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**GAVIN NEWSOM, Governor**  
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February 23, 2024

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Governor's Office of Planning & Research

**Feb 23 2024**

**STATE CLEARINGHOUSE**

**BERTH 44 BOATYARD PROJECT  
NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT  
SCH #2024010275**

Dear Ms. Enciso:

The California Department of Fish and Wildlife (Department) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the Port of Los Angeles (Port) for the Berth 44 Boatyard Project (Project), pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**DEPARTMENT ROLE**

The Department is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state (Fish and Game Code, Section 711.7, subd. [a] & 1802; Public Resources Code, Section 21070; CEQA Guidelines Section 15386, subd. [a]). The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., Section 1802). Similarly for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act Act (Fish & G. Code, Section 2850-2863) and the Marine Managed Areas Improvement Act (Pub. Resources Code, Section 36700) in coastal marine waters of California and ensuring fisheries are sustainably managed under the Marine Life Management Act (Fish & G. Code, Section 7050-7090). Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Los Angeles Harbor Department and LA Shipyard LLC

**Objective:** The objective of the Project is to develop and operate a boatyard to serve commercial and leisure vessels. The Project consists of two components: (1) the Los Angeles Harbor Department proposes to do site preparation consisting of demolition, soil remediation, grading, repairs, and dredging, and (2) LA Shipyard LLC proposes to construct and operate a commercial boatyard. Primary project activities include demolishing the existing structures, buildings, and utilities on site; backfilling, compacting, and regrading the ground surface to match existing elevations; repairing the existing seawall, riprap, and storm drain; constructing a new 40-foot seawall segment along the existing marine way inlet; dredging of approximately 11,000 cubic yards of sediment to approximately -20 Mean Lower Low Water in the slip area; paving the site and constructing concrete pads, an approximately 80-space parking lot, docks, gangways, slips, underground utilities, water treatment systems, approximately 1,000 linear feet of fencing, lighting (i.e., 10 new light poles would be installed), and buildings (e.g., an office space, ship store and chandlery, specialty carpentry, fabrication, engine repair and maintenance areas) to support boatyard operations; and installing equipment (i.e., a 400-ton travel lift, sanding systems, and scissor lifts). Approximately 1.25 acres of the Project site would occur within the West Channel harbor water and there would be a total of approximately 17,000 square feet of docks. In-water structures would include seven up to 12-foot-wide slips, two 9-foot-wide fixed piers, one up to 12-foot-wide headwalk connecting to all the slips, three gangways, and approximately 179 up to 24-inch-diameter piles (100 feet in length) to support the docks. Seawall repairs are anticipated to be conducted from land; however, marine vessels may be used.

**Location:** The Project site is located at 2945 Miner Street, San Pedro, CA 90731 at Berth 44 on the Port of Los Angeles Outer Harbor (Harbor).

**Timeframe:** Construction is anticipated to take approximately 30 months in total (site preparation construction is anticipated to take approximately 12 months and boatyard construction is anticipated to take approximately 18 months). The anticipated construction start date was not included in the NOP.

## **BIOLOGICAL SIGNIFICANCE**

**Discussion and Comment:** The Harbor waters support many resident and migratory fish and special status wildlife such as seabirds, marine mammals, and sea turtles. Important marine plants such as eelgrass (*Zostera marina*) support those fish and wildlife species and may be present throughout shallow coastal environments in the Harbor. Eelgrass is important as fish nursery habitat and supports juvenile and adult fish. The Port waters also support commercially and recreationally important fish and invertebrate species such as California halibut (*Paralichthys californicus*), California spiny lobster (*Panulirus interruptus*), and the important forage fish Northern anchovy (*Engraulis mordax*).

## COMMENTS AND RECOMMENDATIONS

The Department offers the comments and recommendations below to assist the Port in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife resources.

### I. Project Level Impacts and Other Considerations

#### Native Eelgrass Impacts

**Comments:** The NOP indicated that eelgrass was observed adjacent to the Project site, where dredging and pile driving impacts may occur, during the 2018 Biological Surveys of the Los Angeles and Long Beach Harbors. Native eelgrass species create large beds beneficial for fish habitat and have been identified as special aquatic sites and given protections by the Clean Water Act. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) identifies eelgrass as a Habitat Area of Special Concern. Additionally, the importance of eelgrass protection and restoration, as well as the marine ecological benefits of eelgrass, is identified in the California Public Resources Code (PRC §35630). The Department uses the California Eelgrass Mitigation Policy (CEMP) (NOAA 2014), developed by the National Marine Fisheries Service (NMFS), for guidance on identifying eelgrass impacts, eelgrass mitigation measures and compensation, and for identifying appropriate eelgrass mitigation and donor sites.

**Recommendations:** The Department recommends that plans should be developed to avoid and minimize potential impacts to eelgrass to the maximum extent feasible if eelgrass beds or patches are identified within or adjacent to the Project area. The proposed Project should avoid and minimize disturbance and damage or losses of eelgrass beds from dredging, pile driving, and associated barges and vessels. Impacts to avoid and minimize may include, at a minimum, barge shading and anchoring within eelgrass habitat, pile driving bottom disturbances, demolition and construction turbidity, sedimentation, and falling debris. The Department recommends the following should eelgrass beds or patches be identified within or adjacent to the Project area:

- To avoid direct eelgrass impacts, locate pile driver barges and vessels and all barge anchoring outside of eelgrass habitat.
- To avoid scouring of eelgrass and potential eelgrass habitat, anchor chain designs, and locations of barge and vessel moorings, should avoid eelgrass habitat impacts.
- To avoid and minimize eelgrass impacts from demolition and construction debris, the Port should use Best Management Practices (BMPs) such as perimeter debris booms. If debris is observed falling into the water, retrieve debris as soon as possible.
- To minimize eelgrass impacts from water turbidity and sedimentation, install silt curtains around pile driving or demolition areas if applicable. Restrict the turbidity plumes to the smallest possible area during all phases of in-water construction.

If eelgrass is identified in the Project area, comprehensive pre-and post-construction surveys for eelgrass beds or patches should be conducted consistent with the CEMP. If any unavoidable eelgrass impacts occur, these impacts should be compensated using guidance described within the CEMP. Indirect eelgrass impacts such as shading from new piles should also be avoided.

If eelgrass harvest and transplanting is required for mitigation, a Scientific Collecting Permit (SCP) from the Department will be required prior to harvest and transplanting activities. The SCP may include permit conditions such as donor eelgrass surveys, submittal of an eelgrass harvest and transplant plan, limits on number of turions collected, methods for collection and transplanting, notification of activities, and reporting requirements. Please visit the Department's SCP webpage for more information: <https://wildlife.ca.gov/Licensing/Scientific-Collecting>.

## **Pile Driving and Sound Criteria**

**Comments:** Underwater noise associated with pile driving activities may cause temporary or permanent impacts to fish, such as temporary movement out of the Project area, barotrauma injury, or mortality. The Department relies on guidance from the Fisheries Hydroacoustic Working Group to set safe sound pressure level (SPL) criteria for pile driving and pulling activities (Fisheries Hydroacoustic Working Group 2008). The SPL dual criteria include a peak level of 206 dB and a cumulative sound exposure (SEL) level of 187 dB for fish 2 grams and heavier or a cumulative SEL of 183 dB for fish less than 2 grams. Additionally, if hydraulic jetting or an impact hammer is used for pile driving, this may impact water quality, releasing contaminants from sediments into the water and/or creating turbidity that could harm fish and shade or smother eelgrass beds.

**Recommendations:** The Department recommends using a vibratory hammer for pile driving to the greatest extent feasible, or an alternative technology that produces the least amount of noise. If an impact hammer must be used (e.g., due to pile material, refusal at bedrock), multiple minimization measures are needed to reduce sound levels. The Department recommends the following:

- A sound attenuation and monitoring plan should be submitted to the resource agencies for review prior to initiating pile driving activities.
- A wood, or similar material, cushion block should be used between the pile and hammer during all pile driving using an impact hammer.
- To further reduce hydroacoustic impacts to fish and marine mammals, a bubble curtain may be used during all impact pile driving to reduce sound below levels that have been shown to cause injury and/or mortality.
- Underwater sound level monitoring should be conducted during pile driving. If SPLs and SELs exceed agreed upon levels as per the Interim Criteria for Injury to Fish, additional steps should be taken to reduce the underwater noise to acceptable levels.

The Department recommends the use of a silt curtain to control turbidity during high turbidity generating activities, such as hydraulic jetting. Additionally, high turbidity generating activities should be conducted when there are no strong outgoing tides since this could exacerbate turbid conditions and negatively impact marine life.

### **Marine Mammal and Sea Turtle Monitoring**

**Comments:** Harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), other species of marine mammals, and sea turtles (including listed species under the Endangered Species Act such as the green sea turtle (*Chelonia mydas*), leatherback sea turtle (*Dermochelys coricea*), loggerhead sea turtle (*Caretta caretta*), and the olive ridley sea turtle (*Lepidochelys olivacea*)) may be present or occur within the Project area. Project activities, particularly noise from pile driving, could impact these animals if they are present. Additionally, the NOP mentioned that the boatyard operations may attract additional large vessels to the area which could increase impacts to marine mammal and sea turtle species.

**Recommendations:** The Department recommends that the Port prepare and implement a marine mammal and sea turtle monitoring plan that includes, but is not limited to:

- Establishment of an underwater exclusion zone.
- Preconstruction monitoring to update the animals' occurrence and use of the area.
- Monitoring of marine mammals and sea turtles by an experienced observer immediately prior to and during all pile driving activities.
- Pile driving should not occur while marine mammals or sea turtles are present within the exclusion zone.

The Department recommends that the Port consult with the National Marine Fisheries Service and U.S. Fish and Wildlife Service regarding the above recommendation and any other necessary avoidance and mitigation measures to reduce impacts to marine mammals and sea turtles.

## Dredged Material

**Comments:** The NOP notes that dredged material would undergo sediment characterization to identify a suitable disposal location. Compatible sediments are required for healthy marine invertebrate habitat needed for forage of the higher trophic levels such as fish and shorebirds. Contaminated or high silt and organic content sediments should not be placed in the marine environment that are not compatible with existing native sediment. High silt content sediments may cause marine soft substrates to be compacted and unsuitable for subtidal benthic and epibenthic invertebrates.

**Recommendation:** The Department recommends using compatible sediments when placing fill material, and that the DEIR should include any plans the Port may have for the use of incompatible or contaminated sediments if present. Plans should include but not be limited to upland disposal or capping of sediments.

The Southern California Dredged Material Management Team (DMMT) is comprised of regulatory, advisory, and trustee agencies (i.e., United States Army Corps of Engineers, United States Environmental Protection Agency, Regional Water Quality Control Boards, California Coastal Commission, National Oceanic and Atmospheric Administration's National Marine Fisheries Service, and the Department). The DMMT is responsible for managing dredging activities and reviewing technical issues associated with proposed dredging and dredged material disposal projects. All proposals for sediment placement should be reviewed by the DMMT prior to placement.

## Invasive Species Impacts

**Comments:** Disturbance of the bottom sediments from potential pile construction, anchoring, or dredging may redistribute non-native species that compete with native species. This could cause widespread adverse impacts to eelgrass and marine ecology. The invasive alga *Caulerpa taxifolia* is listed as a federal noxious weed under the U.S. Plant Protection Act and while deemed eradicated in 2006 is monitored for potential future emergence. Another invasive alga species found recently in Newport Bay and San Diego Bay is *Caulerpa prolifera*, which is also a potential threat to growth and expansion of native eelgrass beds and other native algae. *Caulerpa prolifera* can grow as deep as 50 meters and appears to be more tolerant of low light environments than most other macroalgae. Additionally, since all *Caulerpa* species pose a serious risk in harming native marine life, Fish and Game Code Section 2300 was amended in 2023 so that no person shall sell, possess, import, transport, transfer, release alive in the state, or give away without consideration all species of the genus *Caulerpa*, with the exception of bona fide scientific research upon authorization by the Department.

**Recommendations:** The Department recommends conducting pre-construction *Caulerpa Spp.* surveys to identify potential existence of invasive *Caulerpa Spp.* in

accordance with the Caulerpa Control Protocol <https://media.fisheries.noaa.gov/2021-12/caulerpa-control-protocol-v5.pdf> (October 2021). Any sightings of *Caulerpa Spp.* should be reported within 24 hours to the Department ([Caulerpa@wildlife.ca.gov](mailto:Caulerpa@wildlife.ca.gov)), and NMFS at 562-980-4037 ([nmfs.wcr.caulerpa@noaa.gov](mailto:nmfs.wcr.caulerpa@noaa.gov)).

## ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by the Department. Payment of the environmental document filing fee is required for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## CONCLUSION

The Department appreciates the opportunity to comment on the NOP to assist the Port in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Leslie Hart, Environmental Scientist at [R7CEQA@wildlife.ca.gov](mailto:R7CEQA@wildlife.ca.gov).

Sincerely,



Becky Ota  
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February 23, 2024  
Page 8 of 7

ec: Eric Wilkins, Senior Environmental Scientist  
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## REFERENCES

NMFS. 2014. California Eelgrass Mitigation Policy, National Marine Fisheries Service, [https://archive.fisheries.noaa.gov/wcr/publications/habitat/california\\_eelgrass\\_mitigation/Final%20CEMP%20October%202014/cemp\\_oct\\_2014\\_final.pdf](https://archive.fisheries.noaa.gov/wcr/publications/habitat/california_eelgrass_mitigation/Final%20CEMP%20October%202014/cemp_oct_2014_final.pdf).

Fisheries Hydroacoustic Working Group. 2008. Interim Criteria for Injury of Fish Exposed to Pile Driving Operations: Memorandum. Washington: Federal Highway Administration.