



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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Governor's Office of Planning & Research

Jazzy Graham-Davis
San Francisco Regional Water Quality Control Board
1515 Clay Street, Room 1505
Oakland, CA 94612
Jazzy.Graham-Davis@Waterboards.ca.gov

Mar 14 2024
STATE CLEARINGHOUSE

Dear Jazzy Graham-Davis:

San Francisco Bay Federal Channels Operations and Maintenance Dredging and Sediment Placement Activities (Project)
Notice of Preparation (NOP)
SCH# 2024020498

The California Department of Fish and Wildlife (Department) received a NOP from the San Francisco Regional Water Quality Control Board (Waterboard) for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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 & G. Code, Section 711.7, subd. (a) & 1802; Pub. 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 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 in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marine Life Management Act.

¹ 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.

The Department is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, Section 21069; CEQA Guidelines, Section 15381.) The Department may need to exercise regulatory authority as provided by the Fish and Game Code. To the extent implementation of the Project as proposed may result in take as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, Section 2050 et seq.), related authorization as provided by the Fish and Game Code will be recommended. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: United States Army Corps of Engineers (USACE)

Objective: The objective of the Project is to maintain navigability of federal navigation channels to authorized depths in San Francisco Bay.

Location: The project is located within San Francisco Bay and the Pacific Ocean in Alameda, Contra Costa, Marin, Napa, Sacramento, San Joaquin, Santa Clara, San Francisco, San Mateo, Solano, and Sonoma counties.

Timeframe: This Environmental Impact Report will cover anticipated Project activities for a 10-year timeframe from 2025 to 2034.

MARINE BIOLOGICAL SIGNIFICANCE

The San Francisco Bay-Delta is the second largest estuary in the United States and supports numerous aquatic habitats and biological communities. It encompasses 479 square miles, including shallow mudflats. This ecologically significant ecosystem supports both state and federally threatened and endangered species and sustains important commercial and recreational fisheries.

STATE AND FEDERALLY LISTED AND COMMERCIAL/RECREATIONALLY IMPORTANT SPECIES

Protected species under the State and Federal Endangered Species Acts that could potentially be present near Project activities include:

- Longfin smelt (*Spirinchus thaleichthys*), state-threatened,
- Delta smelt (*Hypomesus transpacificus*),
- Chinook salmon (*Oncorhynchus tshawytscha*), state and federally threatened (Central Valley Spring-run), state and federally endangered (Sacramento River Winter-run),

- Steelhead (*Oncorhynchus mykiss*), federally threatened (Central California Coast and Central Valley evolutionary significant units),
- Green sturgeon (*Acipenser medirostris*), federal threatened (Southern Distinct Population Segment),
- White sturgeon (*A. transmontanus*), state species of special concern,
- California least tern (*Sternula antillarum browni*), state and federal endangered.

Several species with important commercial/recreational fisheries value and habitat value for spawning and rearing could potentially be present near Project activities. These include:

- Dungeness crab (*Cancer magister*),
- Pacific herring (*Clupea pallasii*),
- Rockfish (*Sebastes* spp.),
- California halibut (*Paralichthys californicus*)
- Surfperches (*Embiotocidae*),
- Eelgrass (*Zostera marina*).

COMMENTS AND RECOMMENDATIONS

The Department offers the comments and recommendations below to assist the Waterboard in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

I. Marine Project Level Impacts and Other Considerations

Longfin Smelt

Comment: Longfin smelt was listed as threatened under CESA in 2009 (CDFW 2009). Scientists have significant concern with the decline of Longfin Smelt as it is part of the collective decline of pelagic fishes known as the Pelagic Organism Decline (POD) that also includes native Delta Smelt, introduced Striped Bass (*Morone saxatilis*), and introduced Threadfin Shad (*Dorosoma pentenense*). The Pelagic Organism Decline Management Team (POD-MT) was formed by the Interagency Ecological Program (IEP) in 2005 to evaluate potential causes of the decline. The team developed several conceptual models to guide work plan development and integrate results. More information can be found on the Department's website at <https://wildlife.ca.gov/Conservation/Fishes/Longfin-Smelt>.

Entrainment monitoring conducted onboard the federal hopper dredge *Essayons* since 2014, shows that entrainment is continuing to be documented in both Pinole

Shoals and Richmond Outer Harbor channels. Although it appears that some measures the Department recommended during consultation with the Waterboard for the 2014 EIR and subsequent CEQA comment letter have been followed, other recommended measures, specifically adherence to the recommended work window, have not.

Recommendation: The Department recommends the Draft Environmental Impact Report (DEIR) include an analysis of the measures that were included in the 2014 EIR and measures provided by the Department in 2014 as a memo at the request of the Waterboard (Attachment 1). The analysis should include which of the measures were successfully implemented, which measures were not implemented, and the reason for the lack of implementation during the previous 10-year period. The DEIR should also consider recommendations provided in the 2015 San Francisco Bay Long Term Management Strategy (LTMS) report, *A Study Plan to Seek Solutions to Hopper Dredge Entrainment of Longfin and Delta Smelt* (Attachment 2).

Recommendation: The Department recommends that the DEIR include additional measures to further avoid the take of Longfin smelt. The measures could be a range of actions and include, but not be limited to, alternatives to suction dredging, a reduction in the amount of hopper dredging in San Francisco Bay, analysis of alternative channels in which hopper dredging may be feasible to avoid take of CESA listed species, alterations to the schedule of dredging activities in San Francisco Bay to remain within the recommended work window, and possible fish deterrents as described in the LTMS report attached.

White Sturgeon

Comment: White sturgeon is a state species of special concern (SSC). Although the SSC designation does not have a formal legal status, species are designated to bring additional attention to conservation, research, and recovery of species that have previously been subject to population declines or are generally rare. SSCs should be considered during the environmental review process. CEQA (California Public Resources Code §§ 21000-21177) requires State agencies, local governments, and special districts to evaluate and disclose impacts from projects in the State. Section 15380 of the CEQA Guidelines indicates that species of special concern should be included in an analysis of project impacts if they can be shown to meet the criteria of sensitivity outlined therein. Sections 15063 and 15065 of the CEQA Guidelines, which address how an impact is identified as significant, are particularly relevant to SSCs. Project-level impacts to listed (rare, threatened, or endangered species) species are generally considered significant thus requiring lead agencies to prepare an Environmental Impact Report to fully analyze and evaluate the impacts. In assigning "impact significance" to populations of non-listed species, analysts usually consider factors such as population-level effects, proportion of the taxon's range affected by a project, regional effects, and impacts to habitat features.

Additionally, the Department received a petition to list White sturgeon as threatened under CESA on November 29, 2023. The Department is expected to complete our review of the petition by April 2024. Information regarding this petition for listing can be found on the California Fish and Game Commission webpage at, https://fgc.ca.gov/CESA?utm_medium=email&utm_source=govdelivery#ws.

Recommendation: The Department recommends the DEIR include analysis of the potential impacts to White sturgeon from Project activities.

Pacific Herring

Comment: The Department has concerns with the amount of dredging that is occurring each year outside of the LTMS environmental work windows, and specifically during the winter Pacific herring spawning season. Dredging in Oakland Inner Harbor occurs yearly outside of the work window through the entirety of the spawning season each year. In addition, channels such as Richmond Inner Harbor, seem to occur on a more frequent basis which has caused conflicts between dredging activities and spawning fish. This has caused dredging to be halted, following other permitting agency conditions of approval and consistent with protocols included in Department issued Pacific herring work window waivers, until after spawning events have concluded. These locations are within the core spawning areas of Pacific herring in San Francisco Bay and dredging during the spawning season may be having impacts to fish each winter dredging occurs (CDFW 2019). Additional impacts from dredging during a sensitive timeframe for a species such as herring, which have seen a decline in overall numbers in San Francisco Bay over the last decade, should be addressed within the DEIR.

Recommendation: The Department recommends the DEIR discuss and analyze the known impacts to species from the continued dredging activities outside of the approved LTMS work windows. The analysis should include a description of mitigation measures that would avoid and minimize impacts to species, and specifically directly benefit species such as herring. Mitigation measures should include adherence to the approved LTMS work windows, approaches to modifying current dredging schedules for channels continually dredged outside of the work windows, continue herring observer monitoring requirements, and compensatory mitigation.

Monitoring and Mitigation

Comment: Entrainment monitoring, and some additional detection surveys, have continued during hopper dredging episodes since 2014 with only a brief interruption due to the COVID-19 pandemic. Monitoring should continue until enough data is available to make informed decisions and create an actionable plan for USACE to implement that would reduce impacts to CESA listed and commercially and recreationally important species.

Compensatory mitigation for CESA listed species impacts should continue as a method to offset impacts from suction dredging occurring in San Francisco Bay and its tributaries. Given the continued level of take being documented and non-adherence to some minimization measures such as work windows, compensatory mitigation to fully offset the impacts of the Project has to be described fully in the DEIR.

The mitigation calculation used in 2014 is no longer a viable way to calculate mitigation amounts for Projects that have entrainment and impingement impacts. The Department determined that the calculation, based on water volume entrained and subsequent mitigation from the State Water Project, did not translate accurately to projects with lower volumes of water entrained. The DEIR should consider a new approach to calculating the mitigation amount to fully offset the Project's impacts.

Recommendation: The Department recommends the DEIR include discussion and analysis of monitoring options, including onboard entrainment monitoring on all suction dredges including cutterhead dredges. Continued monitoring will add to the existing data and assist USACE in making necessary changes to dredging practices that could further reduce or eliminate impacts to sensitive species. Improvements recommended by CDFW in the attached memo and in the attached LTMS report should be considered such as changes to the sampling basket or the addition of a flow meter on the sample basket diversion pipe.

Recommendation: The Department recommends that the DEIR describe different compensatory mitigation options to offset dredging impacts to listed species under CESA and the Federal Endangered Species Act. The Department also recommends that the Waterboard and USACE engage with the resources agencies when determining options and amounts for compensatory mitigation to ensure that the DEIR is describing mitigation options based on the recommendations and requirements of each resource agency.

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 found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/SubmittingData#44524420-pdf-field-survey-form>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of 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 fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, Section 753.5; Fish & G. Code, Section 711.4; Pub. Resources Code, Section 21089.)

CONCLUSION

The Department appreciates the opportunity to comment on the NOP to assist the Waterboard in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed Arn Aarreberg, Environmental Scientist, at (707) 791-4195 or R7CEQA@wildlife.ca.gov.

Sincerely,



Becky Ota
Environmental Program Manager
Marine Region

ENCLOSURES

Attachment 1 – California Department of Fish and Wildlife Response to Request for Guidance on CEQA Issues Related to Take of State-Listed Fish Species under the U.S. Army Corps of Engineers San Francisco Bay Navigational Dredging Program

Attachment 2 – A Study Plan to Seek Solutions to Hopper Dredge Entrainment of Longfin and Delta Smelt

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State Clearinghouse (SCH No. 2024020498)

REFERENCES

CDFW. 2019. California Pacific Herring Fishery Management Plan. Available from:
<https://wildlife.ca.gov/Fishing/Commercial/Herring/FMP>.

CDFG. 2009. California Department of Fish and Game report to the Fish and Game Commission: A Status Review of the Longfin Smelt *Spirinchus thaleichthys* in California, January 23, 2009.