



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Marine Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 5, 2022

Jan Novak
Port of Oakland
Environmental Programs and Planning Division
530 Water Street
Oakland, CA 94607
TurningBasins@portoakland.com

Dear Mr. Novak:

Oakland Harbor Turning Basins Widening (Project)
Notice of Preparation (NOP)
SCH# 2022050647

The California Department of Fish and Wildlife (Department) received a NOP from the Port of Oakland (Port) for the Project pursuant 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 CESA (Fish & Game Code, Section 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

REGULATORY REQUIREMENTS

California Endangered Species Act: Please be advised that a CESA permit will be recommended if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened, rare, or endangered species. (Pub. Resources Code, Section 21001, subd. (c), 21083; CEQA Guidelines, Sections 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with Fish and Game Code section 2080.

PROJECT DESCRIPTION SUMMARY

Proponent: Port of Oakland

Objective: The objective of the Project is to improve the efficiency of vessels entering and exiting the Oakland Harbor, the Project proposes to increase the width of existing turning basins to accommodate large vessels and a length of 1,310 feet. Primary Project activities include dredging to deepen the turning basin to 50 feet below mean lower low water, remove shoreline structures within the widening area, pile removal, bulkhead removal and installation, new anchor/tie back installation.

Location: Along the eastern shoreline of San Francisco Bay in Oakland Inner and Outer Harbors within the Cities of Oakland and Alameda, Alameda County.

Timeframe: The Project is proposed to start in July 2027 and take approximately 2.5 years to complete.

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:

- Chinook salmon (*Oncorhynchus tshawytscha*), state and federally threatened (Sacramento River 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
- Longfin smelt (*Spirinchus thaleichthys*), state-threatened
- Brown pelican (*Pelecanus occidentalis californicus*), state fully protected
- California least tern (*Sternula antillarum browni*), federal and state endangered and state fully protected

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 Port 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

Work Windows

Comment: The NOP addresses work windows that were put into place by multiple state and federal agencies under the San Francisco Bay Long Term Management Strategy (LTMS) (attached). As described in the NOP, work is planned to take place within the specified work windows during the anticipated 2.5 years of construction. The general in-water work window for dredging and pile driving activity is June 1 through November 30. However, Least Terns, a state endangered and fully protected species, are present nearby and could be impacted by Project activities. If potential impacts to Least Terns are identified, the work window to avoid impacts to this species and other aquatic species would be August 1 through November 30.

Recommendations: The Department recommends that the Draft Environmental Impact Report (DEIR) discuss the work window to avoid impacts to certain species. The DEIR should also address the potential for impacts, both direct and indirect, to Least Terns.

Dredging

Comment: The NOP mentions that the majority of dredged material would be placed at a beneficial use site with some contaminated sediment being disposed at a land fill. It is not clear if this will account for 100% of the material. The Department expects all uncontaminated material to be beneficially reused within San Francisco Bay.

Recommendations: The Department recommends that the DEIR discuss whether any uncontaminated material will be placed anywhere other than a beneficial reuse site or be used for the specific purpose of habitat restoration or creation. The Department recommends the DEIR include a complete accounting, to the extent known, of where the estimated amount of material may be reused or disposed.

Hydroacoustic Impacts

Comment: The NOP describes the installation of a new bulkhead using steel and concrete walls. The extent to which pile driving and other construction related in-water activities will be necessary for the installation of this structure is not clear.

Recommendations: The Department recommends the DEIR discuss whether pile driving will occur and the expected materials and methods that will be utilized to

construct the new bulkhead. If pile driving is anticipated to occur, the Department recommends the following minimization measures:

- A vibratory hammer should be used to the maximum extent feasible.
- If an impact a hammer is necessary, a soft start technique should be implemented.
- Impact pile driving should occur at low tide, if possible.
- All impact pile driving should use a wood cushion block between the hammer and pile.
- Impact pile driving larger diameter steel and concrete piles should include a bubble curtain for additional sound attenuation.

If hydroacoustic sound levels are still anticipated to exceed the interim hydroacoustic thresholds for injury to fish (attached), the DEIR should include discussion on consultation with the Department to receive incidental take coverage via a 2081(b) Incidental Take Permit for potential take of state listed species.

Eelgrass

Comment: There is documented eelgrass habitat within and near both the Oakland Inner and Outer harbors. It is not clear from the NOP whether eelgrass may be present and/or impacted from the proposed Project activities.

Recommendations: The Department recommends the DEIR discuss the potential impacts to eelgrass from Project activities. If it is determined that impacts may occur, the DEIR should also discuss avoidance measures and surveys will occur prior to and during construction such as:

- Pre- and post-construction eelgrass surveys consistent with the recommendations within the California Eelgrass Mitigation Policy (attached)
- Installation of turbidity curtains
- Light monitoring
- Vessel transit routes to avoid eelgrass during the process of construction

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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

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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 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 Arn Aarreberg, Environmental Scientist, Marine Region at (707) 791-4195 or Arn.Aarreberg@wildlife.ca.gov.

Sincerely,



Craig Shuman, D. Env
Marine Regional Manager

Enclosures

Interim Criteria for Injury to Fish from Pile Driving Activities
National Marine Fisheries Service California Eelgrass Mitigation Policy
San Francisco Bay Long Term Management Strategy Environmental Work
Windows

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