



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Marine Region  
1933 Cliff Drive, Suite 9  
Santa Barbara, CA 93109  
[wildlife.ca.gov](http://wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



December 18, 2023

Ms. Khamley Chuop  
Port of Oakland  
Environmental Programs and Planning Division  
530 Water Street  
Oakland, CA 94607  
[TurningBasins@portoakland.com](mailto:TurningBasins@portoakland.com)

**Oakland Harbor Turning Basins Widening (Project) Draft Environmental Impact Report (DEIR) SCH# 2022050647**

Dear Ms. Chuop:

The California Department of Fish and Wildlife (Department) received a DEIR from the Port of Oakland (Port) for the 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 & 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

---

<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.

waters of California, and ensuring fisheries are sustainably managed under the Marine Life Management Act.

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 required. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Port of Oakland

**Objective:** The objective of the Project is to widen the turning basins within the Inner and Outer Oakland Harbor. The Inner Harbor would be widened from 1500 feet to 1834 feet and would require the removal of portions of the existing shoreline in Oakland and Alameda. The Outer Harbor would be widened from 1650 feet to 1965 feet. Widening would be accomplished via dredging and shoreline excavation. The newly formed shoreline would be protected by installing a new retaining wall, bulkhead, and placement of riprap which would include pile driving.

**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 be completed in November 2029.

## **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,
- 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

#### Hydroacoustic Impacts

**Comment:** The DEIR describes the construction of the new bulkheads as needing both steel sheet piles and steel batter piles, approximately 24" in diameter. Installation of the piles would include both vibratory and impact hammers. A total number of piles is not provided in the DEIR and the Department understands that at this point in the Project design exact numbers are not available. However, it is estimated that at least 10% of the piles will be installed in the water. Given the extent of the new bulkhead, the Department anticipates that 10% of the total piles would still equate to a substantial number of piles driven in the water. Additionally, both pile types, when using an impact hammer, can produce underwater sound levels that

can cause injury and mortality to fish as specified in the Agreement in Principle for Interim Criteria for Injury to Fish from Pile Driving Activities (Attachment 1).

**Recommendation:** The Department recommends that the Port consult with the Department on obtaining a 2081(b) incidental take permit (ITP) for the potential take of state listed species during in-water pile driving activities for the construction of the new bulkhead and retaining walls.

**Recommendation:** The Department recommends that the Port continue close coordination with the Department as details regarding the exact method of construction and total number of piles are available for the new bulkhead. The Department will need this level of detail in order to issue an ITP prior to the start of construction. The Department recommends that the FEIR include, at a minimum, a range of potential in-water piles to be installed for the project.

## Eelgrass

**Comment:** California Public Resources Code (PRC Section 35630) outlines the importance of eelgrass protection and restoration in California and other West Coast states. Eelgrass has numerous benefits, as outlined within PRC 35630, such as habitat for listed and commercially valuable species, water quality, carbon sequestration, and shoreline protection.

There is documented eelgrass habitat within and near both the Oakland Inner and Outer harbors. The DEIR includes two mitigation measures to minimize potential impacts to eelgrass. MM BIO-1A describes the use of silt curtains to contain areas where elevated chemical contaminants have been identified. MM BIO-2 states that eelgrass surveys will be conducted prior to the start of, and following the completion of, any in-water construction following the recommendation and guidelines specified within the California Eelgrass Mitigation Policy.

Additionally, if mitigation is necessary to offset impacts to eelgrass, the Department would need to authorize the harvest and transplanting of eelgrass within state waters through a Scientific Collection Permit (Fish and Game Code Sections 1002, 1002.5 and 1003).

**Recommendation:** Given the importance of eelgrass, the Department recommends that MM BIO-1A include the use of silt curtains if eelgrass habitat is identified within 45 meters of dredging activities, regardless of the presence of chemical contaminants.

**Recommendation:** The Department recommends that MM BIO-2 include language that the pre-construction survey be both National Marine Fisheries Service and

Department approved. The Department will need to review the pre-construction survey as part of the Department's approval of the Project.

**Recommendation:** The Department recommends the final EIR include language to describe the Department's permitting role, via a Scientific Collection Permit, in the event eelgrass mitigation is necessary.

### **California Least Tern**

**Comment:** The California Least Tern is listed as an endangered species under CESA and a state fully protected species (Fish and Game Code Section 3511). The DEIR failed to recognize the CESA listing in Table 3.401 and on page 3.4-9.

**Recommendation:** The Department recommends that Table 3.401 and text on page 3.4-9 include the species CESA listing in the final EIR.

### **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](mailto: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 DEIR to assist the Port in identifying and mitigating Project impacts on biological resources.

Khamly Choup  
Port of Oakland  
December 18, 2023  
Page 6

Questions regarding this letter or further coordination should be directed Arn Aarreberg, Environmental Scientist, at (707) 791-4195 or [R7CEQA@wildlife.ca.gov](mailto:R7CEQA@wildlife.ca.gov).

Sincerely,



Craig Shuman, D. Env  
Marine Regional Manager

Enclosures

Attachment 1: Agreement in Principle for Interim Criteria for Injury to Fish from Pile Driving Activities

ec: Becky Ota, Environmental Program Manager  
Department of Fish and Wildlife

Eric Wilkins, Senior Environmental Scientist  
Department of Fish and Wildlife

Arn Aarreberg, Environmental Scientist  
Department of Fish and Wildlife

Marcia Grefsrud, Environmental Scientist  
Department of Fish and Wildlife

Xaiver Fernandez, Environmental Program Manager  
Regional Water Quality Control Board

Kevin Lunde, Senior Environmental Scientist  
Regional Water Quality Control Board

Brenda Goeden, Senior Environmental Scientist  
San Francisco Bay Conservation and Development Commission

Habitat Conservation Program Branch CEQA Program Coordinator  
California Department of Fish and Wildlife

State Clearinghouse (SCH No. 2022050647)

---

*NOAA's Fisheries Northwest and Southwest Regions*    *U.S. Fish and Wildlife Service Regions 1 & 8*    *California/Washington/Oregon Departments of Transportation*    *California Department of Fish and Game*    *U.S. Federal Highway Administration*

---

MEMORANDUM

June 12, 2008

From: Fisheries Hydroacoustic Working Group

Subject: Agreement in Principle for Interim Criteria for Injury to Fish from Pile Driving Activities

To: Applicable Agency Staff

The signatory agencies, identified below, have agreed in principle to use the attached Interim Criteria for Injury to Fish from Pile Driving Activities. The agreement was concluded at a meeting in Vancouver, Washington on June 10-11, 2008 with key technical and policy staff from the Federal Highway Administration, NOAA Fisheries, U.S. Fish and Wildlife Service, the Departments of Transportation from California, Oregon, and Washington; and national experts on sound propagation activities that affect fish and wildlife species of concern. The agreed upon criteria identify sound pressure levels of 206 dB peak and 187 dB accumulated sound exposure level(SEL) for all listed fish except those that are less than 2 grams. In that case, the criteria for the accumulated SEL will be 183 dB.

These criteria will apply to all new projects beginning no later than 60 days from the date of this memorandum. During the interim 60 day period, the Transportation Agencies will work with the Services to identify projects currently in the consultation process and reach agreement on which criteria will be used to assess project effects.

The agencies agree to review the science periodically and revise the threshold and cumulative levels as needed to reflect current information. Behavioral impacts to fish and impacts to marine mammals are not addressed in this agreement. Sub-injurious effects will continue to be discussed in future meetings.

The respective agencies also agree to develop appropriate training for staff on these revised criteria, as well as a process to review and possibly refine the criteria, when appropriate.

For questions or concerns about the revised criteria, we recommend staff contact their agency environmental coordinator or agency expert on pile driving issues.

*Carol G. Adkins*



Federal Highway Administration\*

\*FHWA supports the use of these interim criteria in the states signing this agreement in principle. FHWA leaves the schedule for implementation to the discretion of the state DOTs in cooperation with their respective FHWA Division Offices and the Services.

*Michael Jehan*



NOAA Fisheries – NWR

*Russell M. Strook*



NOAA Fisheries – SWR

*Ken S. Berg*



US Fish and Wildlife Service Region 1

*Michael E. Dagensh*



US Fish and Wildlife Service Region 8

*[Signature]*  
California Department of Transportation



*[Signature]*  
California Department of Fish and Game



*A. G. [Signature]*  
Oregon Department of Transportation





*Meghan L. Latta*  
\_\_\_\_\_  
Washington State Department of Transportation

