



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404-4731

March 7, 2024

Refer to NMFS No: WCRO-2023-03215

James Mazza
Chief, Regulatory Division
U.S. Department of the Army
San Francisco District, Corps of Engineers
450 Golden Gate Avenue, 4th Floor, Suite 0134
San Francisco, California 94102-3406

Re: Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens
Fishery Conservation and Management Act Essential Fish Habitat Response for the Port of
San Francisco Shoreline Maintenance and Repair of Shoreline Structures Project (Corps
File No. SPN-2015-00016S)

Dear Mr. Mazza:

This letter responds to your November 29, 2024, request for concurrence from NOAA's National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA) for the subject action. Your request qualified for our expedited review and concurrence because it contained all required information on your proposed action and its potential effects to listed species and designated critical habitat.

This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA and implementing regulations at 50 CFR 402. On July 5, 2022, the U.S. District Court for the Northern District of California issued an order vacating the 2019 regulations that were revised or added to 50 CFR part 402 in 2019 ("2019 Regulations," see 84 FR 44976, August 27, 2019) without making a finding on the merits. On September 21, 2022, the U.S. Court of Appeals for the Ninth Circuit granted a temporary stay of the district court's July 5 order. On November 14, 2022, the Northern District of California issued an order granting the government's request for voluntary remand without vacating the 2019 regulations. The District Court issued a slightly amended order two days later on November 16, 2022. As a result, the 2019 regulations remain in effect, and we are applying the 2019 regulations here. For purposes of this consultation and in an abundance of caution, we considered whether the substantive analysis and conclusions articulated in the letter of concurrence would be any different under the pre-2019 regulations. We have determined that our analysis and conclusions would not be any different.

ENDANGERED SPECIES ACT

We reviewed the Corps' consultation request document and related materials. Based on our knowledge, expertise, and your action agency's materials, we concur with the action agency's conclusions that the proposed action is not likely to adversely affect the NMFS' ESA-listed species and/or designated critical habitat. We relied on your analysis of potential effects to



reach our concurrence. However, your effects analysis did not specifically consider whether or not the effects of your proposed action were likely to be insignificant, discountable, or completely beneficial. These are the criteria for a not likely to adversely affect determination. After further review, we have supplemented your analysis.

As described in the information provided by the Corps, the proposed work under this Regional General Permit (RGP) involves repair and stabilization of existing banks, including armored and unarmored shorelines, seawalls, dikes, and rip-rap; restoration of navigation aids and regulatory markers; removal, repair and replacement of piles; repair of piers, wharves, fenders, dolphins, whales, aprons, and minor coring of decks to install related structures; repair or replacement of fencing and related structures; repair of bulkheads and breakwaters; replacement or reconfiguration of existing docking facilities; repair or replacement of bollards, cranes, pier canopies, and equipment; removal of existing dilapidated piles and associated structures; deployment of scientific measurement devices; and survey activities. Details of the proposed work and avoidance and minimization measures are described in detail in *Regional General Permit for Shoreline Maintenance Repair, Rehabilitation, and Replacement Activities Biological Assessment and Essential Fish Habitat Assessment* (BA) Prepared for the Port of San Francisco, January 2024 by Environmental Science Associates Consulting.

Effects from these activities are expected to temporarily impair water quality in the form of increases in turbidity and suspended sediment, increases in underwater sound, disturbance of benthic habitat, and overwater shading. The increased turbidity and suspended sediment resulting from project activities are expected to be relatively short-lived and localized, and disperse within one to two tidal cycles. Increases in underwater sound are not expected to cause lethal impacts due to the Project's proposed minimization measures including the use of work-windows for impact hammers, vibratory hammers, and limits on the number, size and type of pile. The proposed work is for existing structures. Benthic habitat impacts would be limited to areas where structures currently exist, and the project avoidance and minimization measures to reduce these impacts would be implemented. No new structures are proposed; therefore, no increased overwater shading is anticipated from this project. The removal of existing dilapidated piles and associated structures is anticipated to result in a net reduction of shading and fill. Therefore, project-related temporary impacts on water quality, underwater sound, benthic habitat, and overwater shading are anticipated to be insignificant for threatened Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley steelhead (*O. mykiss*), endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*), threatened Central California Coast steelhead (*O. mykiss*), threatened North American green sturgeon (*Acipenser medirostris*) and their designated critical habitats.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The concurrence letter will be available through NMFS' Environmental Consultation Organizer [<https://www.fisheries.noaa.gov/resource/tool-app/environmental-consultation-organizer-eco>]. A complete record of this consultation is on file at the NMFS North-Central Coast Office in Santa Rosa, California.

Reinitiation of consultation is required and shall be requested by the Corps or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) the proposed action causes take; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the written concurrence; or (4) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA consultation.

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

NMFS also reviewed the proposed action for potential effects on essential fish habitat (EFH) designated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), including conservation measures and any determination you made regarding the potential effects of the action. This review was pursuant to section 305(b) of the MSA, implementing regulations at 50 CFR 600.920, and agency guidance for use of the ESA consultation process to complete EFH consultation.

Section 305 (b) of the MSA directs Federal agencies to consult with NMFS on all actions or proposed actions that may adversely affect EFH. Under the MSA, this consultation is intended to promote the conservation of EFH as necessary to support sustainable fisheries and the managed species' contribution to a healthy ecosystem. For the purposes of the MSA, EFH means "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity", and includes the associated physical, chemical, and biological properties that are used by fish (50 CFR 600.10). Adverse effect means any impact that reduces quality or quantity of EFH, and may include direct or indirect physical, chemical, or biological alteration of the waters or substrate and loss of (or injury to) benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality or quantity of EFH. Adverse effects may result from actions occurring within EFH or outside of it and may include direct, indirect, site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 CFR 600.810). Section 305(b) of the MSA also requires NMFS to recommend measures that can be taken by the action agency to conserve EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset the adverse effects of the action on EFH (50 CFR 600.0-5(b)).

NMFS determined the proposed action would adversely affect EFH for various life stages of fish species managed under the Pacific Groundfish, Coastal Pelagic Species, and Pacific Coast Salmon Fishery Management Plans (FMPs), and estuary Habitat Areas of Particular Concern designated under the Pacific Groundfish and Pacific Coast Salmon FMPs through increased underwater sound, decreased water quality, disturbance of benthic habitat, and overwater shading.

Exposure to increases in underwater sound pressure levels can result in fish injury or mortality (Molnar *et al.* 2020). As noted above for critical habitat, effects from underwater sound are expected to be localized and minimal in nature. Potential increases in underwater sound from pile removal and installation would be minimized through the use of vibratory hammers and the

restricted use of impact hammers to June 15 to November 30 (BA Section 5.1.1), which avoids the salmonid migratory period. Impacts resulting from the removal and installation of piles would be further minimized by the number, type and size pile allowed under this proposed RGP (BA Section 4.4.2).

Fish may suffer reduced feeding ability (Benfield and Minello 1996) and be prone to fish gill injury (Nightingale and Simenstad 2001) if exposed to excessive high levels of turbidity. Increases in turbidity and suspended sediment are expected to occur from the proposed work, however these increases are expected to be localized and water quality is expected to return to background conditions within one to two tidal cycles. Further minimization of impacts to water quality would occur by minimizing sediment removal and substrate disturbance, removal of or complete avoidance of debris, contaminants, and hazardous materials, as well as implementing a spill prevention and response plan.

Benthic habitat impacts would be limited to areas where structures currently exist, and the project avoidance and minimization measures to reduce these impacts would be implemented. Additionally, minimal ground disturbance would occur to prevent stormwater impacts and appropriate handling of materials and treated wood would be executed (BA Section 5.2).

Overwater structures, such as docks and piers, result in shading of the water column and benthic habitats. Shading is known to reduce growth of submerged aquatic vegetation, decrease primary productivity, alter predator-prey interactions, change invertebrate assemblages, and reduce the density of benthic invertebrates (Helfman 1981; Glasby 1999; Struck *et al.* 2004; Stutes *et al.* 2006). As noted above, there will be no increase in overwater shading as a result of the proposed work. Light transmitting materials will be incorporated into replacement structures where feasible. In addition, the removal of dilapidated piles and associated structures may result in a net reduction of shading and fill, which may also benefit habitat by the permanent removal of creosote-treated piles.

The Corps must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations (50 CFR 600. 920(l)). This concludes the MSA consultation.

Please direct questions regarding this letter to Sara Azat, North-Central Coast Office in Santa Rosa, California at (707) 575-6067 or sara.azat@noaa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Darren Howe". The signature is fluid and cursive, with a long horizontal line extending from the left side.

Darren Howe
San Francisco Bay Branch Supervisor
North-Central Coast Office

cc: Jenna Rais, Corps of Engineers (jenna.s.rais@usace.army.mil)
Copy to E-file FRN 151422WCR2023SR00264

REFERENCES

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- Struck, S.D., C.B. Craft, S.W. Broome, M.D. Sanclements, and J.N. Sacco. 2004. Effects of Bridge Shading on Estuarine Marsh Benthic Invertebrate Community Structure and Function. *Environmental Management* 34(1):99-111.
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