



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE

Southwest Region

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Long Beach, California 90802- 4213

JUL 17 2007

Colonel Thomas H. Magness, IV
U.S. Army Corps of Engineers
Los Angeles District
Regulatory Branch
ATTN: CESPL-CO-R-2003-01029-AOA
P.O. Box 532711
Los Angeles, California 90053-2325

Dear Colonel Magness:

NOAA's National Marine Fisheries Service (NMFS) has reviewed the U.S. Army Corps of Engineers' (Corps) and the Port of Los Angeles's (POLA) Re-Circulated Draft Environmental Impact Statement/Environmental Impact Report (RDEIS/EIR) for the Berth 97-109 China Shipping Container Terminal Project (Project). NMFS offers the following comments pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), Endangered Species Act (ESA), Marine Mammal and Protection Act (MMPA) and the Fish and Wildlife Coordination Act.

Proposed Project

The proposed Project consists of the development and operation of a new container terminal for the China Shipping Lines at Berths 97-109. The terminal would be developed by POLA in three phases of construction, Phase I (completed and in operation since 2004), Phase II (estimated completion in 2011), and Phase III (estimated completion in 2012). The main elements of the Project that concern NMFS include dredging and wharf construction.

Phase I involved discharge of fill in 1.3 acres of waters of the U.S. associated with construction and operation of a 1,200-foot wharf at Berth 100. Of the 1,300 feet of new wharf, approximately 925 feet would be constructed on a previously approved dike at Berth 102 that was built as part of the Channel Deepening Project. The new wharf at Berth 102 would extend northward from the existing Berth 100 wharf. New wharf would also be constructed to extend Berth 100 an additional approximately 375 feet south into the Catalina Express Terminal. Only the Berth 100 southern wharf extension (approximately 375 feet) would require new rock dike (116,000 cubic yards) and fill (24,000 cubic yards). According to the RDEIS/EIR, a total of 2.54 acres of waters of the U.S. will be filled by the Project.



The construction of new wharves at Berth 100 required clamshell dredging to remove approximately 41,000 cubic yards of sediments, with that material disposed of at the POLA's Anchorage Road soil storage site. Major dredging is not necessary for Berth 102 because dredging was previously conducted in this area as part of the Channel Deepening Project. However, some minor maintenance dredging may be needed to remove sediments near Berth 102 that have settled since the Channel Deepening Project dredging, and this material would also be disposed of at the Anchorage Road soil storage site.

Magnuson-Stevens Fishery Conservation and Management Act Comments

Action Area

The proposed project occurs in essential fish habitat (EFH) for various federally managed fish species within the Pacific Groundfish and Coastal Pelagics Fishery Management Plans (FMPs). In addition, the project occurs within estuarine habitat, which is considered a habitat area of particular concern (HAPC) for various federally managed fish species within the Pacific Groundfish FMP. HAPC are described in the regulations as subsets of EFH which are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area. Designated HAPC are not afforded any additional regulatory protection under MSA; however, federally permitted projects with potential adverse impacts to HAPC will be more carefully scrutinized during the consultation process.

Effects of the Action

Adverse impacts to EFH from the introduction of fill material may include 1) loss of habitat function and 2) changes in hydrologic patterns. Based on the REIS/EIR, placement of 2.54 acres of fill will occur. Pursuant to the Inter-Agency Bolsa Chica Memorandum of Agreement and the Outer Harbor Mitigation Bank signed by NMFS and a number of other regulatory and resource agencies, areas of the harbor designated as "Inner Harbor" for habitat mitigation purposes require the application of 0.5 credit to offset each acre of lost habitat, whereas areas designated as "Outer Harbor" require the application of 1.0 credit per acre of loss. The POLA intends to apply 1.27 credits available in the Bolsa Chica or Outer Harbor mitigation banks to compensate for this loss of EFH and Inner Harbor habitat for other fish and wildlife resources.

Another potential project concern is the spread of the invasive alga *Caulerpa taxifolia* from dredging activities. As you may be aware, this alga has been introduced to our coastline. Evidence of harm that can ensue as a result of an uncontrolled spread of the alga has already been seen in the Mediterranean Sea where it has destroyed local ecosystems, impacted commercial fishing areas, and affected coastal navigation and recreational opportunities. Although it is not known to be present within POLA, it has been detected in two other locations in Southern California. If the invasive alga is present within the project area, the dredging activities would adversely affect EFH by promoting its spread and increasing its negative ecosystem impacts.

EFH Conservation Recommendations

As described in the above effects analysis, NMFS has determined that the proposed action would adversely affect EFH for various federally managed fish species within the Coastal Pelagics Species and the Pacific Coast Groundfish FMPs. NMFS believes the use of Bolsa Chica or Outer Harbor mitigation credits would adequately offset the adverse effects associated with the 2.54 acre fill. In addition to this proposed measure, NMFS offers the following EFH conservation recommendation to avoid, minimize, mitigate, or otherwise offset the adverse effects to EFH pursuant to section 305(b)(4)(A) of the MSA.

- If maintenance dredging is needed, a pre-construction survey for Caulerpa of the project area should be conducted in accordance with the Caulerpa Control Protocol (see <http://swr.nmfs.noaa.gov/hcd/caulerpa/ccp.pdf>) not earlier than 90 days prior to planned construction and not later than 30 days prior to construction. The results of that survey should be transmitted to NMFS and the California Department of Fish and Game at least 15 days prior to initiation of proposed work. In the event that Caulerpa is detected within the project area, no work shall be conducted until such time as the infestation has been isolated, treated, and the risk of spread is eliminated.

Statutory Response Requirement

Please be advised that regulations at section 305(b)(4)(B) of the MSA and 50 CFR 600.920(k) of the MSA require your office to provide a written response to this letter within 30 days of its receipt and at least 10 days prior to final approval of the action. A preliminary response is acceptable if final action cannot be completed within 30 days. Your final response must include a description of measures to be required to avoid, mitigate, or offset the adverse impacts of the activity. If your response is inconsistent with our EFH conservation recommendations, you must provide an explanation of the reasons for not implementing those recommendations. The reasons must include the scientific justification for any disagreements over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate, or offset such effects.

Supplemental Consultation

Pursuant to 50 CFR 600.920(l), 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.

Endangered Species Act Comments

Section 7 of the Endangered Species Act (ESA; see 16 U.S.C. § 1536(a)(2)) requires federal agencies to consult with the Secretary of Commerce to insure that "any action

authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species" See also 50 C.F.R. part 400.

On page 3.3-21 of the RDEIS/EIR, the Corps makes a determination that the proposed project would have "no effect" on marine mammals. Please note that the Corps should formally request concurrence from NMFS regarding any effects determination of possible impacts to those ESA-listed species under NMFS' jurisdiction.

Marine Mammal Protection Act Comments

An additional 234 ship calls to the Ports of Los Angeles and Long Beach, may increase the risk of a collision with a marine mammal. In the mitigation measure, MM BIO-2: The Vessel Speed Reduction Program, vessel speeds would be reduced to 12 knots between 40 nm from Point Fermin and in the Precautionary Area, with 100 percent compliance starting in 2009. Since the average ship speed for a container ship ranges from 18 to 25 knots, slowing the speed to 12 knots may reduce the likelihood of a collision with a whale (please note, when vessels travel at greater than 10 knots, collisions are usually fatal to the animal). NMFS supports this mitigation measure and reminds the Corps that in the unlikely event of a collision with a marine mammal, a report must be sent to the NMFS Southwest Regional Office's Stranding Coordinator, Mr. Joseph Cordaro.

Whales, dolphins, porpoises, seals, and sea lions are protected under the Marine Mammal Protection Act (MMPA). See 16 U.S.C. § 1361 *et seq.* Under the MMPA, it is generally illegal to "take" a marine mammal without prior authorization from NMFS. "Take" is defined as harassing, hunting, capturing, or killing, or attempting to harass, hunt, capture, or kill any marine mammal. Except with respect to military readiness activities and certain scientific research conducted by, or on behalf of, the Federal Government, "harassment" is defined as any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal in the wild, or has the potential to disturb a marine mammal in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

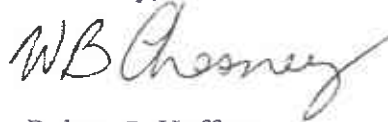
Marine mammals likely to be in the immediate project area are the California sea lion (*Zalophus californianus*) and possibly the Pacific harbor seal (*Phoca vitulina richardii*), although in fewer numbers than sea lions. The RDEIS/EIR mentions possible impacts to marine mammals from underwater sound from project-related vessels, dredging, and pile-driving. The noise generated from pile-driving or other construction could affect marine mammals located within the vicinity of the project site and has the potential to disturb a marine mammal. On page 3.3-46 of the RDEIS/EIR, temporary disturbance to fish and marine mammals was caused by dredging and wharf construction during Phase I activities. Underwater noise levels during dredging could range between 111 and 175 dB at 33 feet and pile-driving produces noise levels of 177 to 220 dB at 33 feet (page 3.3-21 RDEIS/EIR).

Sounds introduced into the sea by man-made devices could have a deleterious effect on marine mammals by causing stress or injury, interfering with communication and predator/prey detection, and changing behavior. Acoustic exposure to loud sounds, such as those produced by pile-driving activities, may result in a temporary or permanent loss of hearing (termed a temporary (TTS) or permanent (PTS) threshold shift) depending upon the location of the marine mammal in relation to the source of the sound. NMFS is currently in the process of determining safety criteria (i.e., guidelines) for marine species exposed to underwater sound. However, pending adoption of these guidelines we have preliminarily determined, based on past projects, consultations with experts, and published studies, that 180 dB re 1 $\mu\text{Pa}_{\text{RMS}}$ (190 dB re 1 $\mu\text{Pa}_{\text{RMS}}$ for pinnipeds) is the impulse sound pressure level that can be received by marine mammals without injury. Marine mammals have shown behavioral changes when exposed to impulse sound pressure levels of 160 dB re 1 $\mu\text{Pa}_{\text{RMS}}$.

The RDEIS/EIR refers to observations of pile-driving at the San Francisco-Oakland Bay Bridge East Span seismic safety project, where sea lions rapidly swam out of the area when piles were being driven and concluded based on the aforementioned observations, that sea lions, which are sometimes present in the West Basin, would be expected to avoid areas where sound pressure waves could affect them. The California Department of Transportation, the agency conducting the work described above for the seismic safety project, obtained an Incidental Harassment Authorization to cover the "take" of marine mammals, as defined above under the MMPA, caused by the bridge work (68 FR 64595). Based on the information provided in the RDEIS/EIR, it may be necessary to receive authorization from NMFS under the MMPA for this proposed project. Most incidental take authorizations to date have involved the incidental harassment of marine mammals by noise.

Thank you for consideration of our comments. If you have any questions about our EFH comments, please contact Mr. Bryant Chesney at 562-980-4037 or Bryant.Chesney@noaa.gov. For questions related to ESA or MMPA, please contact Monica DeAngelis at 562-980-3232 or Monica.DeAngelis@noaa.gov.

Sincerely,



for Robert S. Hoffman
Assistant Regional Administrator
for Habitat Conservation

