**UNITED STATES DEPARTMENT OF COMMERCE**
**National Oceanic and Atmospheric Administration**
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802- 4213

SEP 25 2007

Colonel Thomas H. Magness
U.S. Army Corps of Engineers
Los Angeles District
Regulatory Division
ATTN: Dr. Spencer D. MacNeil
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 Los Angeles Harbor Department's (Port) Draft Environmental Impact Assessment/Environmental Impact Report (DEIS/EIR) for the Berths 136-147 Container Terminal project in the Port of Los Angeles. NMFS offers the following comments pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Fishery Conservation and Management Act and the Fish and Wildlife Coordination Act.

Statutory and Regulatory Information

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996, establishes a national program to manage and conserve the fisheries of the United States through the development of federal Fishery Management Plans (FMPs), and federal regulation of domestic fisheries under those FMPs, within the 200-mile U.S. Exclusive Economic Zone ("EEZ"). 16 U.S.C. §1801 *et seq*. To ensure habitat considerations receive increased attention for the conservation and management of fishery resources, the amended MSA required each existing, and any new, FMP to "describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 1855(b)(1)(A) of this title, minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat." 16 U.S.C. §1853(a)(7). Essential fish habitat (EFH) is defined in the MSA as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity" 16 U.S.C. §1802(10). The components of this definition are interpreted at 50 C.F.R. §600.10 as follows: "Waters" include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; "substrate" includes sediment, hard bottom, structures underlying the waters, and associated biological communities; "necessary" means the habitat required to support a sustainable fishery and the managed species'

contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle.

Pursuant to the MSA, each federal agency is mandated to consult with NMFS (as delegated by the Secretary of Commerce) with respect to any action authorized, funded, or undertaken, or proposed to be, by such agency that may adversely affect any EFH under this Act. 16 U.S.C. §1855(b)(2). The MSA further mandates that where NMFS receives information from a Fishery Management Council or federal or state agency or determines from other sources that an action authorized, funded, or undertaken, or proposed to be, by any federal or state agency would adversely effect any EFH identified under this Act, NMFS has an obligation to recommend to such agency measures that can be taken by such agency to conserve EFH. 16 U.S.C. §1855(4)(A). The term "adverse effect" is interpreted at 50 C.F.R. §600.810(a) as any impact that reduces quality and/or quantity of EFH and may include direct or indirect physical, chemical, or biological alterations 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 quantity and/or quality of EFH. In addition, adverse effects to EFH may result from actions occurring within EFH or outside EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

If NMFS determines that an action would adversely affect EFH and subsequently recommends measures to conserve such habitat, the MSA proscribes that the federal action agency that receives the conservation recommendation must provide a detailed response in writing to NMFS within 30 days after receiving EFH conservation recommendations. The response must include a description of measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with NMFS EFH conservation recommendations, the federal agency must explain its reasons for not following the recommendations. 16 U.S.C. §1855(b)(4)(B).

Proposed Action

The overall purpose of the proposed project is to increase and optimize the cargo handling efficiency and capacity of the Port at Berths 136-147 in the West Basin to address the need to optimize Port lands and terminals for current and future containerized cargo handling. The proposed Project seeks to do this by improving facilities and expanding an existing operating 176-acre marine terminal at Berths 136-147.

The proposed project occurs in the Port of Los Angeles in the north and eastern portions of the West Basin of the Port, in the Wilmington and San Pedro Districts. The proposed terminal is roughly bordered by Harry Bridges Boulevard on the north; by Slip 1, Neptune Avenue, Water Street, and Fries Avenue on the east; by the Turning Basin to the south, and by Berths 118-131 to the west.

The proposed project is to expand and modernize the container terminal at Berths 136-147, upgrade existing wharf facilities, and install a buffer area between the terminal and

the community. The proposed project includes a 30-year lease and would involve two phases of construction (Phase I: 2008-2015, Phase II: 2015-2025). Most of the proposed improvements would occur on 176 acres currently being used as a container terminal operated by TraPac, but the proposed project also includes adding a total of 67 terminals to the new terminal, 57 in Phase I and 10 in Phase II.

Major elements of the proposed project include the following:

- Expanding, redeveloping, and constructing container terminal facilities, including new buildings and gates, and constructing a new on-deck rail yard
- Wharf and berth work, including dredging 295,000 cubic yards, renovating 2,900 feet of wharf and constructing 705 feet of new wharf
- Installing five new gantry cranes to replace six existing gantry cranes
- Relocating the Pier A rail yard to the backlands area of Berth 200
- Constructing a 500-space parking lot for union workers
- In Phase II, filling the 10-acre Northwest Slip, constructing backlands facilities on the fill, and constructing a new 400-foot wharf along the edge of the fill
- Widening Harry Bridges Boulevard and constructing a new 30-acre buffer area between "C" Street and Harry Bridges Boulevard

Alternatives to the proposed project were also discussed and analyzed in the DEIS/EIR. Alternative 1 is the no project alternative. Alternative 2 is the same as the proposed project except that the 10-acre Northwest Slip would not be filled and the 400-foot wharf extension adjacent to it would not be built. Alternative 3 is the same as the proposed project except that the proposed new 705-foot wharf at Berth 147 would not be constructed, the 10-acre Northwest Slip would not be filled, and the 400-foot wharf extension adjacent to it would not be built. Alternative 4 would convert the area into an omni-cargo handling terminal. The omni terminal would differ from the proposed project in that there would be no seismic upgrades to the existing wharves, no new wharf construction, no change in existing cranes, and no 10-acrea fill of the Northwest Slip. Alternative 5 comprises only the upland infrastructure components of the proposed project.

Action Area

The proposed project occurs within EFH for various federally managed fish species within the Coastal Pelagics Species and the Pacific Coast Groundfish FMPs. In addition, the project occurs within an area designated as an estuary 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, federal projects with potential adverse impacts to HAPC will be more carefully scrutinized during the consultation process.

Effects of the Action

Based on information provided in the DEIS/EIR, NMFS concludes that the proposed action would adversely affect EFH for various federally managed species within Coastal Pelagics Species and Pacific Coast Groundfish FMPs.

The proposed fill at Northwest Slip would result in the direct loss of 9.5 acres of EFH and habitat for other fishery resources. As part of the proposed project, the Port intends to apply 4.75 credits available in the Bolsa Chica or Outer Harbor mitigation banks to compensate for loss of EFH and habitat for other fish and wildlife resources.

The waters adjacent to Berths 144-147 would be deepened by dredging to match the planned –53 foot (MLLW) channel depth that is expected to be achieved by the Channel Deepening Project. Approximately 265,000 cubic yards of sediments would be dredged for this purpose. In addition, the wharf upgrades would involve dredging approximately 30,000 cubic yards of sediments from the West Basin. In total, proposed dredging activities would impact 6.2 acres of soft bottom habitat. The environmental effects of dredging and disposal on EFH include 1) direct removal/burial of organisms; 2) turbidity/siltation effects, including light attenuation from turbidity; 3) contaminant release and uptake, including nutrients, metals, and organics; 4) release of oxygen consuming substances; 5) entrainment; 6) noise disturbances; and 6) alteration to hydrodynamic regimes and physical habitat.

Wharf construction activities involve modifications of the dike and vertical wall surfaces, timber piling removal, and concrete piling installation. These activities would result in habitat disturbances, noise disturbances, and pollutant runoff, which would reduce the quality of EFH within the impact area.

EFH Conservation Recommendation

As described in the above effects analysis, NMFS has determined that the proposed action would adversely affect EFH for various federally managed fish species the Coastal Pelagics Species and the Pacific Coast Groundfish FMPs.

NMFS believes the dredging and wharf construction activities would adversely affect EFH. However, many of the impacts would only be temporary. In addition, the proposed action contains adequate measures to avoid, minimize, mitigate, or otherwise offset the adverse effects associated with dredging and wharf construction. Therefore, NMFS has no EFH Conservation Recommendations to provide on these issues.

NMFS's primary concern relates to the purpose and need for the proposed fill at Northwest Slip. The proposed fill would adversely affect EFH via the permanent removal of 9.5 acres of habitat. Therefore, pursuant to section 305(b)(4)(A) of the MSA, NMFS offers the following EFH conservation recommendation to avoid, minimize, mitigate, or otherwise offset the adverse effects to EFH.

1. If practicable, the Corps and the Port should adopt Alternative 2 rather than the proposed project. Alternative 2, which does not include the fill, involves the same number of annual ship calls and containerized cargo as the proposed project. The only statements NMFS identified in the DEIS/EIR that argued against Alternative 2 relate to decreased container movement efficiency compared to the proposed project. Given the same level of cargo traffic in the proposed project and Alternative 2, the effect of decreased efficiency is not readily apparent and, thus, does not provide a sufficient justification for filling 9.5 acres of marine habitat.

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.

Please contact Mr. Bryant Chesney at 562-980-4037 or Bryant.Chesney@noaa.gov if you have any questions concerning this EFH consultation or require additional information.

Sincerely,

Robert S. Hoffman
Assistant Regional Administrator
for Habitat Conservation Division