LTMS
Environmental Work Windows

INFORMAL CONSULTATION PREPARATION PACKET

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Draft Version 1.4

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INTRODUCTION

In 1999, under the authority of the Federal Endangered Species Act (FESA), NOAA Fisheries and the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG), under the California Endangered Species Act (CESA), completed a programmatic consultation for the Long Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region (LTMS) Management Plan. NOAA Fisheries, USFWS and CDFG concluded that the LTMS program was not likely to jeopardize the continued existence of listed species under their jurisdiction. The respective biological opinions provided an incidental take statement which authorized the take of listed species which may inadvertently occur during dredging and dredged material disposal activities that adhere to the environmental work windows set forth in the LTMS Management Plan (Figures 3.2 and 3.3 and Appendix F). Therefore, permitted dredging activities that conform to the Environmental Work Windows can be completed without the need to consult with the resource agencies under the FESA and the CESA.

Any project proposing to conduct dredging activities outside of the LTMS environmental work windows is required to undertake either informal or formal consultation with the appropriate resource agencies (NOAA Fisheries, USFWS, and CDFG). Consultation is required so the agencies can consider the potential adverse effects from dredging and disposal to listed species or designated critical habitat. When requested by the applicant, the United States Army Corps of Engineers (USACE) will initiate either informal or formal consultation for the project with the appropriate resource agency. In many cases, when a species is listed by both the State and the Federal Government, the CDFG would work with the federal agencies to find concurrence through a consistency determination. If the species of concern is not a federally listed species, but a California State endangered species or species of concern, the CDFG must be contacted by the applicant directly. (See list of federal and state species in Attachment 2). If a state endangered species would be adversely affected by the project, then a CDFG 2081 permit is required.

HOW CONSULTATION WORKS

When an applicant proposes to dredge or dispose of dredged material outside of the environmental work window the applicant should request that the USACE initiate consultation. As a result of this request, the USACE reviews the project for potential impacts on listed species and designated critical habitat. If the USACE is able to determine that this project may affect, but is *not likely to adversely affect* the listed species or adversely modify designated critical habitat, the USACE will request that the appropriate resource agencies (NOAA Fisheries, USFWS, CDFG) concur with this determination. If the resource agencies concur with this determination, then the project can be completed within the parameters

of the determination. Remember if the project affects a State endangered species only, CDFG must be contacted directly by the applicant for further direction and possibly permitting.

If the resource agencies do not concur, or the USACE is unable to make a determination of *not likely to adversely affect* the listed species or adversely modify designated critical habitat, then consultation between the USACE and the resource agencies will continue either as an informal or formal consultation. Informal consultation often requires some modification of the dredging project or planned period for the dredging/disposal. This process is initiated when the USACE (through information provided by the applicant) provides a complete package of information to the resource agencies, NOAA Fisheries or USFWS, or the applicant provides information to the CDFG.

In cases where listed species or designated critical habitat are present, incorporation of measures designed to avoid or minimize adverse affects may enable dredging and disposal outside the work windows. If the resource agency can concur with the USACE's determination or make modifications to the project that will likely reduce potential impacts, the resource agency will write a letter formalizing the determination of not likely to adversely affect listed species or adversely modify designated critical habitat. Although not required by regulation, the agency will attempt to respond with this letter within 30 days of receiving a complete package of necessary information.

If the resource agency does not concur, and instead determines that listed species or critical habitat may be adversely affected by the dredging or disposal activity, then the agency may request more information, or require formal consultation. If a project requires formal consultation then the resource agency will develop a Biological Opinion for the project, which will provide the authority for (1) the incidental take of listed species (for CDFG this would likely be in the form of Fish and Game Code Section 2081 permit); (2) provide measures designed to avoid or minimize adverse effects; (3) or issue a jeopardy opinion. Federal regulations allow 135 days to complete this form of consultation. If a biological opinion is required, is likely that the CDFG would work with the federal resource agencies involved in the its development, and then adopt the biological opinion through a consistency determination process. For further information on the formal consultation process please contact the USACE or the resource agencies.

For projects that are located in an area where State species of special concern occur, as in the case of Central Bay and herring, the applicant must contact the Department of Fish and Game directly.

HERRING

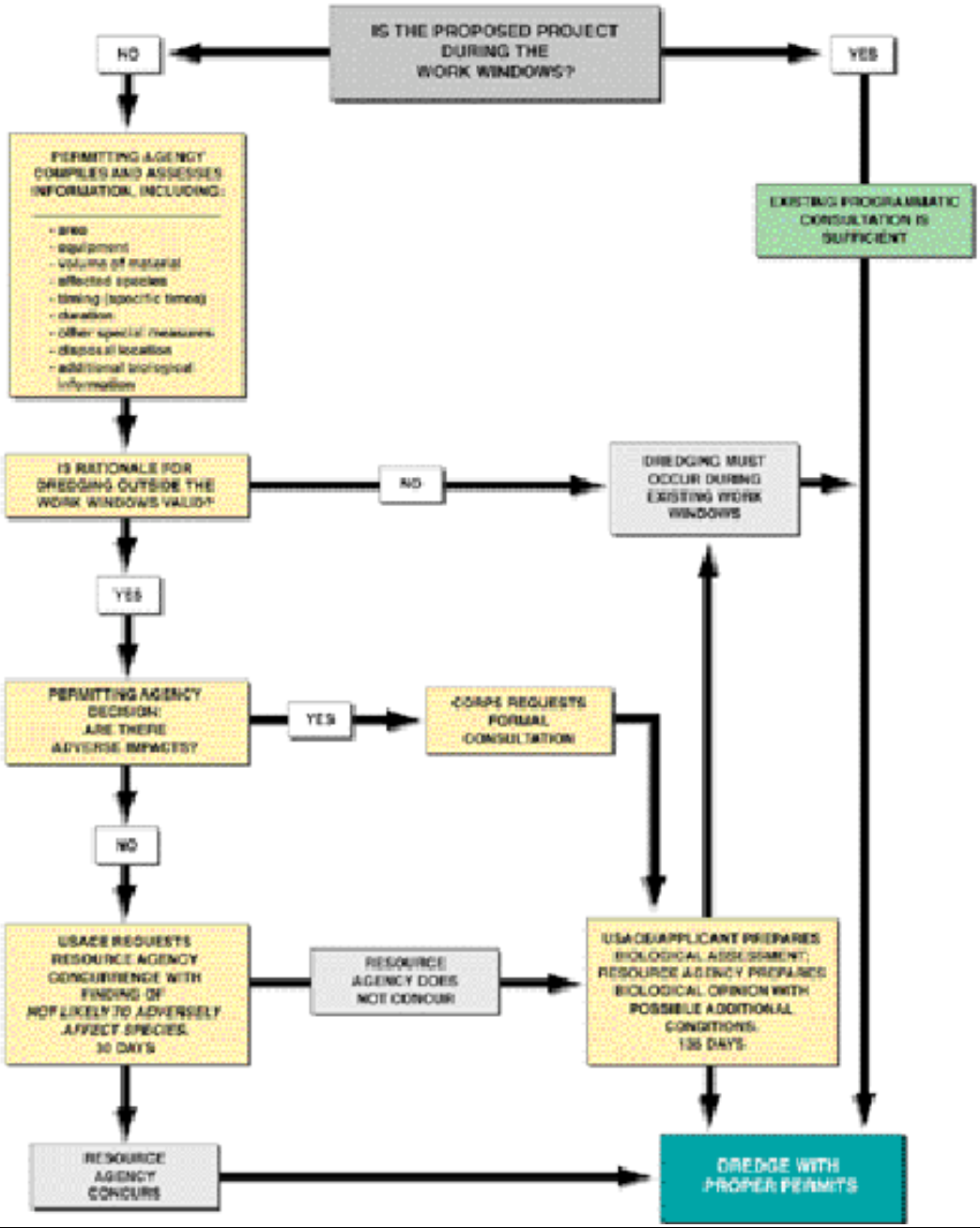
The Pacific Herring is considered a species of special concern by the CDFG because they are an important forage fish for many marine species. San Francisco Bay serves as California's principle spawning ground for Pacific herring. Additionally, there is an active herring fishery in the Bay. Therefore, as shown in the LTMS Work Windows Chart (attached), there is a three month period when dredging cannot occur within the central portion of San Francisco Bay without a waiver from the CDFG. This period is from December 1st through the end of February in any year. Dredging projects that are geographically located in the area of the herring restriction, should be planned to occur during the remaining work window period. In the event that an emergency situation arises (i.e., unexpected shoaling that causes a navigational hazard), or a project needs to extend into December due to unforeseen circumstances, a waiver can be requested. If a waiver is granted, it may include requirements that certain protocols be followed such as having a trained observer on board and cessation of dredging activities should a herring spawning event occur in the vicinity of the project. If the project sponsor finds that a waiver may be necessary, he/she is encouraged to contact the CDFG directly. Contact with CDFG should occur as early as possible. The attached consultation form may be used to provide information to the CDFG as well the federal agencies. Because the regulatory agencies (BCDC and the USACE) will also need to approve an extension into the restricted period, it is helpful to cc, both BCDC and the Corps in this process.

SCOPE

The purpose of this document is to provide a template for preparing a thorough compilation of information to be used in the **informal consultation process**. The goal is to provide all of the information needed by the USACE and the appropriate resource agencies to make an informed and timely decision regarding your project. While this packet will guide the applicant in the preparation process, it is always possible that more information other than what is requested here will be needed on the proposed project.

Figure 3.4

Consultation Process Flowchart



RECIPIENTS

The USACE has the responsibility of reviewing and submitting the prepared informal consultation package to the appropriate federal resource agency. It is in the applicant's best interest to provide as much information as possible to the USACE office. However, to precipitate the most timely response, it is advisable to submit an additional copy to the Resource Agency Representative at the same time you submit it to the USACE.

Contact:

Clyde Davis
US Army Corps of Engineers,
333 Market Street, 8th Floor
San Francisco, CA 94105
(415)977-8449

Gary Stern
NOAA Fisheries
777 Sonoma Avenue
Santa Rosa, CA 95404-4731

Ryan Olah
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825

George Isaac
California Department of Fish and Game
20 Lower Ragsdale Drive, Suite 100
Monterey, CA 93940

Brenda Goeden
San Francisco Bay Conservation and Development Commission
50 California Street, Suite 2600
San Francisco, CA 94111

TIMELINE/RESPONSE

A. USACE/NOAA/USFWS:

Once the USACE submits the consultation request, the timeline for review of an **informal** consultation from the resource agency is usually less than 30 days (as a courtesy). **Formal** consultation can take as long as 135 days. It is anticipated that that the USACE will receive one of the following responses from the resource agencies and will pass the response on to you:

1. A letter of concurrence
2. A request for more information
3. A letter of non-concurrence and the initiation of the formal consultation process.

B. CDFG:

Once you have initiated contact with the California Department of Fish and Game, they will contact BCDC & the USACE directly.

TECHNICAL ASSISTANCE

Each project, project location and affected species are unique, and will be evaluated on an individual basis. In order to best prepare for the informal consultation, you are advised to seek technical assistance and input from the appropriate Resource Agency.

The following individuals can be contacted for technical assistance:

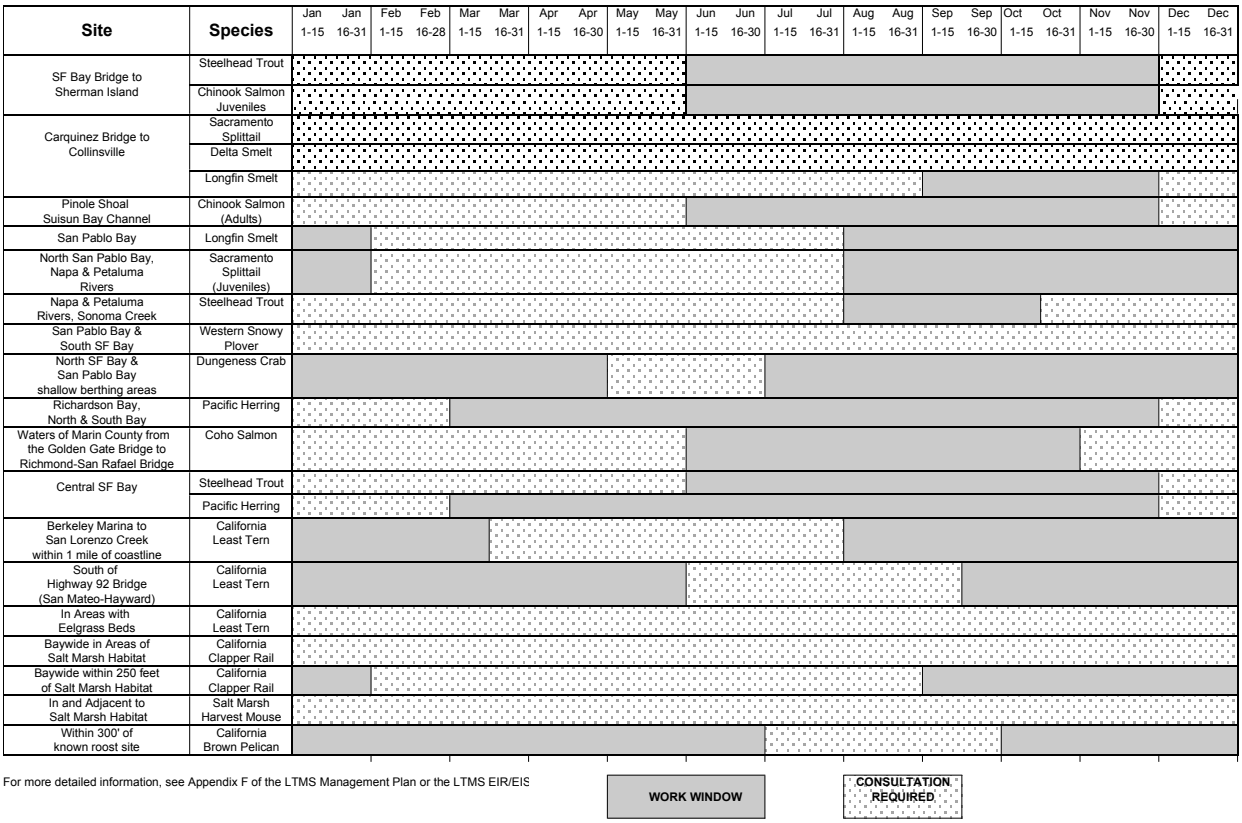
NOAA Fisheries
David Woodbury- (ESA/EFH/MMPA) (707) 575-6088
David.P.Woodbury@noaa.gov
Brian Mulvey - (EFH) (707) 575-6056
Brian.Mulvey@noaa.gov

US Fish and Wildlife Service
Ryan Olah – (916)414-6639
ryan_olah@fws.gov
Dan Buford - (Birds & Mammals) (916) 414-6625
Daniel_Buford@fws.gov

California Department of Fish and Game
George Isaac - DFG (831) 649-2813
gisaac@dfg.ca.gov

ESA = Endangered Species Act
EFH = Essential Fish Habitat
MMPA = Marine Mammal Protection Act

Attachment One
Environmental Work Windows
Dredging Chart



For more detailed information, see Appendix F of the LTMS Management Plan or the LTMS EIR/EIS

Attachment 2
Responsible Agencies
State and Federally Listed Species and
Species of Special Concern

Species (Common Name)	Consulting Agency
Steelhead Trout	NMFS
Coho Salmon	NMFS, CDFG
Chinook Salmon (listed runs)	NMFS, CDFG
Delta Smelt, Long Fin Smelt	FWS, CDFG
Sacramento Splittail	FWS
Pacific herring	CDFG
Least Tern	FWS, CDFG
Western Snowy Plover	FWS, CDFG
Dungeness Crab	CDFG
California Clapper Rail	FWS
Salt Marsh Harvest Mouse	FWS, CDFG
California Brown Pelican	FWS, CDFG

Attachment 3
Informal Consultation Form

The following information is needed to assist the USACE in requesting consultation on you project. While these questions cover most of the information needed, individual projects may require additional information to complete consultation.

1. Area

Name of Project: _____

USACE Permit Number: _____

Town Project is in: _____

County Project is in: _____

Calculated Area of project: _____

Project Grade w/over depth: _____

Provide a Map of project

2. Equipment

Type of Dredge: _____

Capacity of Bucket: _____
(If Clamshell)

Cutter Head Velocity (FPS): _____
(If Cutter Suction Dredge)

Pump Power: _____
(If Hydraulic Hopper)

Disposal Equipment Description:
(Dump Scow, Flat Barge, Pipeline?)_____

Disposal Equipment Capacities:
(Scow Capacity) _____

3. Volume of Material _____
(How much material will be dredged? Include over dredge depth volume)

4. Disposal Location/Method_____

_____

_____

5. Has the DMMO reviewed and found the material suitable for aquatic disposal, or if not what are the issues?

_____

6. Duration/Timing

Proposed Projected Start Date:_____

Proposed Projected Completion Date:_____

Working Days:_____

Working Hours:_____

7. Affected Species
(See Attached LTMS Windows Chart, DMMO or NOAA website)

8. Additional Biological Information if available.

9. Reasons why this activity necessitates dredging outside of the work window._____

_____

10. Other Special Measures
(Some special measures may include: the ability to change disposal sites, use of silt curtains or environmental buckets, or possibly blocking species entry into the project area. Measures may be very site specific, but would normally include better technology or methodology; disposing of material further downstream, upland would be even better; this is where you brainstorm and come up with site specific ideas, each project is slightly different.)

_____

_____

11. Has prior consultation occurred on this project? Yes or No? If yes, what year and with what result?