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

In response refer to:
2009/06769

JUL 13 2010

Alexis Strauss
Director, Water Division
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

Lieutenant Colonel Laurence M. Farrell
U.S. Department of the Army
San Francisco District, Army Corps of Engineers
1455 Market Street, 16th Floor
San Francisco, California 94103-1398

Dear Ms. Strauss and Colonel Farrell:

Thank you for your letter of July 21, 2009, requesting a programmatic consultation with NOAA's National Marine Fisheries Service (NMFS) pursuant to the essential fish habitat (EFH) provisions of the Magnuson Stevens Fishery Conservation and Management Act (MSA). This consultation pertains to operations and maintenance dredging in the San Francisco Bay area and associated dredged material placement conducted by the U.S. Army Corps of Engineers (USACE) or by non-federal entities that USACE and U.S. Environmental Protection Agency (USEPA) review for authorization under section 10 of the Rivers and Harbors Act of 1899 (33 USC §403), section 404 of the Clean Water Act (33 USC §1344), and/or section 103 of the Marine Protection Research and Sanctuaries Act (33 USC §1401).

Section 305(b)(2) of the MSA requires federal action agencies to consult with NMFS for any action they authorize, fund, or undertake that may adversely affect EFH. Programmatic consultation provides an efficient and effective means for NMFS and a federal agency to consult regarding a potentially large number of similar individual actions occurring within a given geographic area. NMFS has determined that in accordance with 50 CFR 600.920(j) of the EFH regulations, programmatic consultation is appropriate for operations and maintenance dredging in the San Francisco Bay area and associated dredged material placement, because all activities are routinely undertaken or authorized by the USACE, and sufficient information is available to develop EFH Conservation Recommendations that will address reasonable foreseeable adverse impacts to EFH.

In the enclosed programmatic EFH consultation, NMFS has evaluated the potential adverse effects to EFH pursuant to Section 305(b)(2) of the MSA. Potential adverse effects to EFH and HAPC from programmatic activities include: (1) direct removal/burial of organisms (prey and refugia), (2) increase levels of turbidity/suspended sediments, (3) contaminant release and uptake, including nutrients, metals, and organics, (4) release of oxygen consuming substances, (5) entrainment, (6) noise disturbances, (7) alteration of adjacent habitat, (8) invasive species, and (9) alteration to hydrodynamic regimes and physical habitat. As described in enclosed effects analysis, NMFS has determined that the programmatic activities would adversely affect EFH and Habitat Areas of Particular Concern for various Federally-managed fish species within the Pacific Groundfish, Pacific Salmon and Coastal Pelagic Fishery Management Plans. Therefore, pursuant to section 305 (b)(4)(A) of the MSA, NMFS offers the enclosed EFH Conservation Recommendation to avoid, minimize, mitigate, or otherwise offset the adverse effects to EFH.

Please be advised that regulations (50 CFR 600.920(k)) to implement the EFH provisions of the MSA require your office to provide a written response to this programmatic consultation within 30 days of its receipt and prior to its use. A preliminary response indicating the anticipated submission date of the final response is acceptable if a final response cannot be completed within 30 days. Your final response must include a description of how the EFH Conservation Recommendations will be implemented and any other measures that will 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 for not implementing this recommendation at least 10 days prior to final approval of the action. This explanation must include scientific justification for any disagreements with NMFS over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects.

Please note that a preliminary response does not allow for use of the programmatic consultation. In order to use the programmatic consultation prior to submission of a final response, project specific responses may be provided. Project specific responses must include acceptance of Conservation Recommendations number 4, 5, 7, and 8 (enclosed) or describe why the recommendations do not apply to the project. Once the final response has been submitted to NMFS, project specific responses will not be required to use the programmatic consultation. However, if the final response is inconsistent with our project-specific EFH Conservation Recommendations (4, 5, 7, and 8) projects to which these recommendations apply will not be covered by the programmatic consultation and must be consulted on individually.

Please note that Public Notices will no longer need to initiate EFH consultation for maintenance dredging projects, but should instead indicate that projects are covered by the programmatic EFH consultation. Public Notices should also indicate which EFH Conservation Recommendations are being implemented relevant to the project.

If you have any questions regarding this programmatic consultation or require additional information, please contact Laura Hoberecht of my staff at (707) 575-6056, or by electronic mail at Laura.Hoberecht@noaa.gov.

Sincerely,

Robert S. Hoffman
Assistant Regional Administrator
for Habitat Conservation

Enclosure

cc: Chris Yates, NMFS, Long Beach, California
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