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 15, 2024 **Refer to NMFS No:** WCRO-2023-03303

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 San Francisco International Airport Shoreline Structures Maintenance Project (Corps File No. SPN-2023-00412)

Dear Mr. Mazza:

This letter responds to your January 23, 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 the some of the effects of the proposed action, and 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 the maintenance of timber trestles used for runway lighting, involving the strengthening of existing piles using a fiberglass repair method, and reinforcing or replacing portions of timber trestles above water. The proposed maintenance would also consist of repairs to concrete basins, piles and outfall cradles. No new structures are proposed. Details of the proposed work and avoidance and minimization measures are described in detail in *San Francisco International Airport Shoreline Structures Repair Program Biological Assessment for NMFS and USFWS* (BA) Prepared for San Francisco International Airport, November 2023 by Environmental Science Associates Consulting.

Effects from these activities are expected to temporarily impair water quality in the form of minor increases in turbidity and suspended sediment, 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 tidal cycle. Disturbance of bottom sediments and repair of creosote piles may increase exposure of contaminants in the aquatic environment, however, this increase would be minor, both temporally and spatially, and wrapping of creosote piles would ultimately reduce creosote leaching. 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. Although the existing trestles result in overwater shading, these structures are widely spaced, allow for light transmittance, and no increased overwater shading is proposed under this project. Therefore, project-related temporary impacts on water quality, benthic habitat, and overwater shading are anticipated to be insignificant for threatened Central California Coast steelhead (*Oncorhynchus 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-consultion-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-STEVENS 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 decreased water quality, disturbance of benthic habitat, and overwater shading.

Decreased water quality from this Project may occur through increases in suspended sediment and release of contaminants. Fish may suffer reduced feeding ability (Benfield and Minello 1996) and be prone to fish gill injury (Nightingale and Simenstad 2001) if exposed to high levels of suspended sediment, and exposure to creosote may result in decreased hatch rates, morphological abnormalities and reduced cardiac function in larval fish (Vines et al 2000). Although increases in suspended sediment are expected to occur from the proposed work, these increases are expected to be less than the levels described in the literature, and are expected to return to background conditions within one tidal cycle. Thus, effects from elevated suspended sediment concentrations are expected to be minor and temporary. Similarly, while some creosote may be released into the water column during project activities, fish and habitat are not expected to experience harmful levels of creosote exposure. Additionally, the wrapping of creosote piles will minimize future direct exposure and reduce the amount of creosote leaching in San Francisco Bay. Implementation of the Project's best management practices will further minimize contaminant exposure through the use of absorbent booms or socks to prevent dispersal.

Benthic habitat impacts would be minor in scope and limited to areas where structures currently exist. The Project has identified and will implement additional best management practices to reduce impacts from work barges during maintenance activities (BA Section 2.3).

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 (Glasby 1999; Struck *et al.* 2004; Stutes *et al.* 2006; Munsch *et al.* 2017). As noted above, although shading will persist, the existing trestles consist of widely-spaced beams that allow for light transmittance, and there will be no increase in overwater shading as a result of the proposed work. Thus, NMFS has no practical conservation recommendations to provide.

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,

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

cc: Sarah Firestone, Corps of Engineers (sarah.m.firestone@usace.army.mil)
Copy to E-file FRN: 151422WCR2024SR00003

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