

HCD



DEPARTMENT OF THE ARMY  
LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
P.O BOX 532711  
LOS ANGELES, CALIFORNIA 90053-2325

January 25, 2005

REPLY TO  
ATTENTION OF:

Office of the Chief  
Regulatory Branch

National Marine Fisheries Service  
Attention: Rodney R. McInnis  
501 West Ocean Boulevard Ste 4200  
Long Beach, California 90802-4221

Dear Mr. McInnis:

In accordance with 305(b)(4)(B) of the Magnuson-Stevens Fishery Management and Conservation Act and implementing regulation at 50 CFR section 600.920(j), we hereby acknowledge and agree to abide by the Essential Fish Habitat conservation recommendations specified in the Programmatic Consultation dated August 12<sup>th</sup>, 2004. The terms and conditions will be incorporated as special conditions into any verification issued by the Corps of Engineers pursuant to the Programmatic Consultation. If you have any questions, please contact Joshua L. Burnam, D.Env., of my staff at (213) 452-3294.

Sincerely,

*Susan A. Meyer*  
for David J. Castanon  
Acting Chief, Regulatory Branch

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SOUTHWEST REGION  
NAT'L MARINE FISHERIES SVC.





**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

AUG 12 2004

F/SWR4:MH

Colonel Richard G. Thompson  
District Engineer  
Los Angeles District  
U.S. Army Corps of Engineers  
P.O. Box 532711  
Los Angeles, California 90053-2325

Dear Colonel Thompson:

The purpose of this letter is to convey the attached Essential Fish Habitat (EFH) Programmatic Consultation document requested by the Los Angeles District's (LAD) Regulatory Branch. They provided my office an EFH Assessment for the proposed action, describing the specified activities, the EFH and managed species affected by those activities, and the nature of those effects. The objective of this Programmatic Consultation is to address as many adverse effects as possible through programmatic EFH Conservation Recommendations.

Under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Federal agencies are required to consult with the Secretary of Commerce, through the National Marine Fisheries Service (NOAA Fisheries), on any action that may adversely affect EFH. NOAA Fisheries has defined five approaches to meet the EFH consultation requirements: use of existing procedures, general concurrences, programmatic consultations, abbreviated consultations and expanded consultations. The use of programmatic consultations is one process that implements the EFH consultation requirements efficiently and effectively by including many individual actions that may adversely affect EFH into one consultation. NOAA Fisheries has determined that in accordance with 50 CFR 600.920(j) of the EFH regulations, programmatic consultation is appropriate for the specified activities because sufficient information is available to develop EFH Conservation Recommendations which will address reasonable foreseeable adverse impacts to EFH.

The Programmatic Consultation applies to permit applications (standard individual permits, letters of permission, nationwide permits, or general permits or any combination of those types of authorization) under the LAD's Regulatory Program. The geographical scope of analysis for this consultation includes all tidal-influenced waters of the United States and immediate fringes within the regulatory boundaries of the LAD. Attachment A to this letter contains the Programmatic Consultation for the proposed actions. Sections 1-2 provide background information on the purpose and the EFH affected by program activities. Section 3 presents an assessment of effects on EFH and Section 4 provides the agency's EFH Conservation Recommendations.



Thank you for the opportunity to coordinate on these proposed actions. We look forward to your response in writing, as to whether or not you agree with this programmatic consultation as required by Section 305(b)(4)(B) of the Magnuson-Stevens Act. Should you have any additional questions, please contact Mark Helvey of my staff at (562) 980-4046.

Sincerely,



Valerie L. Chambers  
Assistant Regional Administrator  
for Habitat Conservation

Attachment

cc: Pacific Fishery Management Council  
Karen Abrams - F/HC  
Tiffany Troxel - LAD  
Joshua Burnam - LAD

## Attachment A

### Essential Fish Habitat (EFH) Programmatic Consultation between the National Marine Fisheries Service, Southwest Region and U. S. Army Corps of Engineers, Los Angeles District

#### 1.0 PURPOSE

Under Section 305 (b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Federal agencies are required to consult with the Secretary of Commerce on any actions that may adversely affect Essential Fish Habitat (EFH). Consultation can be addressed programmatically to broadly consider as many adverse effects as possible through programmatic EFH Conservation Recommendations.

This Programmatic Consultation applies to permit applications (standard individual permits, letters of permission, nationwide permits, or general permits or any combination of those types of authorization) under the Los Angeles District (LAD) of the U. S. Army Corps of Engineers' Regulatory Program (referred to hereafter as "Program"). The geographical scope for this consultation includes all tidal-influenced waters of the United States and immediate fringes within the regulatory boundaries of the LAD. These boundaries extend from the Mexico-San Diego County line north to the San Luis Obispo - Monterey County line.

Many of the activities addressed in this Programmatic Consultation were addressed in a General Concurrence adopted by the National Marine Fisheries Service (NOAA Fisheries), Southwest Region and the LAD on August 5, 2003. The difference between these two consultations is the degree of impact caused by the activities on EFH. The degree of impacts for activities listed in the General Concurrence are such that they will likely result in no more than minimal adverse effects individually and cumulatively to EFH. In contrast, activities listed in this consultation may adversely affect EFH including eelgrass habitat. Consequently, appropriate EFH Conservation Recommendations are provided including appropriate habitat mitigation if necessary.

#### 1.1 Program Description

The LAD routinely permits a variety of projects that occur in estuarine waters designated as EFH. Twenty-two different types of actions occur. The essential activities of the Program are:

- 1) Installation/maintenance of buried utility lines;
- 2) Individual, in-kind dock replacement/repair;
- 3) Scientific Measurement Devices;
- 4) Construction/maintenance of floating ramp structures;
- 5) Construction/maintenance of concrete boat ramps;
- 6) Construction/maintenance of bank stabilization measures provided the measures are landward of mean high water;
- 7) Installation/maintenance of buried utility lines;
- 8) Installation/maintenance of aerial utility lines;
- 9) Survey activities;
- 10) Outfall structures and maintenance;
- 11) Placement/maintenance of aids to navigation, regulatory markers, and mooring buoys;
- 12) Placement/maintenance of structures in fleeting and anchorage areas;
- 13) Minor discharges of dredged or fill material;
- 14) Minor dredging;
- 15) Placement/removal of shellfish enhancement devices;
- 16) In-kind replacement/repair of road crossings;
- 17) Return water from an upland contained disposal area;
- 18) Structural Discharges;
- 19) Modification but not expansion of existing marinas;
- 20) Temporary construction, access and dewatering;
- 21) Repair/maintenance of breakwaters, jetties, and revetments; and
- 22) Placement/maintenance of temporary recreation structures.

## 2.0 ESSENTIAL FISH HABITAT AFFECTED BY THE PROGRAM ACTIVITIES

EFH means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For interpreting the definition of EFH, "waters" includes aquatic areas and their associated physical, chemical, and biological properties used by fish, and may include areas historically used by fish where appropriate. "Substrate" includes sediment, hard bottom, structures underlying the water, and associated biological communities. The term "necessary" means the habitat required to support a sustainable fishery and a healthy ecosystem. The term "spawning, breeding, feeding, or growth to maturity" covers a species full life cycle.

### 2.1 Fishery Management Plans Affected

Federally managed fish species occurring in estuarine waters within the geographical range of the LAD are administered by two fishery management plans (FMP). These are the Pacific Groundfish FMP and the Coastal Pelagic Species FMP.

#### 2.1.1 Pacific Groundfish Species

The habitat and trophic requirements of groundfish species is adapted from McCain (2003)<sup>1</sup>:

**Leopard Shark - *Triakus semifasciata*:** Leopard sharks are most abundant in California bays and estuaries and along southern California beaches. Although they are common in enclosed muddy bays, other habitats include flat, sandy areas, mud flats, and bottoms strewn with rocks near rocky reefs or kelp beds and around jetties and piers. They are also known to congregate around warmwater outfalls of power plants. Leopard sharks are most common on or near the bottom in waters less than 4 m deep. Estuaries and shallow coastal waters appear to be used as pupping and feeding/rearing grounds. Neonate pups occur in and just beyond the surf zone in areas of southern California, such as Santa Monica Bay. Leopard sharks often enter shallow bays and onto intertidal flats during high tides and retreat on ebb. The leopard shark utilizes several major food sources and food preference is dependent upon the size of the shark. Juveniles and adults are carnivorous, opportunistic, benthic and littoral feeders. Prey includes crabs and shrimp, echinuroid worms, clams, fishes, fish eggs, prey upon polychaete worms and octopi and feed rapidly on the eggs of herring, topsmelt, jacksmelt, and midshipmen when available. Presence of mud-burrowing prey in their diet signifies that the leopard shark is feeding very close to or in the mud.

**California skate - *Raja inornata*:** The California skate is common off most of the California coast, as well as inshore and in shallow bays (18 m of water or less). They typically inhabit inshore muddy bottoms. Egg cases are deposited on the bottom.

**Kelp Rockfish - *Sebastes atrovirens*:** Kelp rockfish inhabit shallow waters. As adults, kelp rockfish are primarily residential in kelp forests. Older kelp rockfish frequently occur on or near the bottom in kelp beds and rocky areas and also in midwater areas around giant kelp plants. Juveniles and adult kelp rockfish apparently prefer rocky habitats and are predominately associated with *Macrocystis* plants. Although adult kelp rockfish prefer kelp and other algae, they have been observed living in rocky areas without algae. Young-of-the-year first settle in the fronds of kelp beds and as they grow,

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<sup>1</sup>Essential Fish Habitat West Coast Groundfish, Draft Revised Appendix. Prepared initially in June, 1998 by EFH Core Team for West Coast Groundfish. Updated January, 2003 by Bruce McCain of the Habitat/Ecosystem Team for West Coast Groundfish National Marine Fisheries Service 2725 Montlake Blvd. Seattle, WA 98112

they spread out, away from the canopy. Young kelp rockfish initially occupy the surface and mid-depth portions of the water column in very close proximity with the *Macrocystis* canopy for the first 16 weeks after their recruitment to the nearshore regions of central California. For young-of-the-year kelp rockfish, *Macrocystis* provides a nursery area and a refuge. Post-settlement, young-of-the-year rockfish are most frequently associated with the large *Macrocystis pyrifera*, especially their stipes.

Kelp rockfish are carnivorous and eat a variety of prey, most of which are free-swimming. They are most active at night and will sometimes chase food slightly away from the plant habitat. Older kelp rockfish prey primarily on benthic invertebrates and small fishes that colonize the substrate; their diet is dominated by caridean shrimp and amphipods, tunicates, cephalopods, and gastropods. Adult kelp rockfish also commonly prey on juvenile rockfishes. Kelp rockfish larvae are zooplanktivores, preying on nauplii and invertebrate eggs as well as copepods.

**Brown rockfish - *S. auriculatus*:** Brown rockfish are common in shallow water and occur from the surface to 128 m. However, they are most common in waters less than 175-ft (53 m) and are widely distributed in shallow water bays. Pelagic juveniles are found over a wide depth range, 50-90 m. Brown rockfish use estuaries as nursery grounds. Off California, young brown rockfish recruit to hard substrate, low (<1 m) relief reefs, patches of drift algae on the bottom, and on the walls of submarine canyons. Brown rockfish are bottom dwellers, living on hard bottom such as low profile siltstone or sand. They aggregate near sand-rock interfaces and rocky bottoms of artificial and natural reefs over a fairly wide depth range; in eelgrass beds; oil platforms; sewer pipes; and even old tires. Off California, some frequent sewer outfalls. In California they are primarily found on sandy, low relief areas. In shallow waters, they are associated with rocky areas and kelp beds, while in deeper waters they stay near the rocky bottom. Brown rockfish eat small fishes, crabs, shrimps, isopods, and polychaetes

**Olive rockfish - *S. serranoides*:** Olive rockfish occur from surface/intertidal waters to 174 m deep but most commonly they occur in waters less than 30 m. Adult olive rockfish are a midwater fish, almost always living over hard, high relief (such as reefs, wrecks, oil platforms or pipes). Young-of-the-year and adults are primarily found hovering off the bottom. Sometimes olive rockfish are observed well off the bottom, in or near kelp or over rocky reefs. Olive rockfish prefer clear-water areas of dense kelp and are rarely caught or seen over sandy substrate. Olive rockfish distribution is fairly even over all rocky substrata, although significant selection is exhibited toward low rock substratum. The larval stage of olive rockfish is planktonic. When young-of-the-year olive rockfish settle out of the plankton they are most commonly found in and around kelp beds, oil platforms, surfgrass, and other structures at depths as shallow as 3 m. Young olive rockfish also are found under drifting kelp mats.

Larval olive rockfish are planktivorous and are known to feed on nauplii, invertebrate eggs, and copepods. Juveniles feed on crustaceans (such as calanoid copepods and zoea larvae), juvenile fishes, polychaetes, octopi and squid. Adults and subadults rockfish feed primarily on midwater organisms rather than on substrate-orientated prey. Major prey of the olive rockfish include fishes (particularly juvenile rockfishes), octopi, squid, and such planktonic organisms as copepods and crab larvae, although polychaetes, are sometimes consumed. Olive rockfish prefer fish prey over plankton including juvenile blacksmith, anchovy, pipefish, blue rockfish, olive rockfish, and adult topsmelt. Small individuals prey primarily on plankton. Individuals of all sizes ingest tiny prey such as ostracods, cladocerans, and small copepods.

**California scorpionfish - *Scorpaena guttata*:** California scorpionfish are benthic and found intertidally as deep as 183 m. They are commonly found in both sandy and rocky areas, in association with rocky reefs, often lodged in crevices. Although it is commonly a solitary species, it aggregates near prominent features and can be associated with anthropogenic features including pipes and wrecks. Juveniles settle on rocky bottom. Very young scorpionfish live in shallow water, hidden away in habitats with dense algae and bottom-encrusting organisms.

**Cabezon - *Scorpaenichthys marmoratus*:** Cabezon are found intertidally or in shallow, subtidal areas on a variety of habitats, often in the vicinity of kelp beds, jetties, isolated rocky reefs or pinnacles, and in shallow tide pools. Rocky bottoms and cobble substrates are utilized most frequently. Eelgrass beds and occasionally sandy bottoms are used. They are abundant all year in estuarine and subtidal areas, as well as to mid-depths along the continental shelf. Eggs, large juveniles and adults are demersal; larvae and small juveniles are pelagic and planktivorous. Juveniles and adults reside primarily in shallow water bays and estuarine areas. In California, juveniles first appear in kelp canopies, tide pools, and other shallow rocky habitats such as breakwaters from April to June.

Larvae are planktivorous. Larvae eat copepods, barnacle larvae, fish larvae, and fish eggs. Cannibalism of eggs and newly hatched larvae may be very high among the larvae. Newly metamorphosed juveniles eat amphipods and small shrimps. Juveniles and adults are carnivorous, feeding opportunistically. Small juveniles depend mainly on amphipods, shrimp, crabs, and other small crustaceans. Adult fish eat crabs, small lobsters, mollusks (abalone, squid, octopus), small fish (including rockfishes), and fish eggs.

**English sole - *Parophrys vetulus*:** Eggs and larvae are pelagic; juveniles and adults are. Small juveniles settle in the estuarine and shallow nearshore areas all along the coast, but are less common in southerly areas, particularly south of Point Conception. As they grow, they move to deeper water. Adults, spawning adults, and eggs have been found in Santa Monica Bay, California. Adults are also common in San Pedro Bay, California. Larvae and juveniles occur in most estuaries between Puget Sound and San Pedro Bay, California. They use nearshore coastal and estuarine waters as nursery areas. Adults and juveniles prefer soft bottoms composed of fine sands and mud but also are reported to occur in eelgrass habitats.

Larvae are planktivorous. Larvae probably eat different life stages of copepods and other small planktonic organisms. Larvae appear to have a strong preference for appendicularians. Juveniles and adults are carnivorous, apparently feeding primarily during daylight hours. Juveniles feed on harpacticoid copepods, gammarid amphipods, cumaceans, mysids, polychaetes, small bivalves, clam siphons, and other benthic invertebrates. Small juvenile English sole concentrate their feeding on harpacticoid copepods and other epibenthic crustaceans until they reach approximately 50-65 mm in length, then they switch to feeding primarily on polychaetes. English sole feed primarily by day, using sight and smell, and sometimes dig for prey.

**Starry Flounder - *Platichthys stellatus*:** Older juveniles and adults are found from 120 km upstream to the outer continental shelf at 375 m, but most adults are found in less than 150m. Most juvenile and adult starry flounder were collected in the tidally influenced section (7-Km), whereas most flounder from the upper reaches were juveniles (<100 mm). Most spawning occurs in estuaries or

sheltered inshore bays. Eggs and larvae are epipelagic; juveniles and adults are demersal. Eggs occur at or near the surface over water 20-70 m deep. Larvae are found in estuaries to 37 km offshore. Juveniles are found in estuaries. Juveniles prefer sandy to muddy substrates, and adults prefer sandy to coarse substrates.

Larvae are planktivorous. Juveniles and adults are carnivorous. At 5-12 mm, larvae eat copepods, eggs and nauplii as well as barnacle larvae and diatoms. Small juveniles feed on copepods, amphipods and annelid worms. Large fish fed on a wider variety of items, including crabs and other more mobile foods. Starry flounder probably competes with other soft-bottom benthic fishes of estuaries and shallow nearshore bays.

### 2.1.2 Coastal Pelagic Species

The habitat and trophic requirements of coastal pelagic species is adapted from PFMC (1998)<sup>2</sup>.

**Northern Anchovy - *Engralis mordax*:** The central subpopulation ranges from approximately San Francisco, California, to Punta Baja, Baja California. The bulk of the central subpopulation is located in the Southern California Bight, a 20,000-square-nautical-mile area bounded by Point Conception, California, in the north and Point Descanso, Mexico, (about 40 miles south of the U.S.-Mexico boarder) in the south. Northern anchovy in the central subpopulation are typically found in waters that range from 12<sup>o</sup> C to 21.5<sup>o</sup> C. All life stages are found in the surface waters of the EEZ. Eggs and larvae are found near the surface, generally at depths of less than 50 meters and in the same areas as spawning adults. Anchovy eggs are most abundant at about 14<sup>o</sup> C. Nearshore habitat areas (<90 meters) between Pt. Conception, California and Pt. Banda, Baja California represented 23% of the available habitat for central stock juvenile northern anchovy.

Northern anchovy eat phytoplankton and zooplankton by either filter feeding or biting, depending on the size of the food.

**Pacific Sardine - *Sardinops sagax*:** Sardines inhabit coastal subtropical and temperate waters. Pacific sardines are pelagic at all life history stages. They occur in estuaries, but are most common in the nearshore and offshore domains along the coast. Juveniles occur in near shore waters off of northern Baja California and southern California (Clark 1940). Eggs and larvae occur nearly everywhere adults are found and eggs are most abundant between 14<sup>o</sup> C and 15<sup>o</sup> C.

Sardine are planktivores that consume both phytoplankton and zooplankton.

### 2.2 Summary of EFH Habitats Utilized

Several subhabitat types occur in the program area and may be affected by the activities listed in this programmatic consultation. There types range from deep to shallow water: subtidal non-vegetated, subtidal vegetated, intertidal non-vegetated, intertidal vegetated, intertidal rocky, and surface and water column. Table 1 summarizes the primary habitat types utilized by the aforementioned FMP species.

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<sup>2</sup> Essential Fish Habitat Coastal Pelagic Species. Modified from Coastal Pelagics Species Fishery Management Plan [ Amendment 8 to the Northern Anchovy Fishery Management Plan], Pacific Fishery Management Council, December, 1998.

### 3.0 ASSESSMENT OF EFFECTS ON EFH

The EFH types that may be affected by the listed activities below are summarized in Table 2.

**Installation/maintenance of buried utility lines** - Discharges of dredged or fill material associated with excavation, backfill, or bedding for utility lines. Material resulting from trench excavation may be temporarily sidecast during construction. However, upon completion of the project, the pre-construction contours would be restored. Activity normally would occur in estuarine waters affecting subtidal and intertidal vegetated and non-vegetated habitats, and surface waters. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per regional conditions for the LAD for NWP 3 and 12. It is believed that these activities would rarely result in permanent impacts in subtidal and intertidal habitats.

**Individual, in-kind dock replacement/repair** - Pilings would be jettied or hammer installed, and the decking structure would be constructed in-place, floated or lowered into place. In-water construction would be limited to minor assembly work and to the dock footprint. Activity normally would occur in estuarine waters potentially affecting subtidal and intertidal vegetated and non-vegetated habitats. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the LAD for NWP 3. It is believed that these activities would rarely result in permanent impacts, thus, it is not expected that there would be a loss in any wetland functions and values, nor the loss of any unique or rare wetland types within the region.

**Scientific Measurement Devices** - The activity includes the installation and maintenance of devices whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Installation and maintenance of small weirs and flumes constructed to record water quantity and velocity. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the LAD for NWP 5 which covers this activity. It is believed that these activities would rarely result in permanent impacts to surface/water column and subtidal habitats.

**Construction/maintenance of floating ramp structures** - The floating ramp or gangway would be lowered from above or floated into place. Only minor in-water construction would occur. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the LAD for NWP 2 and 3 which partially cover this activity. It is believed that these activities would rarely result in permanent impacts to intertidal and subtidal habitats.

**Construction/maintenance of concrete boat ramps** - This activity involves the discharge of approximately 50 cubic yards of concrete, rock, crushed stone or gravel into forms or placement of pre-cast concrete planks or slabs. Excavation would be limited to the area necessary for site preparation and all excavated material would be removed to the upland. The boat ramp does not exceed 20 feet in width and no material is placed in special aquatic sites or wetlands. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the LAD for NWP 3 and 36 which cover

this activity. While the activity may adversely affect existing intertidal and subtidal habitats, it will not lead to any net loss to eelgrass habitat. It is believed that the shift in habitat types will not result in any loss of habitat functions.

**Construction/maintenance of bank stabilization measures provided the measures are landward of mean high water** - Bank stabilization activities necessary for erosion prevention and are less than or equal to 500 feet in length. Excavation would be limited to the area necessary for site preparation and all excess excavated material would be removed to the upland. The site may be isolated from the tidal regime by sheetpile or sandbags. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the LAD for both NWP 3 and NWP 13 which cover different aspects of this activity. It is believed that these activities would rarely result in permanent impacts to intertidal habitats.

**Installation/maintenance of aerial utility lines** - Discharges of dredged or fill material associated with excavation, backfill, or bedding associated with attaching a utility line to an existing or new bridge structure or suspending it across a navigable water of the United States. Construction of foundations for overhead utility line towers, poles and anchors may occur although it is stipulated in Nationwide Permit (NWP) 12 that the foundations be the minimum size necessary and a separate footing is used for each tower leg (where feasible). Activity normally would occur in estuarine waters affecting subtidal and intertidal vegetated and non-vegetated habitats, and surface waters. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per regional conditions for the LAD for NWP 3 and 12. It is believed that these activities would rarely result in permanent impacts to EFH.

**Survey activities** - This activity includes core sampling, soil survey and sampling, and historic resources surveys. This would also include scientific measurement devices whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, and water quality testing devices. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per regional conditions for the LAD under NWP 6. This NWP does not authorize any permanent structures. It is believed that these activities would rarely result in permanent impacts to subtidal and intertidal habitats.

**Outfall structures and maintenance** - Activities related to construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, exempted or otherwise in compliance with the NPDES Program and maintenance excavation, including dredging, to remove accumulated sediments blocking or restricting outfall and intake structures. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the LAD for NWP 3. It is believed that these activities would rarely result in permanent impacts, thus, it is not expected that there would be a loss in any wetland functions and values, nor the loss of any unique or rare wetland types within the region. While the activity may adversely affect existing surface and subtidal habitats, it will not lead to any net loss to eelgrass habitat. It is believed that the shift in habitat types will not result in any loss of habitat functions.

**Placement/maintenance of aids to navigation, regulatory markers, and mooring buoys** - The activity involves the placement/maintenance of aids to navigation and regulatory markers that must

be approved by the United States Coast Guard and installed in accordance with the requirements of the USCG. Mooring buoys are limited to non-commercial and recreational, single-boat buoys. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the LAD for both NWP 3 and 10 under which this activity falls. It is believed that these activities would rarely result in permanent impacts, thus, it is not expected that there would be a loss in any wetland functions and values, nor the loss of any unique or rare wetland types within the region. The activity may affect subtidal and surface waters.

**Placement/maintenance of structures in fleeting and anchorage areas** - This activity involves the placement/maintenance of structures, buoys, floats, and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the USCG has established such areas for that purpose. Portions of this activity fall under NWP 9 of which one General Condition ensures that structures in fleeting and anchorage areas do not have more than minimal impact to water quality and aquatic life movements. Portions of this activity also fall under NWP 3. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the LAD for both NWP 3 and 9. It is believed that this activity would rarely result in permanent impacts, thus, it is not expected that there would be a loss in any wetland functions and values, nor the loss of any unique or rare wetland types within the region. The activity may affect subtidal habitats.

**Minor discharges of dredged or fill material** - Minor discharges of no more than 25 cubic yards of material into waters of the United States below the plane of the ordinary high water mark or the high tide line. The discharge will not cause the loss of than 1/10 of an acre of special aquatic sites including wetlands. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the LAD for NWP 18. It is believed that these activities would rarely result in significant impacts to subtidal habitats and eelgrass beds. Thus, it is not expected that there would be a significant loss in any wetland functions and values, nor the loss of any unique or rare wetland types within the region.

**Minor dredging** - Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States as part of a single and complete project. Dredging is not authorized at sites supporting submerged aquatic vegetation including sites where submerged aquatic vegetation is documented to exist, but may not be present in a given year. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the LAD for NWP 19. It is believed that this activity would rarely result in permanent impacts to subtidal and intertidal habitats and only temporary impacts to surface waters. Thus, it is not expected that there would be a loss in any wetland functions and values, nor the loss of any unique or rare wetland types within the region.

**Placement/removal of shellfish enhancement devices** - Fish and wildlife harvesting devices and activities such as pound nets, crab traps, eel pots, lobster traps, duck blinds, clam and oyster digging and small fish attraction devices (e.g., sea kites) provided the activity does not occur in wetlands or sites that support submerged aquatic vegetation. This activity does not include artificial reefs, impoundments and semi-impoundments of waters of the United States or navigable waters of the United States or aquaculture. Pursuant to NWP 4, notification to NOAA Fisheries is required for

projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the LAD. The activity may affect subtidal habitats.

***In-kind replacement/repair of road crossings*** - This includes replacement of damaged or deteriorated decks, pilings, and/or concrete piers. Excavation would be limited to the area necessary for site preparation and all excess excavated material would be removed to the upland. The site may be isolated from the tidal regime by sheetpile or sandbag cofferdams. This activity does include causeways or road detours. This activity may be covered under NWP 3 and 33. In either case, notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the LAD. It is believed that these activities would rarely result in permanent impacts to intertidal and subtidal habitats.

***Return water from an upland contained disposal area*** - This includes return water from an upland, contained dredged disposal area. Prior to implementation, the applicant shall test sediments to identify potential for contaminants to occur within the sediments to be placed in the upland contained disposal area. (Prior to data collection, testing procedures and protocol shall be coordinated with and approved by LAD.) No contaminated sediments shall be authorized for release in waters of the U.S. The discharge of return water is authorized under NWP 16. Especially important to this NWP is that the quality of the return water is controlled through the State 401-certification process and NWP 16 relies heavily on the Regional Water Quality Control Board to insure minimal impact to water quality in the LAD. It is believed that these activities would rarely result in permanent impacts to surface waters.

***Structural Discharges*** - Discharges of material such as concrete, sand, rock etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways or for general navigation, such as mooring cells. This activity does not include filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas, and other such structures. The discharge of these above-mentioned materials is authorized under NWP 25. Notification to NOAA Fisheries is required for projects with EFH. While the activity may adversely affect existing intertidal and subtidal habitats, it will not lead to any net loss to eelgrass habitat. It is believed that the shift in habitat types will not result in any loss of habitat functions.

***Modification but not expansion of existing marinas*** - Reconfiguration of existing docking facilities within an authorized marina area. Some minor dredging (no more 25 cubic yards) may occur. This activity does not include expansion of the existing marina. Reconfiguring existing marinas is authorized under NWP 28. Notification to NOAA Fisheries is required for projects within special aquatic sites including EFH. It is believed that these activities would rarely result in permanent impacts to intertidal and subtidal habitats.

***Temporary construction, access and dewatering*** - Temporary structures, work and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites. Appropriate measures would be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials, and placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if it is determined by the District Engineer that it will not cause more than minimal adverse effects on aquatic resources. Temporary fill must be entirely removed to upland areas, or dredged material returned to its original location,

following completion of the construction activity, and the affected areas must be restored to the pre-project conditions. This activity is authorized under NWP 33. Notification to NOAA Fisheries is required for projects within special aquatic sites including EFH. It is believed that these activities would rarely result in permanent impacts to surface water, intertidal and subtidal habitats.

**Repair/maintenance of breakwaters, jetties, and revetments** - This involves replacing boulders displaced from existing structures. Work would be constructed from land or the structure itself. Displaced rocks may be recovered. The original footprint may be slightly modified. Activity normally would occur in estuarine and nearshore waters potentially affecting subtidal and intertidal habitats. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the Los Angeles District (LAD) for NWP 3. It is believed that these activities would rarely result in permanent impacts, thus, it is not expected that there would be a loss in any wetland functions and values, nor the loss of intertidal and subtidal habitat.

**Placement/maintenance of temporary recreation structures** - Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use provided that such structures are removed within 30 days after use has been discontinued. Notification to NOAA Fisheries is required for projects within special aquatic sites (which includes eelgrass) and within EFH designated waters as per Regional Conditions for the Los Angeles District (LAD) for NWP 11. It is believed that these activities would rarely result in permanent impacts to subtidal habitats.

#### **4.0 EFH CONSERVATION RECOMMENDATIONS**

The LAD, has determined that the use of this programmatic consultation for the 22 activities listed above will result in no more than minimal individual and cumulative adverse effects on the aquatic environment assuming the associated NWP program terms and conditions are met as well as the Regional Conditions. However, in the event that a proposed activity may adversely affect EFH, NOAA Fisheries provides the following list of EFH Conservation Recommendations. The agency advises LAD that these recommendations be incorporated as appropriate into any project using this Programmatic Consultation.

1. The LAD adopt Regional General Condition No. 5 for EFH coordination which states that the LAD will notify NOAA Fisheries for projects with EFH designated areas prior to the proposed activity commencing, but only in the event of an anticipated adverse affect to EFH or for proposed projects occurring within special aquatic sites. Notification can be accomplished either by electronic mail (i.e., e-mail) or postal mail for each individual project with the project description and location. The LAD will assume NOAA Fisheries concurrence if they do not receive written or e-mail comments regarding their decision within 10-days of notification.
2. When a sensitive resource<sup>3</sup> may potentially be adversely affected, a biological survey should be conducted to map the coverage of the resource and characterize the quality of the habitat,

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<sup>3</sup> Sensitive resources include, but are not limited to, the following: rocky habitat, surfgrass, eelgrass, kelp, and habitat areas supporting grunion, pismo clams and lobster.

pursuant to LAD and NOAA Fisheries protocol, and when appropriate, as determined by LAD and NOAA Fisheries, the applicant shall submit a proposed mitigation plan to compensate for biological resource losses. The biological resources plan shall be submitted to LAD and NOAA Fisheries for review and approval. EFH coordination requirements shall not be considered complete until the LAD and NOAA Fisheries concur on the adequacy of the proposal. If concurrence is not reached between the agencies, a formal consultation shall be conducted for the proposed action.

3. The LAD implement NOAA Fisheries Eelgrass Mitigation Policy when appropriate. This policy addresses among other issues, the mitigation site, the mitigation ratio (1.2 to 1), mitigation techniques, timing, and monitoring. The policy can be accessed at: <http://swr.nmfs.noaa.gov/hcd/eelpol.htm>.
4. The LAD implement the Southern California *Caulerpa* Control Protocol (Version 1.2b, adopted January 31, 2003). The control protocol is designed to minimize the spread and introduction of this species and other potentially invasive species of this genus to California nearshore, coastal, and enclosed bays, estuaries, and harbors from Morro Bay to the U.S./Mexican border. The protocol can be accessed at: <http://swr.nmfs.noaa.gov/hcd/caulerpa/ccp.pdf>
5. For the purpose of annual tracking and determining cumulative effects, the LAD will provide an annual summary of the activities undertaken and will provide geographical coordinates (i.e., latitude/longitude coordinates) for each action. This information will include the number of each action, the amount of acres of habitat adversely affected and the type of habitat adversely affected. The LAD will make this information available to NOAA Fisheries and the public by means of NOAA Fisheries website on an annual basis.

Table 1. List of EFH species and their preferred habitat types occurring within estuarine waters of LAD's boundaries.

Species	Habitat Type					
	Surface/ Water Column	Subtidal non-vegetated	Subtidal vegetated	Intertidal non-vegetated	Intertidal vegetated	Intertidal rocky
<b>Groundfish</b>						
Leopard shark						
California skate						
Kelp rockfish						
Brown rockfish						
Olive rockfish						
California scorpionfish						
Cabezon						
English sole						
Starry flounder						
<b>Coastal Pelagics</b>						
Northern anchovy						
Pacific sardine						
Jack mackerel						

Table 2. EFH types that may be affected by programmatic activities.

Activities	Habitat Type					
	Surface/ Water column	Subtidal non- vegetated	Subtidal vegetated	Intertidal non- vegetated	Intertidal vegetated	Intertidal rocky
1. Installation/maintenance of buried utility lines						
2. Individual, in-kind dock replacement/repair						
3. Scientific measurement devices						
4. Construction/maintenance of floating ramp structures						
5. Construction/maintenance of concrete boat ramps						
6. Construction/maintenance of bank stabilization measures are landward of mean high water						
7. Installation/maintenance of buried utility lines						
8. Installation/maintenance of aerial utility lines						
9. Survey activities						
10. Outfall structures and maintenance						
11. Placement/maintenance of aids to navigation, regulatory markers, and mooring buoys						
12. Placement/maintenance of structures in fleeting and anchorage areas						
13. Minor discharges of dredged or fill material						
14. Minor dredging						
15. Placement/removal of shellfish enhancement devices						
16. In-kind replacement/repair of existing road crossings						
17. Return water from an upland contained disposal area						
18. Structural discharges						
19. Modification but not expansion of existing marinas						
20. Temporary construction, access and dewatering						
21. Repair/maintenance of breakwaters, jetties, and revetments						
22. Placement/maintenance of temporary recreation structures						

