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STAFF REPORT: REGULAR CALENDAR

Consistency Determination No.: CD-0006-22

Federal Agency: National Oceanic and Atmospheric Administration
Restoration Center

Location: Northern and Central California ([Exhibit 1](#))

Project Description: Ten-year continuation of the Community-based Restoration Program for habitat restoration and conservation projects supporting threatened and endangered salmonids and freshwater, marine and estuarine species and habitats.

Staff Recommendation: Concurrence

SUMMARY OF STAFF RECOMMENDATION

The National Oceanic and Atmospheric Administration Restoration Center (NOAA RC) has submitted a general consistency determination to renew its Community-based Restoration Program (CRP) for an additional 10 years. The purpose of this program is to simplify and streamline the permit process for landowners and non-profit organizations as they undertake habitat improvement projects in the coastal zone of northern and central California, primarily to benefit threatened and endangered salmonid species. NOAA RC proposes to continue implementing the CRP, which provides funding and technical assistance for habitat restoration projects in California, into the coastal zone areas of Del Norte, Humboldt, Mendocino, Sonoma, Marin, San Francisco, San Mateo, Santa Cruz, Monterey and San Luis Obispo Counties.

NOAA RC's proposal is based on an existing model of coordinated, multi-agency, regulatory review that ensures the integrity of agency mandates, makes permitting of conservation projects more accessible to farmers, ranchers, rural landowners, and local non-profit restoration groups, and increases the number and quality of conservation projects and beneficial effects in a given area. The subject proposal by NOAA RC builds on the success of the previous general consistency determination (CD-021-13) and 26-year history of the CRP program in California to restore riparian habitat, tidal and freshwater wetlands, and submerged aquatic vegetation.

Implementation of NOAA RC's Community-based Restoration Program over the past ten years led to the completion of 29 individual restoration projects and restoration and enhancement of approximately 27 miles of native riparian habitat and 200 acres of native wetland and estuarine habitat. Through the CRP, a total of 27,284 cubic yards of sediment was prevented from entering important salmonid habitat and a total of 51.5 acre-feet of water storage was created to protect salmonid habitat from periods of low streamflow. This program, facilitated through the Commission's concurrence with NOAA RC's 2013 general consistency determination, represents one of the most successful and comprehensive examples of ongoing efforts to expedite and streamline native habitat and species restoration in coastal California.

Commission concurrence with this consistency determination would allow NOAA RC to provide funding, technical support, monitoring, and annual reporting for specific conservation projects selected and approved by NOAA RC for the enhancement of aquatic habitat and control of sedimentation without further formal review by the Coastal Commission. NOAA RC will notify the Commission's Executive Director annually of selected projects before their implementation, so that they can be reviewed for compliance with this consistency determination. Any activities that do not fall within the scope of the CRP and this consistency determination would be subject to the Commission's normal regulatory review processes.

NOAA RC proposes that the CRP be implemented in the coastal zone of the aforementioned counties for ten years beginning in 2023, with a full evaluation and summary report of the program's activities and progress provided to the Commission in 2033. NOAA RC will also prepare an annual report summarizing the results of projects implemented under the CRP during the most recent construction season within the coastal zone, and the results of post-construction implementation and effectiveness monitoring for that year and previous years. The annual report shall include a summary of the specific type and location of each project and the amount of habitat restored. NOAA RC anticipates that the majority of the projects implemented under this consistency determination will be salmonid habitat restoration projects and related upland restoration projects that improve stream cover, pool habitat and spawning gravel; remove or modify barriers to fish passage; ensure adequate streamflows; and reduce or eliminate ongoing erosion or sedimentation.

The proposed program includes protective measures to ensure that conservation projects will conform to the policies of the Coastal Act, enhance natural resources, improve coastal water quality, protect and enhance environmentally sensitive habitats, improve populations of threatened and endangered species, and help maintain the environmental viability of agricultural lands. The proposed program is consistent with the stream, wetlands, ESHA, water

CD-0006-22 (NOAA Restoration Center)

quality, agriculture, cultural, and visual resource policies of the Coastal Act (Sections 30230-33, 30240-44, and 30251). Therefore, the staff recommends that the Commission **concur** with consistency determination CD-0006-22. The motion to implement this recommendation can be found on Page 5 below.

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EXHIBITS

Exhibit 1 – Program Location Map

Exhibit 2 – NOAA RC Project Requirements and Protection Measures for Coastal Resources

I. FEDERAL AGENCY'S CONSISTENCY DETERMINATION

The National Oceanic and Atmospheric Administration Restoration Center (NOAA RC) has determined the project is consistent with the California Coastal Management Program.

II. MOTION AND RESOLUTION

Motion:

*I move that the Commission **concur** with Consistency Determination No. CD-0006-22 on the grounds that the project described therein is fully consistent, and therefore consistent to the maximum extent practicable, with the enforceable policies of the California Coastal Management Program (CCMP).*

Staff Recommendation:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence with the determination and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution:

The Commission hereby concurs with Consistency Determination No. CD-0006-22 on the grounds that the project described therein is fully consistent, and therefore consistent to the maximum extent practicable, with the enforceable policies of the CCMP.

III. FINDINGS AND DECLARATIONS

A. PROJECT BACKGROUND AND PROCEDURES

The National Oceanic and Atmospheric Administration Restoration Center (NOAA RC) has submitted a general consistency determination to continue implementing its Community-based Restoration Program (CRP) for an additional 10 years. The purpose of this program is to simplify and streamline the review and authorization process for landowners and non-profit organizations as they undertake habitat improvement projects in the coastal zone of northern and central California, primarily to benefit threatened and endangered salmonid species. Another primary objective of the CRP is to promote community involvement and stewardship of local habitat restoration projects. NOAA RC proposes to continue implementing the CRP through this alternative regulatory process, which provides funding and technical assistance for habitat restoration projects in the coastal zone areas of Del Norte, Humboldt, Mendocino,

Sonoma, Marin, San Francisco, San Mateo, Santa Cruz, Monterey, and San Luis Obispo Counties ([Exhibit 1](#)).

In 2013, the Commission concurred with general Consistency Determination No. CD-021-13 for the implementation of NOAA RC's CRP restoration projects for 10 years and a full evaluation and summary report of the program's activities and progress provided to the Commission in 2023. As detailed in this report, from 2013 to 2022, twenty-nine projects were approved under CD-021-13 throughout coastal Central and Northern California. NOAA RC's 2022 Annual Report summarizes each approved restoration project (**Appendix A**). Project types included fish passage improvements, instream and riparian habitat restoration, tidal wetland restoration, upland road sediment improvements, floodplain enhancement, and developing alternative water supply and off-channel storage for livestock. In total, approximately 200 acres and 27 miles of native habitat was restored through these 29 projects. Local project partners included Sonoma Resource Conservation District; Trout Unlimited; San Francisco Zen Center; Pacific Coast Fish, Wildlife and Wetlands Restoration Association; The Nature Conservancy; Northcoast Regional Land Trust; U.S. Fish and Wildlife Service; San Mateo Resource Conservation District; Resource Conservation District of Monterey County; California State Parks; City of Arcata; Marin Resource Conservation District; Gold Ridge Resource Conservation District; and the Yurok Tribe.

In its consistency determination for the current proposal, NOAA RC explains the purpose of the program and the need for an alternate and more efficient regulatory review process for restoration projects in the coastal zone:

The NOAA RC's CRP has funded and provided technical assistance for habitat restoration projects in California since 1996. From 1996-2013, 390 CRP projects were completed; of those, at least 13 occurred in the Coastal Zone. These projects were permitted under the Coastal Act through issuance of Coastal Development Permits by a certified Local Coastal Program (LCP) or the California Coastal Commission, or they received Commission concurrence with a Consistency Determination or Negative Determination made by the NOAA RC. Many more projects were never developed due to project proponent concerns with difficulties obtaining permits for work in the Coastal Zone. NOAA RC restoration partners in Del Norte, Humboldt, Sonoma, Santa Cruz and Monterey Counties had expressed a strong reluctance to initiate projects in the Coastal Zone for this reason.

Since the issuance of federal Consistency Determination CD-021-13 in 2013, the NOAA RC approved 29 projects in the Coastal Zone. The number of applicants and restoration projects taken on in the Coastal Zone has increased over the last ten years.

The NOAA RC seeks to continue to partner with the Commission to make the process of regulatory review and permitting of environmentally beneficial habitat restoration projects more efficient. Before issuance of CD-021-13, the process of obtaining regulatory approval for these projects was perceived by project applicants to be a significant barrier to implementing conservation work with limited grant funding. With the increase in federal and state funding combined with the NOAA RC's programmatic CD,

project proponents now have a new outlook on restoration in the Coastal Zone and are taking on many more projects.

Programmatic permitting of CRP projects through the programmatic federal CD was intended to reduce costs and time for project applicants and help ensure that important restoration projects are implemented as planned. These projects benefit a range of coastal resources, including streams, floodplains, wetlands and estuaries, providing populations of threatened and endangered salmon and steelhead better conditions for spawning, rearing and migration. NOAA RC is willing to continue to take the lead role to ensure that proposed restoration projects meet the environmental and coastal protection standards of the Commission – thereby allowing NOAA RC staff to focus on design, construction and other aspects of the technical assistance they provide to applicants, furthering fisheries habitat restoration goals.

CRP projects can be funded, permitted and implemented throughout California's Coastal Zone (and elsewhere in the state), from the Oregon border to the Mexican border. This proposed renewal of CD-021-13 would cover the geographic jurisdiction of NMFS Santa Rosa and Arcata offices, namely San Luis Obispo County north to Del Norte County. CRP projects in Santa Barbara, Ventura, Los Angeles, Orange and San Diego Counties are covered under a separate federal programmatic CD.

NOAA RC is proposing to continue this alternative regulatory process for another 10 years to further accelerate the implementation of environmentally beneficial projects that meet the standards of the Coastal Act as well as the federal Endangered Species Act and other state fish and wildlife and water quality laws and regulations. This alternative process gives the Coastal Commission the opportunity to programmatically review the NOAA Restoration Center's clear, well-defined goals, processes, and procedures for consistency with the Coastal Act and the CCMP. Projects that are consistent with the terms of this review will be implemented with NOAA RC oversight, avoiding the need for LCP or Coastal Commission project-by-project review and accelerating the restoration of California's coastal resources.

In this consistency determination, the Commission is reviewing the continuation for an additional ten years of a general habitat restoration program and general types of projects rather than a specific project at a single location. NOAA-RC has made this consistency determination pursuant to the federal regulations implementing the Coastal Zone Management Act (CZMA), 15 CFR §930.36(c). These regulations provide that:

In cases where Federal agencies will be performing repeated activity other than a development project (e.g., ongoing maintenance, waste disposal) which cumulatively has an effect upon any coastal use or resource, the Federal agency may develop a general consistency determination, thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A Federal agency may provide a State agency with a general consistency determination only in situations where the incremental actions are repetitive and do not affect any coastal use or resource when

performed separately. A Federal agency and State agency may mutually agree on a general consistency determination for de minimis activities (see §930.33(a)(3)) or any other repetitive activity or category of activity(ies). If a Federal agency issues a general consistency determination, it shall thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

NOAA RC staff is substantially involved with both funded and non-funded projects included in the CRP. NOAA RC staff may provide hands-on technical assistance; participate in feasibility studies, design plans, and construction oversight to ensure benefits are realized; support the development of appropriate monitoring protocols to ensure project performance can be evaluated; aid in tracking the progression of restoration projects through site visits and progress report evaluation; and be involved in public meetings and events to discuss or highlight restoration activities.

To help ensure successful projects, NOAA RC also assists applicants in obtaining the required federal and state permits and regulatory authorizations for their projects. NOAA RC and state and federal regulatory agencies have cooperatively developed permits and agreements to protect and restore sensitive habitats and resources; implementation of CRP projects is based on those agreements. Project applicants receiving funding or technical assistance from NOAA RC under the CRP considered in this consistency determination must comply with all other federal, state, and local regulatory requirements to ensure protection of sensitive resources during implementation of restoration projects. In addition to the Commission, regulatory agencies with jurisdiction over CRP projects include the following:

- U.S. Fish and Wildlife Service (USFWS)
- NOAA's National Marine Fisheries Service (NMFS)
- U.S. Army Corps of Engineers (Corps)
- California Department of Fish and Wildlife (CDFW)
- State and Regional Water Quality Control Boards
- County planning, public works and other local agencies

Applicants for all projects funded by NOAA RC, or which receive NOAA RC technical assistance, must complete the Section 404/Section 10 permit process with the Corps Regulatory Division. In cooperation with the Corps, NOAA RC works with NMFS to apply programmatic consultations under Section 7 of the Endangered Species Act (ESA) for habitat restoration projects it funds or authorizes. NMFS' programmatic biological opinions (BO) cover NOAA RC projects affecting anadromous salmonid habitat and EFH across the four NMFS offices with NOAA RC staff (Arcata, Santa Rosa, Long Beach and Sacramento). The BOs include detailed environmental protection measures, including project type prohibitions, and additional mandatory terms and conditions for all projects conducted under NOAA RC's restoration program. NOAA RC and the Corps are also required to consult with the USFWS for all NOAA RC restoration projects. Currently, NOAA RC and the Corps must consult with USFWS on a project-by-project basis, however a statewide programmatic basis for habitat restoration projects is in the process of being finalized. Similarly, the State Water Board is in the process of developing a Statewide Restoration General Order to approve restoration

projects that do not qualify for the General Water Quality Certification for Small Habitat Restoration Projects under the State Water Board's 2012 Order for Clean Water Act Section 401. NOAA RC projects must also receive either a Section 2080 Consistency Determination (under state statutory authority different from the federal Coastal Zone Management Act), a Section 2081 incidental take permit, a restoration permit from CDFW, or approval through the Habitat Restoration and Enhancement Act process for compliance with the California Endangered Species Act.

NOAA RC has established specific guidelines and procedures for the installation, maintenance, and monitoring of the projects included in this consistency determination. This helps ensure that project development activities, implemented with the assistance of the project partner such as a Resource Conservation District (RCD) (or another entity receiving funding or assistance from NOAA RC) and the landowner/operator, are consistent with NOAA RC and CRP objectives and comply with all applicable state and federal regulations, including the Coastal Act for projects located within the coastal zone. Habitat restoration projects funded or authorized through the CRP are designed and implemented consistent with techniques and minimization measures presented in CDFW's *Salmonid Stream Habitat Restoration Manual*, NMFS' West Coast Region Anadromous Salmonid Passage Design Manual, and other widely accepted manuals guiding habitat restoration and erosion control work in California. The program requires detailed avoidance and minimization measures for all projects to reduce the potential for ancillary effects to listed species and riparian and aquatic habitats. In addition, construction monitoring and post-project monitoring and reporting requirements follow standard procedures established by CDFW as part of its Fisheries Restoration Grant Program.

To address potential direct, indirect, and cumulative effects to sensitive species, habitats, and coastal water quality associated with the construction and installation of the proposed projects, the CRP includes a detailed set of environmental protection measures. These protective measures ensure that conservation projects will conform to the policies of the Coastal Act and protect environmentally sensitive habitats and the quality and biological productivity of coastal waters. NOAA RC proposes to provide the Commission with an annual status report for the program that will list participating landowners, describe each activity, its purpose and design, quantify the area affected and potential impacts to the coastal zone, and list conservation benefits.

Commission concurrence with this consistency determination would allow NOAA RC to provide funding, technical support, monitoring, and annual reporting for specific conservation projects selected and approved by NOAA RC for the enhancement of aquatic habitat and control of sedimentation within Del Norte, Humboldt, Mendocino, Sonoma, Marin, San Francisco, San Mateo, Santa Cruz, Monterey and San Luis Obispo Counties, without further formal review by the Coastal Commission. NOAA RC has agreed to notify the Executive Director of the Coastal Commission of selected projects before their implementation, so that they may be reviewed for compliance with this consistency determination. Any activities that do not fall within the scope of the CRP and this consistency determination, or that the Executive Director determines to be potentially inconsistent with the California Coastal Management Program or that otherwise warrant individual review, will be subject to the Commission's normal regulatory review processes. Landowners working on projects not eligible for inclusion in the CRP or on projects

determined by NOAA RC or the Executive Director to require individual coastal development permits or individual consistency determinations due to their complexity or potential adverse effects on coastal resources will be evaluated individually by the Commission or the appropriate local government through the coastal development permit or federal consistency process, as relevant.

Federal consistency review is therefore an appropriate way for the Commission to evaluate the Chapter 3 consistency of this federal program, which is not subject to coastal development permit (CDP) requirements. Commission concurrence with this federal consistency determination will supplant any coastal development permit requirements for activities covered under this federal program (i.e., for those restoration projects that meet the requirements of NOAA RC's Community-based Restoration Program), both within the CDP jurisdiction of the aforementioned coastal counties, as well as within the Commission's original jurisdiction. Normal CDP requirements will still apply for those restoration projects located within the coastal zone that are not specifically authorized by this consistency determination.

B. PROJECT DESCRIPTION

NOAA RC reports in its consistency determination that its project types fall into three general categories: (1) salmonid habitat restoration; (2) estuarine restoration (marsh, submerged aquatic vegetation, and native shellfish (oysters)); and (3) coastal kelp and native shellfish (abalone) restoration. To qualify for the program restoration projects need to: (1) Contribute to the return of degraded or altered marine, estuarine, coastal, and freshwater, diadromous fish habitats to functioning habitats, or (2) include techniques that return target species to their historical habitats. NOAA RC additionally states that:

Most NOAA RC projects included in the program are salmonid habitat restoration projects such as riparian revegetation, large woody debris placement, fish passage barrier removal, invasive species removal, and off channel habitat creation. The NOAA RC also conducts a variety of estuarine habitat restoration projects designed to restore and enhance seagrass beds, mudflats, salt marsh, brackish marsh and other tidally influenced habitats. Off shore coastal habitats like kelp forests are also restored.

Within the geographic scope of this Federal Consistency Determination, it is anticipated that the majority of the projects implemented as part of the CRP will be salmonid habitat restoration projects and related upland restoration projects that benefit aquatic habitat. They are intended to restore degraded salmonid habitat through improving stream cover, pool habitat and spawning gravel; reconnecting floodplains, removing or modifying barriers to fish passage; ensuring adequate flows; and reducing or eliminating ongoing erosion or sedimentation impacts.

... salmonid habitat restoration projects authorized through the Program must be designed and implemented consistent with the techniques and minimization measures presented in CDFW's California Salmonid Stream Habitat Restoration Manual, NMFS's Guidelines for Salmonid Passage at Stream Crossings, and NMFS Fish Screening Criteria for Anadromous Salmonids, all of which contain specific guidance on effective

implementation of habitat restoration practices and pre- and post-construction protection measures.

As noted above in Section A of this report, NOAA RC provides funding and technical assistance to conservation applicants proposing selected habitat restoration projects that meet the standards of the CRP. NOAA RC has identified a set of program activities or types of restoration work that it will approve and support under the CRP, as summarized in Table 1, below. Further detail on the restoration project types and design guidelines can also be found in NOAA RC’s consistency determination.

Table 1. Habitat Restoration Activities

<p>1. Improvements to stream crossings and fish passage Improvements to stream crossings and fish passage provide safe passage for migratory and non-migratory species, enhance beneficial transport of sediment and debris, and improve hydrology and hydraulics. Stream crossing, culvert, and bridge projects generally involve removing, replacing, modifying, retrofitting, installing or resetting existing culverts, fords, bridges and other stream crossings and water control structures of any size. This includes projects that are developed to upgrade undersized, deteriorated, or misaligned culverts.</p>
<p>2. Fish Screens This category includes the installation, operation, and maintenance of fish screens. Constructing/installing a fish screen usually includes site excavation, forming and pouring a concrete foundation and walls, and installation of the fish screen structure.</p>
<p>3. Removal of small dams, tide gates, levees, bank revetments, and other legacy structures These projects are designed to reconnect stream corridors, floodplains and estuaries, establish wetlands, improve aquatic organism passage, restore more natural channel and flow conditions, restore fisheries access to historic habitat for spawning and rearing, and improve long-term aquatic habitat quality and stream geomorphology. This project type may also include separation of streams from artificial impoundments (e.g., ponds or lakes) by realigning and/or rerouting channels around these artificial water bodies and/or through the use of vertical concrete or sheet-pile walls.</p>
<p>4. Riparian restoration and protection Riparian restoration and protection projects are intended to improve salmonid habitat through increased stream shading intended to lower stream temperatures, increased future recruitment of large woody debris to streams, and increase bank stability and invertebrate production. These projects will aid in the restoration of riparian habitat by increasing the number of plants and plant groupings, and will include the following types of projects: natural regeneration, livestock exclusion fencing and crossings, off channel stock watering, bioengineering, non-native invasive vegetation removal, and revegetation.</p>
<p>5. Restoration and enhancement of off-channel and side-channel habitat</p>

<p>This project type typically involves reconnecting side-channel, alcove, oxbow, pond, off-channel, floodplain, and other habitats, and potentially removing off-channel fill, berms and plugs. This activity category typically applies to areas where side channels, alcoves, and other backwater habitats have been filled or blocked from the main channel, disconnecting them from most if not all flow events. The creation of new side-channel, alcove, oxbow, and pond habitats is included.</p>
<p>6. Floodplain restoration Floodplain restoration projects involve either 1) removing barriers (such as setback, breaching, and removal of levees, berms and dikes, 2) excavation of elevated surfaces to reconnect to the channel, or 3) or channel fill for hydraulic reconnection, and combinations of these approaches to create streams that are fully-connected with their floodplains. These projects generally involve reconnecting historical stream and river channels and freshwater deltas with floodplains, and reconnecting historical estuaries to tidal influence, through levee removal, setback and breaching, or construction of floodplain surfaces that connect at base flow. Typically, these projects take place where floodplains and estuaries have been disconnected from adjacent streams and rivers.</p>
<p>7. Establishment, restoration, and enhancement of tidal, subtidal, and freshwater wetlands This project type includes excavation, removal, and/or placement of fill materials to restore or approximate pre-disturbance site conditions; contouring wetlands to establish more natural topography, hydrology, and/or hydraulics; and setting back, modifying, or breaching existing dikes, berms and levees. This project type also creates ecotones (transitional zone between two habitat or community types [aquatic and upland interface]), "horizontal levees", and/or setback berms) and/or "living shorelines" that use fill and excavation with native vegetation (submerged and/or emergent), alone or in combination with offshore sills, to stabilize the shoreline.</p>
<p>8. Water conservation projects for enhancement of fish and wildlife habitat Creation, operation, and maintenance of water conservation projects, including off-stream storage tanks and ponds and associated off-channel infrastructure and rainwater harvest systems, reduce low-flow stream withdrawals and enhance stream flows, particularly base flows for fish and wildlife habitat during the dry season. These projects typically require placing infrastructure (e.g., pumps and piping, fish screens and head gates) in or adjacent to the stream to provide alternative water intake facilities. Other projects in this category include piping ditches to create a more efficient use of water where the water saved will be dedicated to fish and wildlife under State Water Code Section 1707 or forbearance agreements. These projects are designed to improve streamflow and riparian habitat for fish and wildlife.</p>
<p>9. Removal of pilings and other in-water structures</p>

<p>Untreated and chemically treated wood pilings, piers, vessels, boat docks, derelict seawalls (within embayments), and derelict fishing gear, and similar structures built using plastic, concrete and other materials may be removed and/or replaced to improve water quality and habitat for fish and wildlife. These projects are designed to remove contaminant sources and hazards from stream, river, and estuary habitats. These projects are intended to cover only the removal of debris or structures and not the replacement of any structures or pilings. The removal of any pilings in estuarine waters under this Program requires compliance with the California Eelgrass Mitigation Policy (CEMP), to ensure that eelgrass resources are not affected by the project.</p>
<p>10. Instream Restoration Instream habitat structures and improvements provide predator escape and resting cover, increase spawning habitat, improve migration corridors, improve pool to riffle ratios, and add habitat complexity and diversity. These projects may include placing large woody material or boulders; constructing engineered logjams; installing small wood structures or beaver dam analogues; beaver habitat restoration; augmenting and placing gravel; stream channel reconstruction; removing revetment and other streambank armoring materials; improving stream morphology and channel dynamics; restoring sediment input and retention balance; and improving water quality.</p>
<p>11. Upslope Watershed Restoration Sites in upslope and riparian watershed areas may be restored to reduce delivery of sediment to streams, promote natural hydrologic processes, restore wildlife habitat, and improve water quality. This project type includes road- and trail-related restoration, including decommissioning, upgrading, and storm-proofing. Implementation of these types of projects may require the use of heavy equipment (e.g., excavators, bulldozers, dump trucks, front-end loaders).</p>
<p>12. Kelp Forest Restoration Transplanting lab grown kelp or drifting kelp into the marine environment to restore structural and functional attributes of kelp forests. In some projects, sea urchins are removed from planted or already established areas to increase survival and growth of the kelp forest.</p>

As described in NOAA RC’s 2022 Annual Report, the most common project type in the CRP over the last 10 years was instream habitat restoration (12 projects), followed by improvements to stream crossings and fish passage (6 projects), and upslope watershed restoration (6 projects). Other project types that were implemented as part of the CRP include riparian restoration and protection (5 projects); water conservation projects for enhancement of fish and wildlife habitat (4 projects); restoration and enhancement of off-channel and side-channel habitat (4 projects); floodplain restoration (3 projects); and establishment, restoration, and enhancement of tidal, subtidal, and freshwater wetlands (2 projects). The following project types were not implemented: kelp forest restoration; fish screens; and removal of small dams, tide gates, levees, bank revetments, and other legacy structures. NOAA RC expects that these

project types would receive funding and/or assistance in the next 10 years and thus are included in the proposed consistency determination. NOAA RC also expects to receive an increase in projects that may qualify under the CRP over the next 10 years and is currently in the process of consulting with project partners on future potential CRP projects.

One project type that was not included in the initial CRP was the removal of pilings and other in-water structures from stream, river, and estuary habitats. Wood pilings, both chemically treated and untreated, and other derelict in-water structures can adversely affect water quality and sensitive habitats. Chemicals from the pilings can leach into the sediments and water column, causing harm to native fish species and high mortality rates in fish eggs. Derelict in-water structures also pose hazards to species and habitats and obstruct natural habitats. Careful removal of these hazardous structures is needed in many areas that the CRP covers. Due to the need to restore these types of degraded areas to functioning habitats, NOAA RC expects to provide funding and assistance for the removal of pilings and in-water structures as part of the CRP over the next 10 years.

Environmental Protection Measures

The overall effect of this program's implementation will be to restore native riparian, marine and estuarine habitat and reduce erosion and sedimentation, and thereby improve water quality, the health of natural resources, and agricultural sustainability. NOAA RC acknowledges that any activity taking place in or near sensitive resources requires the use of careful methods. In order to minimize or avoid potential adverse impacts on coastal zone resources, the project has established conditions (e.g. timing, location, etc.) for the design and construction of restoration projects. Only a limited set of activities proposed by project applicants will be considered for inclusion in the CRP. Each approved project shall implement a set of general environmental protection measures and conditions, as well as monitoring requirements, as outlined in **Table 2**, below. In addition, several of the eligible activities require further environmental protection measures and conditions. Finally, each eligible project must comply with all additional requirements specified in federal, state, and local permits and authorizations.

A full description of protection measures can be found in the NOAA RC Programmatic Biological Opinion for the Arcata field office (Appendix A), NOAA Programmatic NEPA Documents, the CDFW Salmonid Restoration Manual, and NMFS Screening and Fish Passage Criteria.

Table 2. General Requirements and Protections Measures

<p><u>General Protection Measures</u></p> <ul style="list-style-type: none">a) Engineering review required for complex projectsb) All other permits must be obtained before the project may commencec) Contractors must be briefed in advance by qualified biologist on all protection measuresd) Impact evaluation criteria must be followed: first avoidance, then minimization, and mitigatione) Detailed success criteria required for revegetation projectsf) Prohibited activities include, but are not limited to gabions, treated wood, migration obstruction, projects with toxic sedimentsg) NOAA retains right of reasonable access to property to monitor effectiveness of projecth) Monitoring and reporting required (see section below)i) BOs also specify:<ul style="list-style-type: none">a. Specific protection measures for species, water quality, and several other resources areasb. Maximum stream dewatering length: 1000' at a timec. Consistency w/ CDFW Salmonid Stream Habitat Restoration Manual, CDFW Culvert Criteria for Fish Passage, CDFW/NOAA Fish Screening Criteria for Salmonids, Handbook for Forest and Ranch Roads (Weaver and Hagans)d. Construction work windows, typically limited to June 15-November 1 with planting allowed beyond November 1
<p><u>Water Quality Measures</u></p> <ul style="list-style-type: none">a) Detailed water quality protection and erosion control requirements during and following constructionb) Dewatering for in-channel work, with specific rules for how dewatering shall occurc) Specific avoidance of impacts from poured concreted) Specific requirements for access road maintenance and road decommissioninge) Temporary erosion controls will be in place before any significant alteration of the action site and will be monitored during construction to ensure proper function. Turbidity curtains, hay bales, and erosion mats shall be used where appropriate.f) Confine vegetation and soil disturbance to the minimum area, and minimum length of time, as necessary to complete the action, and otherwise prevent or minimize erosion associated with the action.g) Cease work under high flows or seasonal conditions that threaten to disturb turbidity reduction measures, except for efforts to avoid or minimize resource damage.h) <i>General On-site Pollution Controls:</i><ul style="list-style-type: none">a. Properly confine, remove, and dispose of construction waste, including every type of debris, discharge water, concrete, cement, grout,

washout facility, welding slag, petroleum product, or other hazardous materials generated, used, or stored on-site.

- b. All vehicles and other heavy equipment will (a) be stored, fueled, and maintained in a vehicle staging area set back from any natural waterbody or wetland; (b) inspected daily for fluid leaks before leaving the vehicle staging area.
- c. Generators, cranes, and any other stationary equipment operated within 150 feet of any natural water body or wetland will be maintained as necessary to prevent leaks and spills from entering the water.
- d. Use procedures to contain and control a spill of any hazardous material generated, used or stored on-site, including notification of proper authorities.
- e. When local conditions indicate the presence of contaminated sediments is likely, soil samples will be tested for contaminant levels and precautions will be taken to avoid disturbance of or provide for proper disposal of contaminated sediments

Listed Species and Sensitive Habitat Protection

- a) Work windows for all listed species
- b) Detailed fish capture and relocation and dewatering requirements; qualified biologist required; reporting all encounters with listed species.
- c) Water quality, water quantity, sensitive habitat protection, and other general measures also serve to protect species.
- d) Flagging required around sensitive areas and buffers
- e) Specific measures to minimize impacts to riparian vegetation
- f) Tree size removal limits
- g) Construction access point must minimize vegetation and soil disturbance and compaction
- h) Invasive Species Removal
 - a. *Herbicide Application Controls* - Use of herbicides in project areas will be conducted according to established protocols for the locality, as determined by a state-licensed herbicide applicator. Such protocols will include information and guidelines for appropriate use, timing, amounts, application methods, and safety procedures relevant to the herbicide application. Chemicals used should be appropriate for the location.
- i) Wetlands - Wetlands projects follow standard protection measures listed through this table including, but not limited to, flagging sensitive areas, on-site erosion controls, on-site pollution prevention controls, methods to reduce soil compaction, seasonal work periods, adequate training of volunteers, and planting and installing vegetation standards.

Visual Resources and Public Access

- a) Not likely to be visual impacts because most projects are on private lands, and result in a net benefit to visual impacts by restoring degraded habitat and vegetation.

<ul style="list-style-type: none">b) Project applications are also evaluated and ranked based on their level of public and landowner support.c) All other permits/approvals must be acquired before project commences. NOAA's mission supports public access and recreation as long as it does not negatively impact listed species.d) Public access not likely impacted because many projects are on private lands. Projects on public lands often include partners with shared mission of maintaining public access for educational and/or recreation purposes (USFWS).
<p><u>Monitoring, Success Criteria, and Reporting</u></p> <ul style="list-style-type: none">a) Pre- and post-construction monitoring plan required of all projects; monitoring protocol typically follows CDFW FRGPb) Development of success criteriac) BOs require photo-monitoringd) Annual report required and prepared by NOAA RCe) Pre-construction reporting for qualifying projects in the Coastal Zone provided to Coastal Commission by May 15; qualifying projects in the Coastal Zone funded later in the year will be reported to Coastal Commission on a project-by-project basis

NOAA RC further states in its consistency determination that:

The NOAA RC and USACE have established general requirements and environmental protection measures that must be implemented for projects to be included in the Program. For example, a key component of the NOAA RC's Programmatic Biological Opinions involves the use of "sideboards" that establish a minimum distance between instream projects and limit the number of instream projects annually within a watershed, relative to the size of the watershed. NOAA Biological Opinions also contain specific requirements for dewatering, riparian restoration, species protection, and more, as well as general project review procedures conducted by NOAA RC Staff.

As part of NOAA RC's general review process, NOAA RC staff will evaluate individual projects and assess whether they can be covered under existing NOAA RC programmatic BOs, applicable BOs for existing restoration programs that fall within the scope of activities covered by the CRP (e.g., existing Partners in Restoration permit coordination programs with pre-existing BOs), or whether a project should be reviewed through an individual Section 7 consultation because the project is outside the program or geographic scope of an existing BO and warrants separate analysis. NOAA RC staff will also screen applications for applicability to this Federal Consistency Determination, applying criteria from the "General Exclusions" and "Qualifying Projects" sections of this report. All projects will be subject to applicable general project requirements, as well as project specific conditions that NOAA RC and NMFS deem necessary in order to protect coastal resources.

Table 1 in NOAA RC's consistency determination summarizes the agency's review process, general requirements, and protection measures for coastal resources ([Exhibit 2](#)).

NOAA RC will provide the Executive Director with early notification and project information about qualifying projects to be covered by NOAA RC's programmatic Consistency Determination on a project-by-project basis. Project information will include the title of the project, project applicant and partners, project location and habitat benefit. The Executive Director would review these projects and coordinate with NOAA RC staff to address any potential concerns, including through removal of individual projects from the program so that they may be individually reviewed and brought to the Commission for consideration.

Further, NOAA RC will also prepare an annual report summarizing the results of projects implemented under the CRP during the most recent construction season within the coastal zone, and results of post-construction implementation and effectiveness monitoring for that year and previous years. The annual report shall include a summary of the specific type and location of each project and the amount of habitat restored.

General Exclusions

NOAA RC and the Executive Director would review every potential project prior to inclusion in the proposed CRP. To be included in the program, projects must meet NOAA RC's goals to protect, restore, and manage use of coastal and ocean resources through ecosystem-based management. Projects that do not meet those goals, are beyond the scope of this proposed program, or are potentially controversial would be excluded from consideration. In addition, the Executive Director may also determine that projects are not consistent with the California Coastal Management Program or the California Coastal Act and would not qualify for this program. In its consistency determination, NOAA RC describes the types of projects that would be excluded from the proposed program:

All projects included under the Program must involve on-the-ground habitat restoration resulting in physical habitat modifications and beneficial ecological impacts for federal trust species. The following projects will be excluded from this action due to their scope, complexity, or potentially controversial nature and individual project review from the Coastal Commission or the approved Local Coastal Program will be sought:

- *Projects the NOAA RC determines to be inconsistent with NOAA RC goals or standards, the CDFW Manual, or other applicable restoration practices and guidelines.*
- *Projects determined to be inconsistent with Section 7 of the Endangered Species Act.*
- *Projects the Executive Director of the Coastal Commission determines to be potentially inconsistent with the California Coastal Management Program or that otherwise warrant individual review.*

C. STREAMS/WETLANDS/ESHA/WATER QUALITY

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 states in part:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource-dependent activities.*

Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The purpose of NOAA RC's CRP is to provide funding and technical assistance for high quality, necessary, and beneficial habitat restoration and erosion control projects on private and public lands in coastal California. This program would result in substantial benefits to habitat for anadromous fish and other aquatic species, water quality, coastal wetlands and the estuarine and marine environments. However, whenever work of this kind takes place, the potential exists for long- and short-term disturbance or degradation of the environment due to incidental effects. The projects and activities approved for funding and/or technical assistance by NOAA RC are expressly designed to avoid long-term disturbance or degradation altogether, minimize any short-term adverse impacts, protect and enhance sensitive habitat, improve water quality in coastal watersheds, and restore coastal resources to a more naturally functioning state.

In order to participate in the CRP, projects must clearly meet the program's goals and standards. CRP activities that will increase the health of wetlands, streams, and other environmentally sensitive habitats as part of a project include, but are not limited to:

- Instream Habitat Structures and Improvements
- Bioengineering and Riparian Habitat Restoration
- Upslope Watershed Restoration
- Creation of Off-channel/Side-channel Habitat
- Invasive Species Control

Due to the adverse effects of past and present development, hydromodification, pollution, and invasive species, there has been a drastic loss of functional riparian and wetland habitat available for plant and animal species, including threatened and endangered species. The need for conservation efforts in riparian and wetland habitats of the coastal zone is high.

Within the proposed CRP program area that would be covered under this general consistency determination, there are hundreds of impaired waterways declared under the Clean Water Act section 303(d) and listed in California's 2018 and 2020-2022 Integrated Reports. Many of the impairments or "pollutant categories" for these waterways – including water temperature, sediment, nutrients, pathogens, other organics, pesticides and hydromodification – affect habitat for fish and other aquatic species and water quality. Unstable geology, erodible soils and high seasonal precipitation cause erosion and sedimentation in these waterways. Sedimentation reduces water quality and impairs spawning and rearing of salmonids, including the protected coho salmon and steelhead present in many of these waterways. Roads constructed along

canyon floors and steep inner gorges cause channel realignment resulting in direct delivery of sediment to waterways. Excess sediment alters the natural hydrology of coastal wetlands, and affects recruitment of native wetlands vegetation and aquatic life. The lack of riparian vegetation leads directly to high stream temperatures and runoff from agricultural fields and other land uses into waterways. Stream modifications from decades of flood control efforts, channelization and small dams have altered natural fluvial regimes and degraded stream habitat. At river and stream mouths, sediment and other pollutants as well as constructed fill have degraded and destroyed estuarine resources, including oyster and other native shellfish populations and submerged aquatic vegetation. These resource impairments can be addressed by CRP projects and activities, which are designed to reduce and eliminate anthropogenic sources of sediment, and benefit riparian, wetlands, estuarine and uplands habitat, and improve water quality.

To protect environmentally sensitive habitats, NOAA RC ensures that, in time and manner of implementation, all funded and authorized CRP projects meet the program's goals and standards, comply with its environmental protection measures, and comply with all conditions required by programmatic and project permits and authorizations from the Corps, NMFS, USFWS, CDFW, State and Regional Water Boards and the Commission. The consistency determination includes a detailed description of the environmental commitments that will be attached to each eligible project in the CRP. These measures, used to the maximum extent possible, will minimize impacts to sensitive species and habitats, and include, but are not limited to, the following:

- Limit construction temporally in order to avoid spawning, rearing and migration periods of anadromous fish, and the nesting or breeding seasons of birds and terrestrial animals
- Limit construction temporally in order to reduce erosion during rainy periods;
- Optimize planting of seedlings by planting close to or during the rainy season;
- Limit the size and grade of disturbance to existing grades;
- Restrict the number and size of access routes, staging areas and total work site area to the minimum necessary;
- Restrict habitat improvements to techniques that are in accordance with the "California Salmonid Stream Habitat Restoration Manual"
- Use native plants in revegetation efforts, and use native plants of local genetic stock where feasible.

The CRP's environmental protection measures, and all conditions required by NOAA RC's Arcata and Santa Rosa Biological Opinions and other federal and state regulatory permits and approvals, will ensure that the short-term impacts that could result from implementation of CRP projects will not have significant adverse effects on riparian areas, wetlands, the marine environment, and water quality. The proposed restoration activities are allowable uses under Sections 30233 and 30240 of the Coastal Act. The long-term benefits of the CRP in the coastal zone will enhance riparian vegetation and bank stability, provide additional habitat areas for foraging, breeding, and shelter, and improve water quality and aquatic habitats by decreasing sediment and other pollutants flowing to coastal waters. In addition, as described in the General Exclusions section of NOAA RC's consistency determination, the Executive Director would have the ability to review all projects proposed by NOAA RC for inclusion in the program and exclude

those with the potential to result in adverse impacts to coastal resources. This would allow those projects to be individually reviewed and considered by the Commission outside of the program so that any project modifications or protective measures the Commission deems appropriate for the protection of wetlands, water quality, marine resources and ESHA could be developed and required. With this precautionary measure in place and the expected restoration benefits provided by the projects and program, the Commission therefore finds that the project is consistent with Sections 30230, 30231, 30233, and 30240 of the Coastal Act.

D. AGRICULTURE

Section 30241 of the Coastal Act states in part:

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy. . . .

Section 30242 states:

All other lands suitable for agricultural uses shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

Section 30243 states:

The long-term productivity of soils and timberlands shall be protected, and conversions of coastal commercial timberlands in units of commercial size to other uses or their division into units of noncommercial size shall be limited to providing for necessary timber processing and related facilities.

One goal of the proposed CRP is to enhance agricultural lands through conservation efforts that will enhance soil and water resources. Consistent with Coastal Act agricultural policies, proposed implementation of the CRP in the coastal zone will help maintain the long-term viability of farming, ranching, and grazing in the coastal zone by reducing the loss of valuable top soil subject to erosion, improving dependable water supplies for livestock, and increasing the function and health of waterways passing through agricultural properties. By improving the compatibility between agricultural land uses and the protection of sensitive habitat areas and waterways, the project will assist in preserving the long-term viability of both agricultural and natural resources. Most of the conservation practices approved for this program act as part of the farming or ranching operation even if the specific project location can no longer be used for economic production. The practices to be implemented in this project are an integral part of production since they enhance resource conditions and prevent loss of productive resources from adjacent crop or rangeland. This does not constitute conversion of agricultural lands to non-agricultural use, as these practices serve the agricultural purpose of controlling erosion and enhancing waterways. The beneficial impacts of retaining significant amounts of soil on site that

would otherwise be lost to erosion, and increasing the quality of waterways on agricultural land, greatly outweigh the minor loss in areas of production from a site-specific conservation structure.

Although some projects implemented under the CRP may result in the restoration and conversion of current and/or historic agricultural lands – primarily diked hay and grazing properties – into native salt and brackish marshlands and riparian floodplain habitat, these types of projects are proposed very infrequently. While in past reviews described above, the Commission has found proposed habitat improvements consistent with Sections 30241 and 30242 because only minor amounts of agricultural land would be converted to habitat or water quality improvement measures, the Commission has also, in other contexts, found conversion of agricultural land for habitat restoration activities consistent with the Coastal Act under the conflict resolution provision (Section 30007.5). Further, as described in the General Exclusions section of NOAA RC’s consistency determination, the Executive Director would have the ability to review all projects proposed by NOAA RC for inclusion in the program and exclude those with the potential to result in adverse impacts to agricultural lands and other coastal resources. This would allow those projects to be individually reviewed and considered by the Commission. Therefore, the Commission finds that the proposed implementation of the CRP in the coastal zone would help to protect agricultural lands and resources and is consistent with Coastal Act Sections 30241, 30242, and 30243.

E. CULTURAL RESOURCES

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The potential exists for encountering cultural resources from a variety of the proposed activities that would be covered under the CRP, although most projects will take place in areas that have already been developed, modified, cultivated or otherwise disturbed by human land uses, and will not exceed the depth, extent or kind of previous activities. NOAA RC complies with the requirements of the National Historic Preservation Act, Section 106 on an individual project basis. For projects that may adversely impact cultural or historical resources, NOAA RC will consult with the state historic preservation officer and local tribal officers. In addition, NOAA has a Cultural Resource Specialist on staff to help administer the cultural resources compliance process for CRP projects.

In its consistency determination, NOAA RC has committed to not proceed with a project where significant impacts to cultural resources cannot be avoided through agency actions and/or revised plans. Should the project applicant or any project partners uncover human remains in the course of a project, NOAA RC and project proponents will follow procedures established by the Native American Heritage Commission, including immediately stopping work in the area and notifying the County Coroner. With these elements, the CRP includes reasonable measures for the protection of archaeological and paleontological resources, and the Commission therefore finds the project consistent with Section 30244 of the Coastal Act.

F. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

CRP projects are not expected to have significant negative effects on scenic or visual resources. Minor adverse impacts to viewsheds may occur from re-establishment of native vegetation where it has not been present for some time, and from construction and soil disturbance during and following project installation. However, these effects are expected to be temporary, and would be offset by beneficial effects to scenic or visual resources accruing from the restoration of native riparian, wetland and estuarine habitats and other coastal resources. Therefore, the Commission finds the program will not likely have negative impacts and is most likely to have beneficial impacts to scenic/visual resources consistent with Section 30251 of the Coastal Act.

CD-0006-22 (NOAA Restoration Center)

APPENDIX A – Substantive File Documents

NOAA Restoration Center, 2022. Consistency Determination No. CD-0006-22

NOAA Restoration Center, 2022. Programmatic Biological Opinion for the Arcata field office (NMFS No: WCRO-2021-02830)

NOAA Restoration Center, 2022. Annual Report for NOAA Restoration Center's Programmatic Federal Consistency Determination CD-021-13 (Projects covered from 2013 – 2022)