CALIFORNIA COASTAL COMMISSION
NORTH COAST DISTRICT OFFICE
1385 EIGHTH STREET, SUITE 130
ARCATA, CA 95521
VOICE (707) 826-8950
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Th12b

1-22-0279

(USFWS & BATES)

SEPTEMBER 8, 2022

EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Site Plan and Photos

Exhibit 3 – Proposed Repair Plans

Exhibit 4 – Other Agency Approvals

Figure 1. Project location on Eureka, CA 7.5' USGS quad.

Exhibit 1- Vicinity Map
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Figure 1. Map of dock renovation project at Humboldt Bay N

Figure 2. Piling and mudflat under dock, looking north.

Exhibit 2- Site Plan & Photos
CDP Application 1-22-0279
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Figure 3. View of above water structure looking north.

Exhibit 2- Site Plan & Photos
CDP Application 1-22-0279
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Figure 4. View of pilings and mudflat below dock, looking southeast.

Exhibit 2- Site Plan & Photos
CDP Application 1-22-0279
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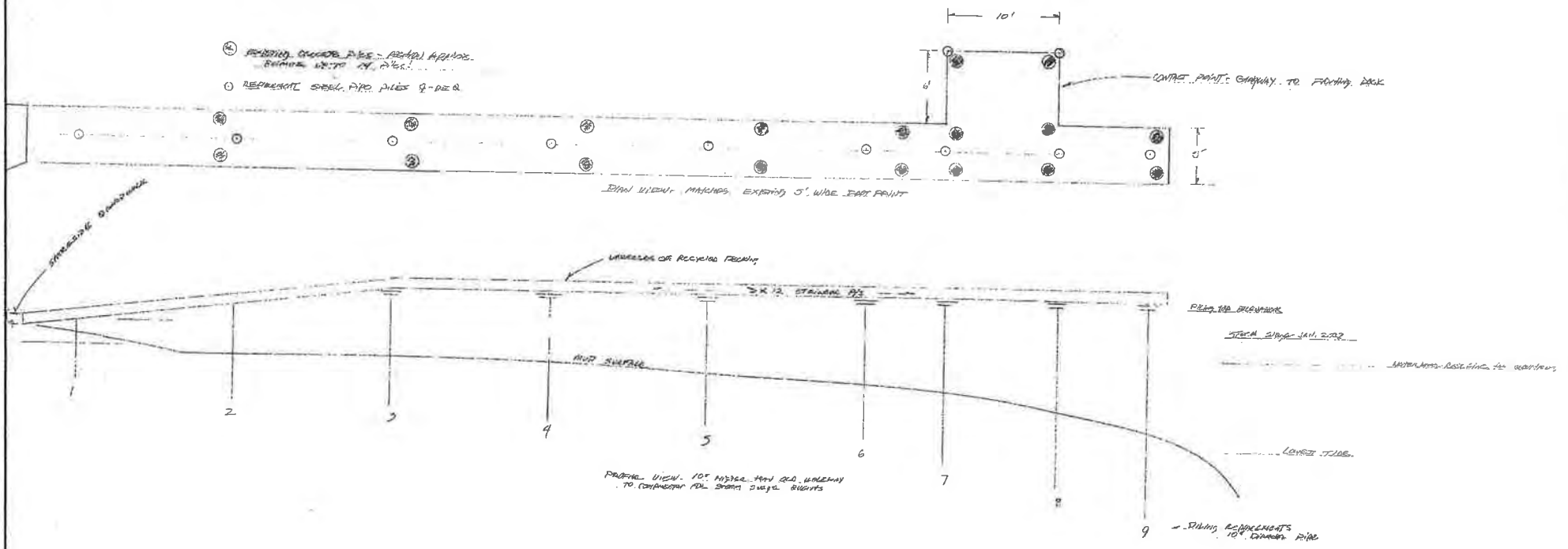

FOR REPAIR OF WALKWAY TO HOUSE

REMOVE OLD PILINGS - REPLACE W/ STEEL PIPE PILES

- REUSE REDWOOD DECKING AS APPLICABLE

PEDESTRIAN WALKWAY
WALK TO HOUSE
CHAPEL ISLAND

June 10, 2021

IN THE MATTER OF WATER QUALITY CERTIFICATION FOR THE INDIAN ISLAND DOCK REHABILITATION PROJECT

APPLICANT:	U.S. Fish and Wildlife Service
RECEIVING WATER:	Humboldt Bay
HYDROLOGIC UNIT:	Eureka Plain Hydrologic Unit No. 110.00
COUNTY:	Humboldt
FILE NAME:	Indian Island Dock Rehabilitation Project
	ECM PIN CW-873742
	WDID 1B21097WNHU

FINDINGS BY THE EXECUTIVE OFFICER:

1. On April 20, 2021, the North Coast Regional Water Quality Control Board (Regional Water Board) received a draft application from Humboldt County Public Works (Applicant), requesting Federal Clean Water Act, section 401, Water Quality Certification (certification) for activities related to Humboldt Bay Trail South Project (Project) and requested a prefiling meeting. On June 1, 2021, the Applicant filed a formal request for certification. The draft application was deemed complete on May 26, 2021.

2. **Public Notice:** The Regional Water Board provided public notice of the application pursuant to Title 23, California Code of Regulations, Section 3858 on April 30, 2021, and posted information describing the Project on the Regional Water Board's website. No comments were received.

3. **Receiving Waters:** The Project will cause disturbances to Humboldt Bay, waters of the U.S. and the state, within the Eureka Plain Hydrologic Unit No. 110.00.

4. **Project Description:** The Project involves a dock on Indian Island that needs renovation and replacement of decking and pilings in order to maintain safety and functionality. To access the dock, you must travel by boat from Woodley Island Harbor and head northwest until you reach Indian Island. The pier consists of 14 paired pilings, redwood longitudinals, and decking. The gangway is 103 ft in length and 5 ft wide, with a surface area of 595 sq. ft.

   The project will involve the removal and replacement of 10-14 creosote pilings with nine 10" hollow steel tubes. Dismantling of the existing dock will occur during both high and low tide. Pulling of pilings would be done at high tid

Exhibit 4- Other Agency Approvals
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wench or crane on a scow. Any pilings that can't be pulled would be cut off at or below the mudflat which would be done at low tide with all saw dust collected. The size of the renovated dock will be exactly the same size as the original dock. All new components would be pre-cut and fit away from the bay before moving them into position. This would include the tubes, longitudinals, and decking.

This strategy is designed to reduce chances of introducing sawdust or steel into the bay. Some old decking may be reused in the final product, but all other components will be disposed of properly off-site. Sediment drift and introduction should be reduced with the use of hollow tubes, but any sediment that gets released would settle during the next low tide resulting in temporary impacts. An informal consultation with USFWS indicates that Tidewater Gobi would not be impacted by this project as they aren't present in the open bay. The goal of the project would be to replace broken and failing parts of the dock to withstand current environmental conditions.

5. **Construction Timing:** Project construction will occur between September 1 and October 14 in 2021 and require 2 weeks of construction. Any work within jurisdictional waters during the wet season will require approval from the Regional Water Board.

6. **Project Impacts:** The Project will result in approximately 12 linear feet (0.0002 acres) of temporary impacts to wetlands as a result of project construction and access. The Project will not result in any permanent impacts.

7. **Mitigation for Project Impacts:** The impacts associated with the Project are temporary in nature and, once complete, the Project will provide a net benefit to water quality; therefore, no compensatory mitigation is required.

8. **Other Agency Actions:** The Applicant has applied to the Corps for coverage under an Individual Permit pursuant to section 404 of the Clean Water Act.

9. **CEQA Compliance:** As a responsible California Environmental Quality Act (CEQA) agency, the North Coast Regional Water Quality Control Board (NCRWQCB) has determined that the Project qualifies for a Categorical Exemption 15301 Existing Facilities (c) and (d).

10. **Antidegradation Policy:** The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution 68-16, which incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution 68-16 requires that existing high-quality waters be maintained unless degradation is justified under specific provisions. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the state and federal antidegradation policies. This Certification is consistent with applicable federal and state ar

as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater and does not otherwise authorize degradation of the waters affected by this project.

11. Notwithstanding any determinations by the U.S. Army Corps or other federal agency made pursuant to 40 C.F.R. section 121.9, dischargers must comply with the entirety of this certification because this discharge is also regulated under State Water Resources Control Board Order 2003-0017-DWQ, *General Waste Discharge Requirements for Dredge and Fill Discharges that have Received State Water Quality Certification*, which requires compliance with all conditions of this water quality certification. https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/go_wdr401regulated_projects.pdf

Receiving Water:	Eureka Plain Hydrological Unit 110.00
Filled and/or Excavated Areas:	
Permanent Impacts	none
Temporary Impacts	12 linear feet (0.0002 acres) bay
Latitude/Longitude:	40.8102 °N / 124.1686 °W
Certification Expiration:	**June 10, 2026**

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Indian Island Dock Rehabilitation Project (WDID 1B21097WNHU), as described in the application, will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the applicant complies with the following terms and conditions:

All conditions of this Certification apply to the applicant (and all their employees) and all contractors (and their employees), sub-contractors (and their employees), and any other entity or agency that performs activities or work on the project as related to this water quality certification.

Standard Conditions

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.

2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amend

license unless the pertinent certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. An application fee and annual fees have been waived for this Certification because the Applicant, U.S. Fish and Wildlife Service, is a United States Federal Agency.

4. This certification does not authorize drafting of surface waters. Any drafting of surface waters shall be in compliance with state water rights law and diversion requirements overseen by the State Water Resources Control Board's Division of Water Rights. (State Board Resolution No. 68-16, 40 CFR Part 131.12 (a)(1), CA Water Code section 13369, CCR section 3861(d)(2))

5. Only wildlife-friendly, 100 percent biodegradable erosion and sediment control products that will not entrap or harm wildlife shall be used. Erosion and sediment control products shall not contain synthetic (e.g., plastic or nylon) netting. Photodegradable synthetic products are not considered biodegradable. The applicant shall request approval from the Regional Water Board if an exception from this requirement is needed for a specific location. (Water Quality Control Plan for the North Coast Region, Section 4.2.1, State Board Resolution No. 68-16)

6. Best management practices (BMPs) shall be implemented according to the submitted application and the conditions in this certification. BMPs for erosion, sediment, and turbidity control shall be implemented and in place at commencement of, during, and after any ground clearing activities or any other project activities that could result in erosion or sediment discharges to surface water. BMPs shall always be immediately available for deployment to prevent discharges to waters of the state. (State Board Resolution No. 68-16, 40 CFR Part 131.12 (a)(1), CA Water Code section 13369, CCR section 3861(d)(2))

7. The applicant is prohibited from discharging waste to waters of the state, unless explicitly authorized by this certification. For example, no debris, soil, silt, sand, bar, slash, sawdust, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Certification, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the state. When operations are completed, any excess material or debris shall be removed from the work area. (Water Quality Control Plan for the North Coast Region, section 4.2.1)

8. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification. (CA Water Code section 13267(c))

9. If, at any time, an unauthorized discharge to surface water (including wetlands, lakes, rivers, or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate BMF

including stopping work. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises. (CA Water Code sections 13170 or 13245 and 13271)

10. Prior to implementing any change to the project that may be a material change as defined in California Water Code section 13260(c) as a proposed change in character, location, or volume of the discharge, the applicant shall obtain prior written approval of the Regional Water Board Executive Officer. If the Regional Water Board is not notified of the material change to the discharge, it will be considered a violation of this certification, and the applicant may be subject to Regional Water Board enforcement action(s). (CA Water Code section 13264)

11. All Project activities shall be implemented as described in the submitted certification application package and the findings and conditions of this certification. Subsequent Project changes that could significantly impact water quality shall first be submitted to Regional Water Board staff for prior review, consideration, and written concurrence. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this certification, and the Applicant may be subject to Regional Water Board enforcement actions. (CA Water Code section 13264)

12. The applicant shall provide a copy of this certification and State Water Board Order 2003-0017-DWQ to any contractor(s), subcontractor(s), and utility company(ies) conducting work on the project and shall require that copies remain in their possession at the work site. The applicant shall be responsible for ensuring that all work conducted by its contractor(s), subcontractor(s), and utility companies is performed in accordance with the information provided by the applicant to the Regional Water Board. (CA Water Code sections 13170 or 13245)

13. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall not result in a discharge or threatened discharge to any waters of the state including dry portions of wetlands. At no time shall the applicant or its contractors allow use of any vehicle or equipment that leaks any substance that may impact water quality. (State Board Resolution No. 68-16, 40 CFR Part 131.12 (a)(1), Water Code section 13369, Water Quality Control Plan for the North Coast Region, section 3.3.16)

14. The Applicant shall not use leaking vehicles or equipment within state waters or riparian areas. Vehicles and equipment used within state waters shall be checked for leaks at the beginning of each workday. (State Board Resolution No. 68-16, 40 CFR Part 131.12 (a)(1), CA Water Code section 13369, Water Quality Control Plan for the North Coast Region, section 3.3.16)

15. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under applica

law. For the purposes of section 401 (d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification. In response to a suspected violation of any condition of this certification, the Regional Water Board may require the holder of any federal permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this Certification, the Regional Water Board may add to or modify the conditions of this Certification as appropriate to ensure compliance pursuant to Section 13267 of the Porter-Cologne Water Quality Control Act. (CA Water Code sections 13385, 13267)

16. The Regional Water Board may add to or modify the conditions of this Certification, as appropriate, to implement any new or revised water quality standards and implementation plans adopted and approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act. (CA Water Code section 13330, and CCR title 23 chapter 28, Article 6 commencing with section 3867)

17. In the event of any change in control of ownership of land presently owned or controlled by the applicant, the applicant shall notify the successor-in-interest of the existence of this certification by letter and shall email a copy of the letter to the Regional Water Board at the following email address: NorthCoast@waterboards.ca.gov. (CA Water Code section 13264)

    The successor-in-interest shall email the Regional Water Board Executive Officer at: NorthCoast@waterboards.ca.gov to request authorization to discharge dredged or fill material under this certification. The request must contain the following:

    i) Effective date of ownership change;

    ii) Requesting entity's full legal name;

    iii) The state of incorporation, if a corporation;

    iv) The address and phone number of contact person; and

    v) A description of any changes to the Project or confirmation that the successor-in-interest intends to implement the project as described in this certification.

18. Except as may be modified by any preceding conditions, all certification actions are contingent on:

i) The discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's Project description and CEQA documentation, as approved herein (CA Water Code section 13264); and

ii) Compliance with all applicable water quality requirements and water quality control plans including the requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan), and amendments thereto. (Water Quality Control Plan for the North Coast Region)

19. The authorization of this certification for any dredge and fill activities expires on **June 10, 2026**. Conditions and monitoring requirements outlined in this Certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable to ensure compliance with water quality objectives adopted or approved under Sections 13170 or 13245 of the CA Water Code.

Any requirement for a report made as a condition to this certification is a formal requirement pursuant to California Water Code section 13267, and failure or refusal to provide, or falsification of such required report is subject to civil liability as described in California Water Code, section 13268.

If you have any questions or comments, please contact Brandon Stevens of my staff, at (707) 576-2377, or via e-mail at Brandon.Stevens@waterboards.ca.gov.

_____

Matthias St. John
Executive Officer

210610_BDS_er_indian_island_dock_rehab_401

Original to: Ms. Cashell Villa
U.S. Fish and Wildlife Service
Humboldt Bay National Wildlife Refuge
PO Box 576
Loleta, CA 95551
cashell_villa@fws.gov

cc: State Water Resources Control Board, Stateboard401@waterboards.ca.gov
Jennifer Siu, EPA Wetlands Office, siu.jennifer@epa.gov
ACOE, CESPN-Regulatory-Info@usace.army.mil

Exhibit 4- Other Agency Approvals
CDP Application 1-22-0279
USFWS & Bates

August 6, 2021

National Marines Fisheries Service
Arcata Field Office
Attn: Matt Goldsworthy
1655 Heindon Road
Arcata, CA 95521

Dear Mr. Goldsworthy:

The U.S. Fish and Wildlife Service, Humboldt Bay National Wildlife Refuge (HBNWR) plans to renovate a boat dock at Tuluwat (Indian) Island, located in Humboldt Bay, California (Figure 1). This parcel is only accessible by boat and the dock provides the only means to access the parcel for staff, public, cooperators, and permit holders. HBNWR proposes to renovate the dock to bring it back into safety compliance because it has becoming increasingly unsafe to utilize.

HBNWR requests consultation with the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA) for the proposed action. Additionally, the analysis of the proposed action serves to address essential fish habitat (EFH) considerations for species managed under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996. Available information indicates the action area provides potential habitat and falls within designated critical habitat for the following listed species:

- **Northern California (NC) Steelhead** (*Oncorhynchus mykiss)* (threatened)
- **Southern Oregon-Northern California Coastal (SONCC) coho Salmon ESU** *(O. kisutch)* (threatened)
- **California Coastal (CC) Chinook Salmon ESU** *(O. tshawytscha)* (threatened)
- **Southern DPS North American Green Sturgeon** (*Acipenser medirostris)* (threatened)

HBNWR has determined that the proposed action may affect, but is not likely to adversely affect, these listed species and their critical habitat. HBNWR has also determined that the proposed action would not adversely affect EFH for Finfish, Coastal Pelagic Species, Groundfish, and Chinook and Coho Salmon with implementation of the proposed avoidance and minimization measures.

The purpose of this letter is to request NMFS concurrence with these determinations.

Proposed Action

Humboldt Bay National Wildlife Refuge was established in 1971 to protect and conserve habitat for the great diversity of birds, mammals, fish, amphibians, invertebrates, and plants that occur in within Humboldt Bay. The Refuge is approximately 5,000 acres with lands scattered in and around the Humboldt Bay. In addition to conservation of natural resources, we maintain a network of infrastructure on our lands to support conservation operations. This infrastructure includes roads, levees, buildings, docks and bridges, which require ongoing and frequent maintenance in the coastal environment.

It has come to the attention of management at HBNWR that the dock at Tuluwat Island has not received ongoing maintenance except for the replacement of decking boards when needed. The supporting structure including the pilings and longitudinals are deteriorated with many needing replacement. Some pilings have already deteriorated to a point that they are no longer supporting the structure or are completely gone. To minimize risk to those utilizing the dock, it is imperative that a renovation of the entire structure takes place to address long-term, sustained use of the structure and environmental concerns that are posed by the continued presence of the original creosote pilings. No alternatives have been identified that would allow the continued use of the dock in its current condition without replacing failing components of the dock (Figures 2-4).

The proposed action would take place during the approved work window for Humboldt Bay inshore waters, September 15 – October 14. The description of the structure and its renovations are as follows:

- The pier consists of 14-paired pilings, redwood longitudinals and decking. The gangway is 103ft in length, 5ft in width with a landing at 8ft x 10ft. The surface area of the decking is 595 sq. ft.
- The project proposes to remove/pull and replace between 10-14 creosote pilings with nine 10in hollow steel tubes. Failing decking and longitudinals will be replaced with new lumber. The footprint of the dock will remain the same.
- Dismantling of the old dock would occur during both high and low tide. Pulling of pilings would be done at high tide with the use of the winch or boom on a scow. Any pilings that can't be pulled would be cut off at or below the mudflat at low tide with all saw dust collected. Dismantling of the above water structure would be completed during low tide.
- New pilings would be set during high tide with pilings being jetted 8ft into the substrate. A 1in steel jet pipe would be used to insert the pilings. The piling is suspended from a boom on a floating scow. Displacement of substrate is equal to or less than 3 cubic feet as the hollow tubes would fill with sediment as they are inserted.
- The entire project is estimated to take less than two weeks to complete. Most work will be completed during low tides or outside of the water column. Those activities that must take place during high tide will be limited to no more than five tide cycles.

General Avoidance and Minimization Measures

The following will be implemented within the action area during the dock project to avoid and minimize potential effects on federally-listed species and their habitats

- Implementing standard in-water construction BMPs to minimize the potential for adverse effects on federally-protected species, their habitats, and water quality within the action area;
- Utilizing approved work window for Humboldt Bay (Sept. 15 – Oct. 14) to avoid the migration season for salmonids and green sturgeon in the action area;
- Limiting in-water operations to the designated work areas to minimize disturbance to sediment, vegetative communities, and marine habitats;
- Eliminating percussion noise by utilizing a jet in method for driving pilings into sediment;
- Working in low water/low current where possible;
- Cutting, drilling, and dry fitting new components away from the bay to reduce introduction of debris into bay;
- Cutting off piling down to mudflat during the low-tide cycle when they cannot be pulled. A drop cloth will be utilized to collect all material and disposed of in accordance with current laws;
- Reusing undamaged decking and longitudinals where appropriate;
- Recapturing debris that has fallen into the water or mudflat;
- Hauling off debris and old dock components via barge and disposing of in accordance will all current local, state, and federal laws;
- Fueling equipment at a distance from the water; and
- Following other avoidance/minimization measures that are proposed by NMFS during this consultation.

Action Area

The action area is defined as the area adjacent to the proposed project that will be impacted directly or indirectly by the action. This could include areas that may be affected by changes to water quality caused by the proposed project. For the purpose of ESA and EFH consultations, the action area for the proposed action is defined as the 595 sq. ft. dock footprint, waters adjacent to the dock, and the mudflat below the dock. The proposed project will take place on the southern side of Tuluwat (Indian) Island in Humboldt Bay, California located at 40°48'35.44"N Latitude and 124°10'9.59"W Longitude.

The action area is located in an intertidal mudflat which is exposed twice daily during the low tide cycle. There are no subtidal channels in the action area and eel grass beds are not likely to be supported within the action area. However, maps of eelgrass in Humboldt Bay show that an eelgrass bed may be present just south of the action area (<100ft) where a subtidal channel runs east to west.

The action area has been occupied by the current dock since the 70's and perhaps longer. The dock was constructed of seven pairs of creosote pilings to support the a

redwood longitudinals and decking for the purpose of providing access to a homestead on the island. A floating dock of approximately 450 sq. ft. is located adjacent to and south of the proposed project and action area to support docking of larger vessels that need subtidal depths to operate.

Lastly, the action area is less than 0.25 miles from Woodley Island Harbor, which supports commercial, recreational, and research vessels. It is the largest harbor within Humboldt Bay. One of the major boating lanes from the harbor is approximately 350ft south of the action area. With its close proximity to this high traffic area, continual impacts to the action area range from engine noise to increased wave action to prop wash. The last two impacts could result in an increase in turbidity as sediment is disturbed within the mudflat and along the adjacent shoreline when boats pass through the area.

Federally Proposed and Listed Species and Designated Critical Habitat

Federally listed species, identified in Table 1, have the potential to occur within the action area based geographic and habitat information provided on the NMFS website. It only includes species that could reasonably be expected to occur within the action area. Updated species life history and status information were obtained from the NMFS website (e.g., https://www.fisheries.noaa.gov/species-directory/threatened-endangered).

(Table 1: Designated Critical Habitat and Listed Species with Potential to Occur within Action Area

Common Name[1]	Scientific Name	Status[2]	Critical Habitat	Species Presence	Listing Regulation
SONCC Coho Salmon ESU	*Oncorhynchus kisutch*	T	Yes	Possible	Threatened (70 FR 37160; June 28, 2005)
					Critical habitat (64 FR 24049; May 5, 1999)
CC Chinook Salmon ESU	*O. tshawytscha*	T	Yes	Possible	Threatened (70 FR 37160; June 28, 2005)
					Critical habitat (70 FR 52488; September 2, 2005)
NC Stealhead DPS	*O. mykiss*	T	Yes	Possible	Threatened (71 FR 834; January 5, 2006)
					Critical habitat (70 FR 52488; September 2, 2005)
Green Sturgeon, Southern DPS	*Acipenser medirostris*	T	Yes	Possible	Threatened (71 FR 17757; April 7, 2006)
					Critical habitat (74 FR 52300; October 9, 2009)

1 **Common Name** ESU – Evolutionarily Significant Units (ESU); DPS – Distinct Population Segments (DPS)
2 **Status** E – Endangered; T – Threatened

Coho Salmon: The Southern Oregon/Northern California Coast (SONCC) evolutionarily significant unit (ESU) of Coho salmon was listed as threatened on May 6, 1997; this status was reaffirmed on June 28, 2005. An ESU is a discrete breeding population of organisms that is treated as a separate species under the ESA. This ESU includes all naturally spawned populations of Coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California, as well three artificial propagation programs: the Cole Rivers Hatchery, Trinity River Hatchery, and Iron Gate Hatchery Coho hatchery programs. Critical habitat for this species was designated in May 1999, and includes all inhabited creeks, rivers, and estuarine areas, including Humboldt Bay.

Coho salmon is an anadromous fish species that typically has a 3-year life cycle. Generally, adults start freshwater migration in the late summer and fall, spawn in mid-winter, and die. The timing varies between areas and populations. Eggs may take up between 1.5 to 4 months to hatch after being deposited by females in excavated gravel nests. This is dependent on river temperature after laying. Juveniles will rear in freshwater up to 15 months and then migrate to the ocean in spring. Coho will spend two seasons in the ocean before returning to their natal stream to spawn as 3 year-olds.

There is no single factor solely responsible for the decline of Pacific salmonids, including SONCC Coho salmon. Given the complexity of the salmon species' life history and the various ecosystems in which they reside, many factors play a role in decline in freshwater, estuarine, and marine habitat value. In the Humboldt Bay, two key limiting threats identified have been channelization of estuaries (habitat degradation) and roads (blocked access to habitat).

Chinook Salmon: The California Coastal (CC) Chinook ESU was listed as threatened in September 1999, and its status was reaffirmed in June 2005. The ESU includes all naturally spawned populations of Chinook salmon from rivers and streams south of the Klamath River to the Russian River, California, as well as seven artificial propagation programs: the Humboldt Fish Action Council, Yager Creek, Redwood Creek, Hollow Tree, Van Arsdale Fish Station, Mattole Salmon Group, and Mad River Hatchery fall-run Chinook hatchery programs. Critical habitat for this species was designated in September 2005, and includes selected creeks and rivers where the species spawns, as well as estuarine areas, including Humboldt Bay.

Chinook salmon are anadromous with a life cycle that takes them from freshwater to estuaries to the ocean, and back to their natal freshwater streams. Adults migrate into freshwater tributaries in spring or fall to spawn and die. Females Chinook, like Coho, lay eggs in excavated gravel nests. After hatching, Chinook juveniles will remain in freshwater from a few months up to a year or more until they migrate into the ocean. Chinook can spend one to three years in the ocean before return to their natal streams to spawn. Threats to CC Chinook include water diversion, artificial barriers to migration, forestry operations, streambed alteration, urbanization, and water pollution.

Steelhead: The Northern California (NC) DPS of steelhead was listed as a threatened species in June 2000, and its threatened status was reaffirmed in January 2006. This DPS includes all naturally spawned steelhead populations below natural and manmade impassable barriers in California coastal river basins, from Redwood Creek southward to—but not including—the Russian River. This DPS also includes two artificial propagation programs: the Yager Creek Hatchery, and North Fork Gualala River Hatchery steelhead hatchery p

for this species was designated in September 2005, and includes selected creeks and rivers where the species spawns, as well as estuarine areas, including Humboldt Bay.

The NC DPS of steelhead is considered to be particularly at risk and population size and viability has declined in both the long and short term. This population spawns in winter, and some individuals may spawn twice before they die. Juveniles spend up to four years in freshwater before migrating to the sea. Threats to NC DPS steelhead and other salmonids are similar to those listed for CC Chinook.

Green Sturgeon: The North American green sturgeon southern distinct population segment (DPS) was listed as a federally threatened species in April 2006. A DPS is treated as a unique species under the ESA. This DPS includes all populations that spawn south of, but not including, the Eel River. Currently, the only known spawning location of southern DPS green sturgeon is the Sacramento River system. Critical habitat for this species was designated in October 2009, and includes both freshwater spawning habitat (the Sacramento River system) and marine and estuarine rearing habitat. The coastal waters of California north of Monterey, to a depth of 60 fathoms, are designated as critical habitat. In addition, several estuaries, including Humboldt Bay, are designated as critical habitat for the green sturgeon southern DPS.

Green sturgeon are an anadromous fish with a complex life history. They spawn and rear in freshwater rivers followed by migrations into saltwater to feed, grow, and mature before returning to freshwater to spawn. As adults, green sturgeon migrate seasonally along the West coast. They will be congregate in bays and estuaries found in Washington, Oregon, and California in the summer and fall while in the winter they congregate off the coast of British Columbia. Green sturgeon mature around age 15 and can live up to 70 years old. They are slow-growing fish that are vulnerable to threats and stressors including blocked access to spawning grounds and habitat degradation.

Effects Analysis – Impacts on Listed Species

The activity most likely to impact fish is removal of the old pilings and insertion of new pilings. This action could disturb sediment at each piling site and increase turbidity within the localized area of the project. Additionally, some ambient noise will be generated while dismantling the old above water structure (longitudinals and decking) and while building the new above water structure. These activities will be done at low tide, outside of the water column so impacts are unlikely. General disturbance associated with engine noise, vessel movement, and wakes created by these vessels is unlikely to affect fish. This project is directly adjacent to a high traffic area, which experiences these types of impacts continually throughout the day. Fish frequenting this area are habituated to this type of activity or if desired, move to other areas with fewer disturbances.

The proposed project could result in temporary and localized increase in turbidity during pile pulling and pile insertion activities. The effects are expected to be short-term with sediment settling out of the water column within a tide cycle. The use of hollow steel tubes are expected to decrease the amount of sediment in the water column by providing a void for sediment to fill while being inserted into the mudflat. The expected volume of sediment displacement is less than 3 cubic feet in total. Pile pulling could also temporarily increase turbidity through the disturbance of sediment around each piling. To minimize disturbance of the sediment during the pulling, the friction bond between the sediment and the base of the pile

pile is removed from the substrate. By employing these minimization measures, any increase in turbidity would be temporary, limited to the local action area and unlikely to have an effect on any listed fish species or critical habitat.

The location of the action area adjacent to a major boating channel should also be considered when talking about turbidity. The ambient turbidity levels within this area could be higher than undisturbed areas due to frequently passing boats that stir up sediment via prop wash and/or waves/wakes hitting the mudflats/banks. With this in mind, it is likely that any temporary increase in turbidity by the proposed action are negligible and would not result in increases in excess of already existing ambient turbidity levels within this area.

HBNWR has determined that the proposed action may affect, but is not likely to adversely affect listed species.

Effects Analysis – Impacts on Critical Habitat

Humboldt Bay is designated critical habitat for all four species listed in this biological assessment. The designations include natal spawning and rearing waters, migration corridors, and estuarine areas that serve as rearing or transition areas. The following primary constituent elements (PCEs) are defined as physical or biological features essential for the conservation of a species on which critical habitat is based.

For SONCC Coho Salmon critical habitat, the PCEs are as follows: spawning sites, food resources, adequate substrate, good water quality, water quantity, and riparian vegetation. Additionally, adjacent riparian areas should have the following functions: sediment, shade, nutrient and chemical regulation, large woody debris or organic matter, and stream bank stability. Ten essential habitat features as defined by NMFS includes substrates, water temperature, quality, quantity, and velocity, cover/shelter, food, space, riparian vegetation, and safe passage conditions.

For CC Chinook critical habitat, the PCEs are as follows: freshwater spawning sites, rearing sites, and migration corridors, good water quality and quantity, adequate substrate and riparian vegetation. Additionally, spawning and rearing areas should provide natural cover, large wood debris, side channels, undercut banks, and good floodplain connectivity. Estuarine areas should be free of obstruction with water quality, quantity and salinity to support juvenile and adult physiological transitions between fresh and saltwater; overhanging large wood debris, aquatic vegetation, side channels, large rocks or boulders and other natural cover; food resources for adult and juveniles including aquatic fishes and invertebrates.

For NC Steelhead critical habitat, the PCEs are as much like those for Chinook. These include quality freshwater spawning and rearing sites, unobstructed migration corridors with natural cover and floodplain connectivity, and estuarine areas free from obstruction but including water conditions that support juvenile and adult transitions between freshwater and saltwater; natural cover and side channels, and juvenile and adult forage adequate to support growth and maturation. It is also noted that these areas should be free of excessive predation.

For Southern Green Sturgeon critical habitat, the PCEs include specific rivers, estuaries, and coastal areas. Habitat features include: abundant benthic food resources in estuarine habitats; adequate water flow and velocity into a bay or estuary that allows successful migration into upstream spawning sites; water quality, quantity, temperature, salinity

to support growth and maturation of all life stages; safe migratory corridors between estuarine, marine, and/or riverine habitats; sufficient water depth to provide shelter, forage, and migration at all stages of life; and adequate sediment quality and quantity to support life stages.

The decrease in water quality due to the proposed action will be temporary, localized to the action area and will have no adverse effects on the PCEs for the listed species. The proposed action will have no effect on salinity, water quantity or depth, migratory pathways, or natural cover as the action area does not contain overhanging banks, estuarine channels, aquatic vegetation or other cover. A small, but insignificant effect from turbidity on benthic resources in or adjacent to the action area is possible. Any effect will be short-term and temporary in nature.

The renovated structure in the long-term should have no impacts to critical habitat. The replacement of the above water structure will be the exact same footprint as the former dock, so no effects from shading are expected. Lastly, we would expect to see some long-term beneficial impacts to water quality and the benthic environment by the removal of up to 14 creosote pilings.

HBNWR has determined that the proposed action may affect, but is not likely to adversely affect critical habitat for endangered species.

Essential Fish Habitat

The action area contains EFH as designated under the Pacific Groundfish, Coastal Pelagic, and Pacific Salmon fisheries management plans (FMPs). Eelgrass beds may occur up to adjacent to the action area, are designated Habitat Area of Particular Concern (HAPC) under the Pacific Groundfish FMP.

The proposed action may temporarily decrease water quality by increasing turbidity during pile removal and insertion. These minor, temporary effects on water quality would not adversely affect the waters and substrate necessary for fish spawning, breeding, foraging, migrating, and/or elements needed for growth and maturation.

An inspection of the most recent Humboldt Bay Eelgrass distribution map indicates that a small patch of eelgrass may be present approximately 50ft south of the action area. Preliminary surveys of the area have not detected eelgrass beds (Figures 2-4). Additionally, the area to the south of the action area and indicated on the eelgrass map as a potential location for eelgrass has a large floating dock that has been in place for several decades. It is possible that eelgrass is present SE and SW of the action area, but no closer that 100ft. Given the size of the project and potential temporary effects to water quality, the proposed action's effects on eelgrass and other EHB are negligible.

Additionally, the eelgrass bed indicated on the map is on the edge of a channel that is located in a high traffic area. This area sees an increase in wave action and a likely decrease in water quality due to high frequency of passing boats that stir up sediment via prop wash and waves hitting the mudflats or bank. Thus, the location of the proposed action is not likely to contribute significantly to ambient turbidity levels in that area.

Effects Determination

In compliance with Section 7 of the Endangered Species Act and its implementing regulations at 50 CFR Part 402, and pursuant to 50 CFR § 600.920(f) for consultation of EFH, HBNWR has determined that the proposed action may affect, but is not likely to adv

October 25, 2021 **Refer to NMFS No:** WCRO-2021-02598

Ms. Cashell Villa
Project Leader
United States Fish and Wildlife Service
Humboldt Bay National Wildlife Refuge Complex
P.O. Box 576
Loleta, California 95551

Ms. Kasey Sirkin
Lead Biologist
U.S. Department of the Army
San Francisco District, Corps of Engineers
601 Startare Drive, #13
Eureka, California 95501

Re: Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Humboldt Bay National Wildlife Refuge's Tuluwat Island Dock Renovation Project (Corps File No. SPN-2021-00365)

Dear Ms. Villa and Ms. Sirkin:

On September 28, 2021, NOAA's National Marine Fisheries Service (NMFS) received your requests for written concurrence that the United States Fish and Wildlife Service's Humboldt Bay National Wildlife Refuge (HBNWR) proposed Tuluwat Island Dock Renovation Project (Project) is not likely to adversely affect (NLAA) species listed as threatened or endangered or critical habitats designated under the Endangered Species Act (ESA). This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA and implementing regulations at 50 CFR 402. Thank you also for your request for consultation pursuant to the essential fish habitat (EFH) provisions in Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1855(b)) for this action.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The document will be available within two weeks at the Environmental Consultation Organizer [https://appscloud.fisheries.noaa.gov/]. A complete record of this consultation is on file at the Northern California Office in Arcata, California.

Proposed Action and Action Area

The HBNWR proposes to conduct renovations to a dock on HBNWR lands on Tuluwat Island and will be seeking Section 10 Rivers and Harbors Act permits from the United States Army Corps of Engineers (Corps). Both the HBNWF and Corps are action agencies, with the HBNWR being the lead federal action agency. The HBNWR parcel on Tuluwat Island is only accessible by boat and the dock provides the only means to access the parcel for staff, public, cooperators, and permit holders. HBNWR proposes to renovate the dock to bring it back into safety compliance because it has become increasingly unsafe. The supporting structure including the pilings are deteriorated with many needing replacement. Some pilings have already deteriorated to a point that they are no longer supporting the structure or are completely gone.

The dock renovation work would occur during the July 15 to October 15 work window and would be expected to require about two weeks to complete. The renovation work would consist of removing 10-14 wooden creosote pilings and replacing them with nine hollow steel pilings (the new steel pilings have a 10-inch diameter). The footprint of the dock would remain the same, but likely with fewer pilings than the current dock. The old decking and supporting structure of the dock would be deconstructed during low tides, and the old wooden creosote pilings would be removed during high tides using a boom or winch from a small floating scow. Any wooden pilings that break, or cannot be removed, during the removal effort would be cut off at the mudline during a low tide. All of the old materials removed from the dock would be placed on a barge and hauled away to appropriate disposal locations.

New pilings would be set eight feet into the substrate during high tides from a floating scow, using a one-inch diameter steel water jet pipe to create spaces in the substrate to insert the pilings. All of the work planned to occur at high tides, including pile removals and installations, are expected to occur over no more than five tidal cycles. All cutting, drilling, and other staging work would occur at a distance from the bay to reduce noise and prevent discharge of any debris. Upon completion of the dock renovation work, any debris or materials that fall into the water or onto the mudflat would be retrieved.

The action area is the area directly or indirectly affected by the proposed action. The action area extends outward 200 feet from the dock in all directions to include areas that may be affected by noise or changes to water quality caused by proposed activities. We considered, under the ESA whether or not the proposed action would cause any other activities and determined that it would not.

Background and Action Agency's Effects Determination

Available information indicates the following listed species (Evolutionarily Significant Units (ESU) or Distinct Population Segments [DPS]) under the jurisdiction of NMFS may be affected by the proposed project:

Southern Oregon/Northern California Coast (SONCC) coho salmon ESU
(*Oncorhyncus kisutch*)
Threatened (70 FR 37160; June 28, 2005)
Critical habitat (64 FR 24049; May 5, 1999)

Exhibit 4- Other Agency Approvals
CDP Application 1-22-0279
USFWS & Bates

California Coastal (CC) Chinook salmon ESU
(*O. tshawytscha*)
Threatened (70 FR 37160; June 28, 2005)
Critical habitat (70 FR 52488; September 2, 2005)
Northern California (NC) steelhead DPS
(*O. mykiss*)
Threatened (71 FR 834; January 5, 2006)
Critical habitat (70 FR 52488; September 2, 2005)
North American green sturgeon Southern DPS
(*Acipenser medirostris*)
Threatened (71 FR 17757; April 7, 2006)
Critical habitat (74 FR 52300; October 9, 2009)

The HBNWR and Corps determined the Project may affect, but is not likely to adversely affect SONCC coho salmon, CC Chinook salmon, NC steelhead, or Southern DPS (SDPS) green sturgeon or their designated critical habitat. The rationale for these determinations include the effects being temporary and minor in nature and listed species not expected to be present in the action area or exposed to the effects of the Project. On October 1, 2021, NMFS requested clarification via email regarding the anticipated timing of the Project, as well as requesting clarification for which agency would be the lead federal action agency. On October 12, 2021, the HBNWR confirmed via email that the Project would not occur during the 2021 season and likely would occur during 2022. The HBNWR also confirmed that they would be the lead federal action agency. On October 12, 2021, informal consultation was initiated based upon receipt of this information.

Life History of Listed Species and Use of Action Area

SONCC Coho Salmon

Coho salmon have a generally simple 3-year life history. The adults typically migrate from the ocean towards their freshwater spawning grounds in late summer and fall, and spawn by mid-winter. Adults die after spawning. The eggs are buried in nests, called redds, in the rivers and streams where the adults spawn. The eggs incubate in the gravel until fish hatch and emerge from the gravel the following spring as fry. These 0+ age fish typically rear in freshwater for about 15 months before migrating to the ocean. The juveniles go through a physiological change during the transition from fresh to salt water called smoltification. Coho salmon typically rear in the ocean for two growing seasons, returning to their natal streams as 3-year old fish to renew the cycle. During the proposed work window, juveniles may be using portions of the action area for migration and rearing in limited numbers as water quality conditions in the action area during the summer months is of marginal quality. During summer months, the ocean and bay water temperatures are warmer and combine to create less favorable temperatures and higher salinities creating unsuitable rearing conditions for juveniles.

CC Chinook Salmon

The CC Chinook salmon ESU are typically fall spawners, entering their natal streams in the early fall. The adults tend to spawn in the mainstem or larger tributaries of ri

anadromous salmon, the eggs are deposited in redds for incubation. When the 0+ age fish emerge from the gravel in the spring, they typically migrate to saltwater shortly after emergence. Therefore, Chinook salmon typically enter the estuary as smaller fish compared to coho salmon. Chinook salmon are typically present in the stream-estuary ecotone from early May to early September, with peak abundance in June/July (Wallace and Allen 2007). Similar to coho salmon, prey resources during out-migration is critical to Chinook salmon survival as they grow and move out to the open ocean. A study by MacFarlane (2010) indicated that juvenile Chinook salmon require less prey in the estuary, equivalent to one northern anchovy (*Engraulis mordax*) per day, compared to a range of one to four anchovies needed per day in the ocean. During the proposed work window, juveniles may be using portions of the action area for migration and rearing in limited numbers as water quality conditions in the action area during the summer months is of marginal quality. During summer months, the ocean and bay water temperatures are warmer and combine to create less favorable temperatures and higher salinities creating unsuitable rearing conditions for juveniles.

NC Steelhead

Steelhead exhibit the most complex suite of life history strategies of any salmonid species. They have both anadromous and resident freshwater life histories that can be expressed by individuals in the same watershed. The anadromous fish generally return to freshwater to spawn as 4 or 5 year old adults. Unlike other Pacific salmon, steelhead can survive spawning and return to the ocean only to return to spawn in a future year. It is rare for steelhead to survive more than two spawning cycles. Steelhead typically spawn between December and May. Like other Pacific salmon, the steelhead female deposits her eggs in a redd for incubation. The 0+ age fish emerge from the gravel to begin their freshwater life stage and can rear in their natal stream for 1 to 4 years before migrating to the ocean.

Steelhead have a similar life history as noted above for coho salmon, in the sense that they rear in freshwater for an extended period before migrating to saltwater. As such, they enter the estuary as larger fish (mean size of about 170 to 180 mm or 6.5 to 7.0 inches) and are, therefore, more oriented to deeper water channels in contrast to Chinook salmon that typically enter the estuary as 0+ fish. The California Department of Fish and Wildlife (CDFW) data indicate that steelhead smolts generally migrate downstream toward the estuary between March 1 and July 1 each year, although they have been observed as late as September (Ricker et al. 2014). The peak of the outmigration timing varies from year to year within this range, and generally falls between early April and mid-May. CDFW estimated 80% to 90% of steelhead trout smolts originated from the stream-estuary ecotone of Freshwater Creek in 2007 and 2008 (Wallace et al. 2015). During the proposed work window, juveniles may be using portions of the action area for migration and rearing in limited numbers as water quality conditions in the action area during the summer months is of marginal quality. During summer months, the ocean and bay water temperatures are warmer and combine to create less favorable temperatures and higher salinities creating unsuitable rearing conditions for juveniles.

Southern DPS Green Sturgeon

Southern DPS green sturgeon inhabit estuaries along the west coast during the summer and fall months (Moser and Lindley 2007) and are known to use the North Humboldt Bay heavily (Goldsworthy et. al. 2016, Pinnix 2008). Juvenile Southern DPS green sturgeon rear in their natal streams in California's Central Valley, so only sub-adult and adult SDPS green sturgeon are present in Humboldt Bay and are the only life stages of SDPS green sturgeon that could be exposed to the effects of the Project. Sub-adults range from 65-150 cm total length from first ocean entry to size at sexual maturity. Sexually mature adults range from 150-250 cm total length.

The action area is located near the northern portion (North Bay) of Humboldt Bay, where SDPS green sturgeon are known to occur more frequently. Most SDPS green sturgeon are expected to reside in the high use area of North Bay, as described by Goldsworthy et al. 2016 and Pinnix et al. 2008, and are expected to transit the action area routinely.

ENDANGERED SPECIES ACT

Effects of the Action

Under the ESA, "effects of the action" are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action (50 CFR 402.02). In our analysis, which describes the effects of the proposed action, we considered 50 CFR 402.17(a) and (b). When evaluating whether the proposed action is not likely to adversely affect listed species or critical habitat, NMFS considers whether the effects are expected to be completely beneficial, insignificant, or discountable. Completely beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Effects are considered discountable if they are extremely unlikely to occur.

The effects of the proposed action include brief periods of turbidity associated with water jetting during piling installation and low levels of acoustic noise during piling removal and installations. Listed salmonid species are not expected to be present in the action area during the proposed work window and likely would not be exposed to any effects of the Project. Thus, any effects to SONCC coho salmon, CC Chinook salmon, or NC steelhead individuals are expected to be discountable. Effects occurring within critical habitat for salmonid species are not expected to change the value or quantity or quality of habitat present and be insignificant. SDPS green sturgeon are expected to be present in the action area at times during the dock renovation work and could be exposed to brief periods of turbidity or acoustic noise during the high tidal cycles when they have access to the action area. The turbidity associated with water jetting and setting nine new pilings is expected to be brief and acoustic noise is expected to be well below levels

that create behavioral changes. Therefore, NMFS expects the effects to be insignificant for SDPS green sturgeon and their critical habitat.

Conclusion

Based on this analysis, NMFS concurs with the HBNWR and Corps that the proposed action is not likely to adversely affect the subject listed species and designated critical habitats.

Reinitiation of Consultation

Reinitiation of consultation is required and shall be requested by the HBNWR, the Corps, or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) the proposed action causes take; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the written concurrence; or (4) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA consultation.

MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

Section 305(b) of the MSA directs Federal agencies to consult with NMFS on all actions or proposed actions that may adversely affect EFH. Under the MSA, this consultation is intended to promote the conservation of EFH as necessary to support sustainable fisheries and the managed species' contribution to a healthy ecosystem. For the purposes of the MSA, EFH means "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity", and includes the associated physical, chemical, and biological properties that are used by fish (50 CFR 600.10). Adverse effect means any impact that reduces quality or quantity of EFH, and may include direct or indirect physical, chemical, or biological alteration of the waters or substrate and loss of (or injury to) benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality or quantity of EFH. Adverse effects may result from actions occurring within EFH or outside of it and may include direct, indirect, site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 CFR 600.810). Section 305(b) of the MSA also requires NMFS to recommend measures that can be taken by the action agency to conserve EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset the adverse effects of the action on EFH (50 CFR 600.905(b)). Habitat Areas of Particular Concern (HAPC) are described in the regulations as subsets of EFH that are identified based on one or more of the following considerations: the importance of the ecological function provided by the habitat; the extent to which the habitat is sensitive to human-induced environmental degradation; whether, and to what extent, development activities are, or will be stressing the habitat type; and the rarity of the habitat type (50 CFR 600.815(a)(8)). Designated HAPC are not afforded any additional regulatory protection under MSA; however, federal projects with potential adverse impacts to HAPC are more carefully scrutinized during the consultation process.

NMFS determined the proposed action would adversely affect EFH as follows: adverse effects to EFH for the Pacific Salmon FMP were previously described in the ESA portion of this document. Adverse effects to EFH for the Pacific Coast Groundfish and the Coastal Pelagic Species include the brief periods of turbidity caused by disrupted sediments during removal and installation of pilings; and the acoustic noise caused by these activities. The action area has been identified as an HAPC within the Pacific Coast Groudfish FMP, and many species managed by the Pacific Coast Groundfish FMP will likely be present in the work area, including: spiny dogfish shark, leopard shark, English sole, starry flounder, juvenile lingcod, juvenile rockfish, and others. Coastal Pelagic Species in the work area include: northern anchovy, jack mackerel, and Pacific sardine.

NMFS determined that the following conservation recommendations are necessary to avoid, minimize, mitigate, or otherwise offset the impact of the proposed action on EFH and HAPC.

1. In order to minimize the continued presence of creosote, and to maximize any benefits to the benthic environment facilitated by the removal of the pilings, NMFS suggests that the HBNWR utilize water jetting or shovels during low tides to excavate sediment, if needed, in order to cut creosote pilings off below the mudline at a depth feasible to the contractor or permittee performing the work. This measure would minimize the effects of creosote on Pacific Coast Groundfish EFH and HAPC, and also help offset and compensate for adverse effects by improving the substrate and infaunal prey communities by allowing for full recovery of the surface of the mudflat.

2. To demonstrate compliance with CEMP, the HBNWR shall ensure all contractors or permittees conducting the renovation work will avoid transiting or anchoring within the eelgrass beds that exist outside of the action area. Vessels, scows, and barges are not expected to need access to areas where eelgrass is currently present, but HBNWR should ensure all those conducting the work are aware and have plans to avoid those areas.

As required by section 305(b)(4)(B) of the MSA, the HBNWR must provide a detailed response in writing to NMFS within 30 days after receiving EFH Conservation Recommendations. Such a response must be provided at least 10 days prior to final approval of the action if the response is inconsistent with any of NMFS' EFH Conservation Recommendations unless NMFS and the Federal agency have agreed to use alternative time frames for the Federal agency response. The response must include a description of the measures proposed by the agency for avoiding, minimizing, mitigating, or otherwise offsetting the impact of the activity on EFH. In the case of a response that is inconsistent with the Conservation Recommendations, the Federal agency must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with NMFS over the anticipated effects of the action and the measures needed to avoid, minimize, mitigate, or offset such effects (50 CFR 600.920(k)(1)).

The HBNWR and Corps must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations (50 CFR 600. 920(l)).

Please direct questions regarding this letter to Matt Goldsworthy, Fisheries Biologist, at Matt.Goldsworthy@noaa.gov or at (707) 825-1621.

Sincerely,

Jeffrey Jahn
South Coast Branch Chief
Northern California Office

cc: Copy to E-File: ARN 151422WCR2020AR00247

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United States Department of the Interior
FISH AND WILDLIFE SERVICE

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30 September 2021

To: Cashell Villa, Refuge Manager – Humboldt Bay NWR
Program: Refuges
Funding: Refuges

From: Spencer Lodge, Zone Archaeologist – Klamath Basin

RE: Notification of Archaeological Survey and Compliance with Section 106 of the National Historic Preservation Act (NHPA) **– Dock Restoration Project on Tuluwat Island,** Humboldt County, California

Thank you for requesting our assistance meeting the responsibilities of the U.S. Fish and Wildlife in complying with Section 106 of the National Historic Preservation Act (NHPA) for the **Dock Restoration Project on Tuluwat Island**. The project takes place in Humboldt County, California (T5N, R1W, Section 18; Eureka, CA 7.5' USGS quad) (Figure 1 and 2).

We reviewed the project activities and determined that the undertaking falls under the terms of Appendix B of the Service's Programmatic Agreement (PA) regarding the administration of routine undertakings with the State of California (SHPO). Appendix B undertakings are those "requiring consultation with the regional (Service) archaeologist/ historic preservation specialist and otherwise excluded from case-by-case review and consultation with the SHPO but will be subject to a Cultural Resource Identification Effort (36CFR800.4)."

Undertaking and Area of Potential Effects: The pier consists of 14 paired pilings, redwood longitudinals and decking. The gangway is 103 ft in length, 5 ft in width with a landing at 8 x 10ft. The surface area is 595 sq. ft. The project would proposed to remove/pull and replace between 10-14 creosote pilings with nine 10" hollow steel tubes. The size of the renovated dock would be exactly the same size as the original dock. This renovation must be completed to allow safe access to the property. The dock is rotting and falling apart with some pilings being held up by redwood blocks. All work would be done on the mudflat and not on uplands.

Disturbance associated with the project is located within the indicated footprint on the map and is localized at each piling pulled and inserted specifically. Dismantling of the old dock would occur during both high and low tide. Pulling of pilings would be done at high tide with the use of the wench or crane on a scow. Any pilings that can't be pulled would be cut off at or below the mudflat which would be done at low tide with all saw dust collected. New pilings would be set during high tide with pilings being jetted 8 ft into the substrate. A 1" steel jet pipe would be used to insert the pilings. The piling is suspended from a boom on a floating scow. Displacement of substrate is equal to less than 3 cubic feet for each new piling as the hollow tubes would fill with sediment as they are inserted. Total project area is less than 600 ft².

Cultural Resource Identification Effort: Archaeological survey was condu
Archaeologist Spencer Lodge on 31 August 2021. As a result of the fieldworl
replacement was surveyed and photographed. Survey of the dock and talking

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property determined the dock was originally built more than 50 years ago. However, over the following 30 years the majority of the dock has been replaced, including all of the decking and redwood longitudinals. The only original portion of the dock are 14 creosote treated pilings that are currently rotting away and in need of replacement.

The survey determined that the dock has been significantly altered since its original construction and does not retain any significant degree of integrity. A record search of the area also determined the location of site CA-HUM-67 (see below) is located on the opposite end of Tuluwat Island and will not be physically, visually, or atmospherically affected by this project. A report documenting the findings is currently being prepared and will be submitted to the SHPO in the FWS' FY21 annual report under the terms of the PA.

Tribal Consultation: The FWS initiated tribal consultation via in-person meeting with the cultural resources staff of the Wiyot, Bear River Band of Rohnerville Rancheria, and Blue Lake Rancheria on 26 April 2021. A verbal and written description of the undertaking along with maps of the APE were provided to the group, followed by a discussion of the project. The group expressed interest in having the dock surveyed to determine the historical significance and integrity of the structure, as well as identifying the dock's location in relationship to a known historical landmark (CA-HUM-67), which is also located on Tuluwat Island.

Follow-up e-mails were sent to the aforementioned tribes after the survey to notify the group of the results. Email correspondence occurred on September 8-9, 2021. The group was informed of the dock's condition and location relative to CA-HUM-67. An assessment of the dock's condition and historical integrity was provided to the tribes. Responses were received the same day concurring with the dock assessment.

SHPO Consultation: As noted above, Appendix B projects are reported to the SHPO at the end of the fiscal year, rather than on a project-by-project basis. The report for this project will be included in the annual report for FY21.

Determination and Recommendation: Based on background research, land use history, the scope of activities, and the results of the field investigation, the FWS has conditionally determined that the project will have a *no historic properties affected* outcome under 36CFR800.4.d.1.

Inadvertent Discovery – Moreover, if cultural resources are discovered during implementation of the undertaking work should cease until the FWS project leader and the FWS regional archaeologist are notified and an assessment is conducted. If project activities change, the regional archaeologist should be notified in order to determine whether additional fieldwork is warranted.

Reference:

Lodge, Spencer (in progress)
2021 National Historic Preservation Act, Section 106 Historic Properties Identification and Evaluation Report, Dock Restoration Project at Tuluwat Island, Humboldt County, California. Prepared by U.S. Fish and Wildlife Service.

HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT

PERMIT

Permit No. 2021-04

601 Startare Drive
Woodley Island Marina
P.O. Box 1030
Eureka, CA 95502-1030

Permittee:
U.S. Fish and Wildlife Service
Attn. Cashell Villa
1020 Ranch Rd, Loleta, CA
707- 733-5406
cashell_villa@ fws.gov

The Board of Commissioners of the **Humboldt Bay Harbor, Recreation and Conservation District** hereinafter referred to as "**District**", having considered the Application herein, number 2021-04, filed by the U.S. Fish and Wildlife Service (USFWS), hereinafter referred to as "**Permittee**", and the **Humboldt Bay Harbor, Recreation and Conservation District (HBHRCD)** as responsible agency, pursuant to the California Environmental Quality Act of 1970, as amended, having made a determination adopting a Notice of Exemption (NOE) and the Board of Commissioners of the **District** having on November 4, 2021, passed Resolution No. 2021-14 establishing findings relative to the Application by **Permittee** for the Tuluwat Island Dock Repair Project as provided for in this Permit, the **Permittee** is hereby authorized to perform the work as more particularly described in the Application filed with the **District**.

You are hereby authorized to conduct that activity described in the Permit Application of **Permittee** consisting of:

The project proposes to repair an existing dock serving USFWS parcels and a private residence on Tuluwat Island. The project goal is to replace rotten, broken or otherwise failing parts of the dock to withstand current environmental conditions. The project will remove/pull and replace between 10-14 creosote pilings with nine 10" hollow steel tubes and involves replacement of the decking to maintain safety and functionality. The size of the renovated dock would be the same size as the original dock.

SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. If the **Permittee** materially changes the activity plan and scope, it will be necessary to request a permit revision.

2. That all work authorized by this Permit shall further be subject to the approval of the following public agencies as applicable:

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A. United States Army Corps of Engineers
B. North Coast Regional Water Quality Control Board
C. California Coastal Commission
D. California Department of Fish and Wildlife

and **Permittee** shall fully comply with all regulations and conditions affecting such work as imposed by the above agencies.

3. That this Permit, if not previously revoked or specifically extended, shall cease and be null and void and terminate on November 4, 2022. If **Permittee** cannot complete the work within the time granted by this Permit, an application for extension must be filed prior to the Permit termination date. The Executive Director may administratively grant up to a one (1) year extension.

4. All construction debris shall be removed from the site and disposed of only at an authorized disposal site. Sidecasting of such material or placement of any such material within Humboldt Bay or any wetland area is prohibited.

5. The permittee and any and all contractors completing work for the project must follow the District's Piling Removal and Installation Best Management Practices (Exhibit 1).

6. Any in-water work requires a Spill Prevention, Control and Countermeasure (SPCC) plan. Spill kits with appropriate contents will be maintained at the project site. Kits shall be equipped with enough material to provide preliminary containment for a volume of material that can reasonably be expected to spill. Booms will be available to contain spilled materials.

7. If archeological or cultural features or materials are unearthed during any phase of project activity, all work in the immediate vicinity of the find shall halt until the **Permittee** has contacted the Wiyot Tribe's Cultural Department, and the significance of the resource has been evaluated, to the satisfaction of the Wiyot Tribe. Any mitigation measures that may be deemed necessary will be provided to the Wiyot Cultural Director for review and input to ensure they are consistent with the standards for cultural resource mitigation particularly in cooperation with Native American tribal representatives and the California State Native American Heritage Commission. Mitigation measures shall be implemented by a qualified archeologist representing the **Permittee** prior to resumption of construction activities. If human remains are exposed by project related activity, the **Permittee** shall comply with California State Health and Safety Code, §7050.5, which states that no further disturbance shall occur until the County Coroner has made the necessary findings as to the origin and disposition pursuant to California Public Resources Code, §5097.98.

8. That there shall be no unreasonable interference with navigation by the work herein authorized.

9. That no attempt shall be made by the **Permittee** to interfere or forbid the full and free use by the public of all navigable waters at or adjacent to the work.

10. That the **District**, its Commissioners, or any officer or employee of the **District** shall in no case be liable for any damages or injury of the work herein authorized which may be caused by or result from future operations undertaken by the **District** for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

11. That neither the **District**, nor its Board of Commissioners, nor any officer of the **District** shall be liable to any extent for any such injury or damage to any person or property or for the death of any person arising out of or connected with the work authorized by this Permit.

12. That the Board of Commissioners of the **District** may revoke this Permit at any time upon a finding by the **District** of a violation by the **Permittee** of any condition of this Permit.

13. That the **Permittee** shall comply with any regulations, condition, or instructions affecting the work hereby authorized if and when issued by the Federal Water Pollution Control Administration and/or the State of California Water Resources Control Agency having jurisdiction to abate or prevent water pollution. Such regulations, conditions, or instruction in effect or prescribed by Federal or State Agencies are hereby made a condition of this Permit.

14. That as a condition to the issuance of this Permit, **Permittee** agrees to indemnify and hold harmless **District** from and against any and all liability, loss, or damage **District** may suffer from claims and demands for attorneys' fees, costs of suit, and costs of administrative records made against **District** by any and all third parties as a result of third party environmental actions against **District** arising out of the subject matter of this Permit, including, but not limited to attorneys' fees, costs of suit, and costs of administrative records pursuant to the California Code of Civil Procedure §1021.5 or any other applicable local, state or federal laws, whether such attorneys' fees, costs of suit, and costs of administrative records are direct or indirect, or incurred in the compromise, attempted compromise, trial appeal or arbitration of claims for attorneys' fees, costs of suit, and costs of administrative records in connection with the subject matter of this Permit.

15. The **Permittee** will perform and conduct a preliminary eelgrass survey and, in the event that eelgrass will be impacted by the project, an eelgrass mitigation and monitoring plan would be adopted and approved by th[illegible]

16. That this Permit is valid as of November 4, 2021 and is made subject to the **Permittee** approving and agreeing to the conditions above set forth and executing said approval as hereinafter provided.

EXECUTED on this 4th Day of November 2021, by authority of the Board of Commissioners of the **Humboldt Bay Harbor, Recreation and Conservation District**.

STEPHEN KULLMANN, Chair
Board of Commissioners
Humboldt Bay Harbor, Recreation and Conservation District

U.S. Fish and Wildlife Service, **Permittee,** in the above Permit, hereby accepts and agrees to all of the conditions hereinabove set forth. **Permittee** shall indemnify and hold harmless the **District**, its Board of Commissioners, officers and employees from any and all claims of any nature arising from the performance of and work of improvement contained in the Application for injury, death or damage to any person or property.

U.S. Fish and Wildlife Service**, Permittee,** in the above Permit, agrees to indemnify and hold harmless **District,** its Board of Commissioners, officers and employees from and against any and all liability, loss or damage **District** may suffer from claims and demands from attorneys' fees; costs of suit and costs of administrative records made against **District** by any and all third parties as a result of third party environmental actions against **District** arising out of the subject matter of this Permit including, but not limited to, attorneys' fees, costs of suit and costs of administrative records pursuant to the California Code of Civil Procedure §1021.5 or any other applicable local, state or federal laws, whether such attorney's fees, costs of suit and costs of administrative records are direct or indirect, or incurred in the compromise, attempted compromise, trial, appeal or arbitration of claims for attorneys' fees, costs of suit and costs of administrative records in connection with the subject matter of this Permit.

Dated: 12/1/2021

U.S. Fish and Wildlife Service

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Exhibit 1

Piling Removal and Installation Best Management Practices

The following Best Management Practices shall be followed. The Habor District shall update these BMP's based on the specific site conditions and industry standards:

1. The following methods may be utilized for piling removal or installation:
   a) Vibratory Hammer: A vibratory hammer with timber clamp.
   b) Impact Hammer: If an impact hammer is proposed, the Department of Fish and Wildlife's Interim Criteria for Injury to Fish from Pile Driving Activities shall be incorporated into Project plans. According to the Interim Criteria, the sound pressure levels should not exceed 206 dB peak and 187 dB accumulated sound exposure level (SEL) for all listed fish except those that are less than 2 grams. For fish less than 2 grams, the criteria for accumulated SEL should not exceed 183 dB.
      - If sound pressure levels exceed those in the Interim Criteria, The applicant shall contact the CA Department of Fish and Wildlife to determine if an application for an Incidental Take Permit and a sound attenuation monitoring plan is required.
      - A wood cushion block shall be utilized during impact hammering to reduce noise impacts.

   c) Water Jet: If a water jet is proposed the water intake shall be screened to meet the Department of Fish and Wildlife water intake screen criteria. The Project shall monitor turbidity within 500 feet of the project site to ensure that the turbidity is not greater than 20% above background turbidity levels. If the turbidity levels exceed 20% over background levels, water jet operations shall cease and adaptive measures shall be implemented to ensure that the turbidity standard is not exceeded.
2. Avoid staging the barge or other equipment over eelgrass habitat. If eelgrass is within 100 feet of the site, the District's Eel Grass Avoidance and Minimization Measures and Best Management Practices shall be followed.
3. Equipment:
   a) An excavator, crane, or other similar piece of equipment carrying a vibratory hammer and timber clamp shall be used to remove the piles.
   b) The excavator or crane operators shall be experienced with vibratory pile removal.
   c) Bio-degradable hydraulic fluid shall be utilized.
   d) All equipment will be checked before use in order to minimize risk of petroleum product releasing to the bay.
   e) A spill response kit, including oil absorbent pads shall be on-site to collect any petroleum product that is accidently released.
   f) The barge, tug and all watercraft shall be of sufficient s
      Humboldt Bay Harbor Master, to be capable of safely h
      The Harbor Master, at his/her discretion may "retag" a

be unsafe or unseaworthy.

g) Contractor shall maintain Workman's Compensation, Jones Act, and/or Maritime insurance as may be required for the work performed.

4. Pile removal:
   a) Pile removal and/or Installation may be conducted either from shore, pier/dockand/or from a barge.
   b) Piles shall be removed at a tide of sufficient elevation to float the barge and tug boat adjacent to the piles being removed without scarring the mudflats and/or Bay subsurface.
   c) Grounding of the barge shall not be permitted.
   d) The crane operator shall "break" the soil/pile bond prior to pulling in order to limitpile breakage and sediment adhesion.
   e) Piles shall be removed slowly to limit sediment disturbance.
   f) Piles shall not be hosed off, scraped, or otherwise cleaned once they are removed from the sediment.
   g) If piles cannot be fully removed, the broken piles shall be cut one foot below themudline.
5. Work surface on barge deck, pier, or shore shall include a containment area for removed piles and any sediment removed during pulling to prevent materials/sediment from re-entering the water. Uncontaminated water run-off can return to the waterway after it passes through a waddle, haybale, or other sediment filter.
   a) The containment area shall be constructed of durable plastic sheeting.
   b) Upon completion of the project, the plastic containment, and sediment filter shall be removed and disposed in accordance with applicable federal and state regulations.
6. Upon removal, the pile shall be moved expeditiously from the water into the containment area.
   a) The pile shall not be shaken, hosed-off, left hanging to drip or any other action intended to clean or remove adhering material from the pile.
   b) The piles shall not be reused in Humboldt Bay and shall be disposed of in accordance with applicable federal and state regulations.
   c) Holes left in the sediment by the pilings shall not be filled as they are expected to naturally fill.
7. Debris Capture in Water
   a) A floating surface boom shall be installed to capture floating surface debris.
   b) The boom shall be located at a sufficient distance from the work area to ensure capture of all work materials.
   c) Debris shall be collected, placed in the containment area, and disposed of along with the disposal of the pilings and containment material.
   d) Debris contained within boom shall be removed at the end of each work day or immediately if waters are rough and there is a chance that debris may escape the boom.

Humboldt Bay
Harbor, Recreation and Conservation District
(707) 443-0801
P.O. Box 1030
Eureka, California 95502-1030

CALIFORNIA ENVIRONMENTAL QUALITY ACT - NOTICE OF EXEMPTION

To: County of Humboldt County Clerk
825 5th Street
Eureka, CA 95501

From: Humboldt Bay Harbor, Recreation, and Conservation District
601 Startare Drive
Eureka, CA 95501
loetker@humboldtbay.org

Project Title: **Tuluwat Island Dock Repair Project**

Project Applicant: US Fish & Wildlife Service (USFWS) Attn: Cashell Villa, 1020 Ranch Rd, Loleta, CA, (707) 733-5406, cashell_villa@fws.gov

Project Location: This project is located on the south side of Tuluwat Island (APNs 405-021-011, 405-021-006), across from the City of Eureka waterfront, and is only accessible by boat. The project site is the 3rd dock from the east on the south side of Tuluwat Island.

Project Summary: The project proposes to repair an existing dock serving USFWS parcels and a private residence on Tuluwat Island. The project goal is to replace rotten, broken or otherwise failing parts of the dock. The project will remove/pull and replace between 10-14 creosote pilings with nine 10" hollow steel tubes and involves replacement of the decking to maintain safety and functionality. The renovated dock would be the same size and in the same location as the existing dock.

Pertinent California Environmental Quality Act (CEQA) Exemption: The District has determined that the project is exempt from CEQA pursuant to Class 1, §15301 Existing Facilities and Class 2, §15302 Replacement or Reconstruction. The project will replace severely damaged dock pilings and decking and would not result in expansion of capacity or use. Further, the project involves replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site and have substantially the same purpose and capacity as the structure being replaced.

Rationale for Exemption: The project involves replacement of an existing dock to maintain safety and functionality. The project will not result in enlargement or expansion of existing use. The District has further determined that the use of the categorical exemption is not barred by any of the exceptions set forth in CEQA Guidelines Section 15300.2. The material supporting these finding is on file with the District and available for review upon request at the address listed below. Specifically:

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1. The cumulative impact of successive dock repairs would not result in a significant impact.
2. There are not unusual circumstances that create a reasonable possibility that the dock repairs will have a significant effect on the environment.
3. The dock repairs would not impact scenic resources.
4. The dock is not located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.
5. The dock repairs would not cause a substantial adverse change to the significance of a historic structure.
6. The Dock repairs permit is conditioned on complying with the Piling Removal and Installation Best Management Practices.

Lead Agency Contact: Larry Oetker, Executive Director
Humboldt Bay Harbor, Recreation and Conservation District
601 Startare Drive, Eureka, CA 95501

Signature: _____ Date: 11/08/21

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USFWS & Bates

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

December 7, 2021

Regulatory Division

Subject: File Number SPN-2021-00365

Ms. Cahsell Villa
USFWS- Humboldt Bay NWRC
PO Box 576
Loleta, CA 95551
Cashell.villa@fws.gov

Dear Ms. Cashell:

This correspondence is in reference to your submittal of September 28, 2021, on behalf of the USFWS concerning Department of the Army (DA) authorization for the Humboldt Bay NWR Dock Renovation Project located at near the City of Eureka, Humboldt County, California; Latitude 40.8098°, Longitude -124.16933°.

Work within U.S. Army Corps of Engineers (Corps) jurisdiction will include activities to renovate the dock to provide safe, long-term access to refuge lands on Tuluwat Island. The project would propose to remove and replace between 10-14 creosote pilings with nine 10" hollow steel tubes. Failing decking and longitudinals will be replaced with new lumber. The footprint of the dock will remain the same (595 sq. ft above water structure). Dismantling of the old dock would occur during both high and low tide. Pulling of pilings would be done at high tide with the use of the winch or boom on a scow. Any pilings that can't be pulled would be cut off at or below the mudflat at low tide with all saw dust collected. A 1" steel jet pipe would be used to insert the pilings. The pilings would be suspended from a boom on a floating scow. Displacement of substrate is equal to or less than 3 cubic feet as the hollow tubes would fill with sediment as they are inserted. Work will require work within .023 acres of Humboldt Bay. All work shall be completed in accordance with the plans and drawings titled: "USACE File ID SPN-2021-00365, Humboldt Bay NWR Dock Renovation Project, Eureka, Humboldt County" dated September 29, 2021, in 4 sheets, provided as enclosure 1.

Section 404 of the Clean Water Act (CWA) generally regulates the discharge of dredged or fill material below the plane of ordinary high water in non-tidal waters of the United States, below the high tide line in tidal waters of the United States, and within the lateral extent of wetlands adjacent to these waters. Section 10 of the Rivers and Harbors Act (RHA) generally regulates construction of structures and work, including excavation, dredging, and discharges of dredged or fill material occurring below the plane of mean high water in tidal waters of the United States; in former diked baylands currently below mean high water; outside the limits of mean high water but affecting the navigable capacity of tidal waters; or below the plane of ordinary high water in non-tidal waters designated as navigable waters of the United States. Navigable waters of the United States generally include all waters subject to the ebb and flow of

the tide; and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce.

Based on a review of the information in your submittal, the project qualifies for authorization under Department of the Army Nationwide Permit (NWP) NWP 3 Maintenance (82 Fed. Reg. 1860, January 6, 2017), pursuant to Section 10 of the Rivers and Harbors Act (RHA) of 1899, as amended (33 U.S.C. § 403 et seq.). The project must be in compliance with the terms of the NWP, the general conditions of the Nationwide Permit Program, and the San Francisco District regional conditions cited on our website (www.spn.usace.army.mil/Missions/Regulatory/Permitting/Nationwide/). You must also be in compliance with any special conditions specified in this letter for the NWP authorization to remain valid. Non-compliance with any term or condition could result in the revocation of the NWP authorization for your project, thereby requiring you to obtain an Individual Permit from the Corps. This NWP authorization does not obviate the need to obtain other State or local approvals required by law.

This verification will remain valid until March 18, 2022, unless the NWP authorization is modified, suspended, or revoked. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon a NWP will remain authorized provided the activity is completed within 12 months of the date of a NWP expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 C.F.R. § 330.4(e) and 33 C.F.R. § 330.5(c) or (d). This verification will remain valid if, during the time period between now and March 18, 2022, the activity complies with any subsequent modification of the NWP authorization. The Chief of Engineers will periodically review NWPs and their conditions and will decide to modify, reissue, or revoke the permits. If a NWP is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. It is incumbent upon you to remain informed of any changes to the NWPs. Changes to the NWPs would be announced by Public Notice posted on our website (www.spn.usace.army.mil/Missions/Regulatory/Public-Notices.aspx). Upon completion of the project and all associated mitigation requirements, you shall sign and return the Certification of Compliance, enclosure 2, verifying that you have complied with the terms and conditions of the permit.

The State has the discretion to require a water quality certification for a Section 10 activity if the state determines that the activity is likely to result in a discharge during construction or operation. If the State issues a water quality certification for a Section 10-only activity, those conditions become part of the DA permit.

You shall comply with all terms and conditions set forth by the "Water Quality Certification for the Indian Island Dock Rehabilitation project WDID 1B21097WNI[illegible]" issued by the North

Coast Regional Water Quality Control Board on June 10, 2021. You shall consider such conditions to be an integral part of the NWP authorization for your project.

General Condition 18 stipulates that project authorization under a NWP does not allow for the incidental take of any federally-listed species in the absence of a biological opinion with incidental take provisions. As the principal federal lead agency for this project, the Corps initiated consultation with the National Marine Fisheries Service (NMFS) to address project related impacts to listed species, pursuant to Section 7(a) of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531 *et seq*. By letter of October 25, 2021, NMFS, respectively, concurred with the determination that the project was not likely to adversely affect SONCC Coho salmon, NC steelhead, and CC chinook and designated critical habitat for these species.

Special Conditions

In order to ensure compliance with this NWP authorization, the following special conditions shall be implemented:

1. All standard Best Management Practices shall be implemented to prevent the movement of sediment downstream. No debris, soil, silt, sand, bark, slash, sawdust, cement, concrete, washings, petroleum products, or other organic or earthen material shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into the waterways.

2. All staging, maintenance, and storage of heavy machinery shall be conducted in such a location and manner that no fuel, oil, or other petroleum products may run off or be washed by rainfall into the water.

3. The NMFS concurred with the determination that the project was not likely to adversely affect SONCC Coho salmon, NC steelhead, CC Chinook, and Green Sturgeon and designated critical habitat for these species. This concurrence was premised, in part, on project work restrictions outlined in enclosure 3. These work restrictions are incorporated as special conditions to the NWP authorization for your project to ensure unauthorized incidental take of species and loss of critical habitat does not occur.

You may refer any questions on this matter to L. Kasey Sirkin by telephone at (707) 443-0855 or by e-mail at L.K.Sirkin@usace.army.mil. All correspondence should be addressed to the Regulatory Division, North Branch, referencing the file number at the head of this letter.

The San Francisco District is committed to improving service to our customers. The Regulatory staff seeks to achieve the goals of the Regulatory Program

cooperative manner while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website: www.spn.usace.army.mil/Missions/Regulatory.aspx

Sincerely,

L. Kasey Sirkin

L. Kasey Sirkin
Lead Biologist, Eureka Field Office

Enclosures

cc:

CA RWQCB, Santa Rosa, CA

Exhibit 4- Other Agency Approvals
CDP Application 1-22-0279
USFWS & Bates

Enclosure 2

Permittee: USFWS, Cashell Villa

File Number: SPN-2021-00365

Certification of Compliance
for
Nationwide Permit

"I hereby certify that the work authorized by the above referenced File Number and all required mitigation have been completed in accordance with the terms and conditions of this Nationwide Permit authorization."

(Permittee) (Date)

Return to:

L Sirkin
U.S. Army Corps of Engineers
San Francisco District
Regulatory Division, CESPN-R-N
450 Golden Gate, 4th Floor
San Francisco, CA 94102-3404

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