UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

AUG -5 2003

RK

Colonel Richard G. Thompson
District Engineer
U.S. Army Corps of Engineers, Los Angeles District
911 Wilshire Boulevard
Los Angeles, CA 90017-3401

AUG

Dear Colonel Thompson:

Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act requires Federal action agencies to consult with the National Marine Fisheries Service (NOAA Fisheries) for any action or proposed action they authorize, fund, or undertake that may adversely affect essential fish habitat (EFH). For categories of specified actions that, individually and cumulatively, would cause no more than minimal adverse effects, NOAA Fisheries can issue a General Concurrence. No further consultation is generally required for actions that fall within a General Concurrence. In the interest of obviating the need for the Army Corps of Engineers, Los Angeles District (LAD) to consult with the NOAA Fisheries on actions causing no more than minimal adverse effects to EFH, the Southwest Regional Office supports your request to develop a General Concurrence for the categories of proposed actions described in Attachment 1.

Qualifying Criteria

For Federal actions to qualify for a General Concurrence, NOAA Fisheries must determine that the actions meet all of the requirements of 50 CFR 600.920 (g)(2). A discussion of the qualification criteria is presented below.

Section CFR 600.920 (g)(2)(i)(A) - The actions must be similar in nature and similar in their impact on EFH. All activities considered for this General Concurrence are minor coastal development activities routinely authorized by the LAD and reviewed by NOAA Fisheries. The impacts upon EFH are similar in that they generally occur along the land/water interface on soft bottom substrate and any sensitive habitats (e.g., kelp beds, eelgrass etc.) in the vicinity are at least 25-feet from the proposed construction footprint. The impacts are short term, minimal and temporary in nature.

Section 600.920(g)(2)(i)(B) - The actions must not cause greater than minimal adverse effects on EFH when implemented individually. Based upon NOAA Fisheries extensive 20-year involvement in the types of activities considered for this General Concurrence, we have determined that these activities do not cause greater than minimal adverse effects on EFH when implemented individually. The screening process that includes only actions where the environment supports a soft bottom substrate and no sensitive habitats occur within 25-feet of the

proposed construction footprint ensures that project impacts are minimized on a case-by-case basis.

Section 600.920(g)(2)(i)(C) - The actions must not cause greater than minimal cumulative adverse effects on EFH. Based upon NOAA Fisheries extensive 20-year involvement in the types of activities considered for this General Concurrence, we have determined that these activities do not cause greater than minimal cumulative adverse effects on EFH. In instances where NOAA Fisheries has determined that greater than minimal impacts are likely to occur, the LAD, at NOAA Fisheries' request, has revised or modified permits to minimize impacts.

Section 600.920(g)(2)(ii) - Actions qualifying for a General Concurrence must be tracked to ensure that their cumulative effects are no more than minimal. For the purposes of routine tracking, LAD agrees to notify NOAA Fisheries prior to construction via electronic mail (i.e., e-mail) for each individual project with the project description and location. The LAD will assume NOAA Fisheries concurrence if they do not receive written or e-mail comments regarding their decision within 10-days of notification. For the purpose of annual tracking, the LAD will provide an annual summary of the activities undertaken and will provide geographical coordinates (i.e., latitude/longitude coordinates) for each action. This information will include the numbers of each action, the amount and type of habitat adversely affected, and specify the baseline against which the actions are tracked in terms of total acreage affected. The LAD will make this information available to NOAA Fisheries, the Pacific Fishery Management Council, and the public by means of NOAA Fisheries' website on an annual basis.

Based upon the above discussion, NOAA Fisheries has determined that the General Concurrence for "soft bottom substrate/no sensitive habitats within 25-feet of construction" activities meets the General Concurrence qualifying criteria.

General Concurrence

The following activities are authorized for EFH General Concurrence: 1) individual, in-kind dock replacement/repair; 2) construction/maintenance of floating ramp structures; 3) construction/ maintenance of concrete boat ramps; 4) construction/maintenance of bank stabilization measures provided the measures are landward of mean high water; 5) installation/maintenance of buried utility lines; 6) installation/maintenance of aerial utility lines; 7) survey activities; 8) placement/ maintenance of aids to navigation, regulatory markers, and mooring buoys; 9) placement/maintenance of temporary recreation structures; 10) placement/removal of shellfish enhancement devices; 11) in-kind replacement/repair of existing road crossings; 12) return water from an upland contained disposal area; and, 13) repair/maintenance of breakwaters, jetties, and revetments. Descriptions of these actions are provided in Attachment 1.

Further Consultation

Pursuant to 50 CFR 600.920(g)(4), and as mentioned previously as part of the tracking system, NOAA Fisheries requests notification in advance of all actions covered under this General

Concurrence. This will allow the agency to make a case-by-case determination if there are circumstances under which we believe an action could result in more than a minimal impact on EFH or if the cumulative impacts of actions covered are inadequately assessed. In cases where NOAA Fisheries does not concur with the LAD's determination, the agency will notify the LAD that the proposed action will not be covered by the General Concurrence.

NOAA Fisheries will periodically review its finding of this General Concurrence and may revise or revoke it if new information indicates that the covered actions are having more than minimal adverse effects of EFH. Should any modifications become necessary, we will notify you as early as possible. If you or any or your staff have questions about the General Concurrence, please contact my EFH Coordinator, Mark Helvey, at (562) 980-4046.

Sincerely,

Rodney R. McInnis

Rodney R. McInnis
Acting Regional Administrator

Attachment

cc: Russell L. Kaiser - ACOE
Karen Abrams - F/HC

ESSENTIAL FISH HABITAT ASSESSMENT

In support of development of a General Concurrence by the National Marine Fisheries Service (NOAA Fisheries), the following assessment of potential impacts to Essential Fish Habitat (EFH) has been prepared to address the categories of activities either permitted by the Corps of Engineers through its Regulatory Permit Program or undertaken by the Corps of Engineers through its Civil Works Program. The assessment has been prepared in accordance with 50 CFR 600.920(f).

Due to the overall degradation of the oceanic environment and the associated decline in fishery resources, the Magnuson-Stevens Fishery Conservation and Management [Magnuson-Stevens] Act was passed in 1996. It set mandates for NOAA Fisheries, regional fishery management councils, and federal action agencies to identify and protect important marine and anadromous fish habitat, also known as EFH. Federal action agencies, which fund, permit, or carry out activities that may adversely impact EFH for managed species, are required to consult with NMFS regarding potential adverse effects of their actions on EFH. EFH is defined in the Magnuson-Stevens Act as "...those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity" and defined "waters" to include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; "substrate" to include sediment, hard bottom, structures underlying the waters, and associated biological communities; "necessary" to mean the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" to cover a species' full life cycle. As indicated, it is the Federal action agency's responsibility to consult with NMFS. Under Section 305(b)(2) of the Act, Federal agencies are required to consult with the Secretary of Commerce on any action that may adversely affect EFH. One approach to meet the EFH consultation requirements is a general concurrence.

PROPOSED ACTIONS

Nature and approximate number of the proposed actions. The following 13 proposed actions in the past have been found to cause only minimal impacts where the environment supports a soft bottom substrate and no sensitive habitats occur within 25-feet of the proposed construction footprint. For this assessment, sensitive habitats include hydrophytic vegetation (including, but not limited to, kelp, eelgrass, surfgrass, saltmarsh and riparian habitat types), mudflats, rocky and other hard substrates, and/or other habitats supporting Federal-listed species.

Individual, in-kind dock replacement/repair – Pilings would be jetted or hammer installed, and the decking structure would be floated or lowered into place. In-water construction would be limited to minor assembly work and to the original dock footprint.

Construction/maintenance of floating ramp structures – The floating ramp or gangway would be lowered from above or floated into place. Only minor in-water construction would occur.

Construction/maintenance of concrete boat ramps – This activity involves the discharge of approximately 50 cubic yards of concrete, rock, crushed stone or gravel into forms or placement of pre-cast concrete planks or slabs. Excavation would be limited to the area necessary for site preparation and all excavated material would be removed to the upland.

Construction/maintenance of bank stabilization measures provided the measures are landward of mean high water – Bank stabilization activities necessary for erosion prevention and are less than or equal to 500 feet in length. Excavation would be limited to the area necessary for site preparation and all

excess excavated material would be removed to the upland. The site may be isolated from the tidal regime by sheetpile or sandbags.

Installation/maintenance of buried utility lines – Discharges of dredged or fill material associated with excavation, backfill, or bedding for utility lines. Material resulting from trench excavation may be temporarily sidecast during construction. However, upon completion of the project, the pre-construction contours would be restored.

Installation/maintenance of aerial utility lines – Discharges of dredged or fill material associated with excavation, backfill, or bedding associated with attaching a utility line to an existing or new bridge structure or suspending it across a navigable water of the United States.

Survey activities – This activity includes core sampling, soil survey and sampling, and historic resources surveys. This would also include scientific measurement devices whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, and water quality testing devices.

Placement/maintenance of aids to navigation, regulatory markers, and mooring buoys – The aids to navigation and regulatory markers must be approved by the United States Coast Guard (USCG) and installed in accordance with the requirements of the USCG. The mooring buoys are limited to non-commercial and recreational, single-boat buoys.

Placement/maintenance of temporary recreation structures – Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use.

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

In-kind replacement/repair of existing road crossings – This includes replacement of damaged or deteriorated decks, pilings, and/or concrete piers. Excavation would be limited to the area necessary for site preparation and all excess excavated material would be removed to the upland. The site may be isolated from the tidal regime by sheetpile or sandbag cofferdams. This activity does not include causeways or road detours.

Return water from an upland contained disposal area – This includes return water from an upland, contained dredged disposal area. Prior to implementation, the applicant shall test sediments to identify potential for contaminants to occur within the sediments to be placed in the upland contained disposal area. (Prior to data collection, testing procedures and protocol shall be coordinated with and approved by the Corps.) No contaminated sediments shall be authorized for release in waters of the U.S.

Repair/maintenance of breakwaters, jetties, and revetments – This involves replacing boulders displaced from existing structures, within the original authorized project footprint. Work would be constructed from land or on structure. Displaced rocks would not be recovered. Note that the sensitive habitat constraint does not apply to this category.

ANALYSIS OF THE EFFECTS OF THE ACTIONS ON EFH AND ASSOCIATED SPECIES AND THEIR LIFE HISTORY STAGE

The Magnuson-Stevens Act defines EFH as "those waters and substrate necessary to fish for spawning,

breeding, feeding, or growth to maturity." To further clarify this definition, waters are to include the aquatic zone and the physical, chemical, and biological properties that are used by fish; and substrate includes the sediment, hard bottom, structures underlying the waters and the associated biological communities. In an effort to manage the sensitive fish resources and species of concern, the Pacific Groundfish Fishery and the Coastal Pelagics Fishery Management Plans were developed in support of the effort; these plans identify EFH, potential activities causing adverse impacts on EFH and measures to be taken to avoid, minimize and/or mitigate adverse impacts associated with the different activities, detail species profiles, and future research needs. The *Essential Fish Habitat West Coast Groundfish* as modified from the Final Environmental Assessment/Regulatory Impact Review for Amendment 11 to the Pacific Coast Groundfish Fishery Management Plan, Pacific Fishery Management Council (1998) and the *Essential Fish Habitat Coastal Pelagic Species* as modified from the Coastal Pelagics Species Fishery Management Plan [Amendment 8 to the Northern Anchovy Fishery Management Plan], Pacific Fishery Management Council (1998), are hereby incorporated by reference. In summary, the plans indicate that there are seven "composite" EFH identification units, including Estuarine, Rocky Shelf, Non-Rocky Shelf, Canyon, Continental Slope/Basin, Nectic Zone, and Oceanic Zone. The Groundfish Management Plan identifies 83 species of concern and the Coastal Pelagics Plan identifies four finfish and 1 invertebrate of concern.

1. Aquatic Environment: Potential Physical/Chemical Impacts.

Broadly speaking the environmental effects of dredge and fill operations and the attendant structures include the direct removal or burial of organisms due to dredging and placement of dredged material; impacts from turbidity and siltation effects; noise disturbances; and alteration to the hydrodynamic regimes and physical habitat. However, the proposed actions would cause only minimal impacts on the marine environment and the interacting tidal regime. Significant alterations are not expected to occur on the following:

Substrate modifications.
Currents, circulation or drainage patterns.
Suspended particulate and associated turbidity.
Water quality [temperature, salinity patterns and other parameters].
Flood control functions.
Storm, wave and erosion buffers.
Erosion and accretion patterns.
Aquifer recharge.
Base-flow.

Construction/maintenance activities would temporarily remove sediment from the seafloor or around pier columns and pilings. The sediment removal and associated silt plume would be both temporary in nature and incur minimal impacts.

2. Aquatic Environment: Potential Biological Impacts.

Construction/maintenance activities would temporarily remove sediment from the seafloor or around pier columns and pilings. The sediment removal and associated silt plume would be both temporary in nature and incur minimal impacts. Animals and plants within close proximity to the sediment removal could be smothered or buried but the displaced sediments are expected to be recolonized by similar organisms within a short period of time.

The impact associated with demolition/replacement of an existing structure would be temporary and very localized.

3. Other cumulative effects not related to this permit action.

Occurred on-site historically[1]. Historic fishing pressures, as well as other activities such as dredging, disposal fills, aqua-culture farming, oil/gas exploration/production, placement and discharge of wastewater in-/out-take structures/materials, and other unauthorized discharges have degraded the oceanic environment and contributed to the decline in fishery resources.

Likely to occur within the foreseeable future. Recent trends have shown water quality enhancement, fishing pressures, and other activities would continue to occur and further stress the oceanic environment, including EFH, and its resources, including managed species.

Contextual relationship between the proposed action and [1] and [2] above. The General Concurrence would help streamline implementation of the mandates of the Magnuson-Stevens Act, which are to integrate fisheries management and habitat management by stressing the ecological relationships between fishery resources and the environments upon which they depend, and ensure federal agencies explicitly consider effects of their actions on important habitats, with the goal of supporting the sustainable management of marine fisheries.

Cumulative effects of this action are anticipated to be small, and minor in nature. Over the last five years, approximately 750 authorizations were granted for similar activities. The average footprint is less than approximately 0.5 acre. The footprints ranged from a minimum of 0 acre to approximately 6.2 acres.

AGENCY DETERMINATION

Based on the analysis above, the predicted project impacts would not be expected to have a substantial adverse impact on EFH or Federally managed fisheries in southern and central California waters.

Source: *A Primer for Federal Agencies*. Essential Fish Habitat: New Marine Fish Habitat Conservation Mandate for Federal Agencies. NMFS, Southwest Regional Office, Habitat Conservation Division. 2000.

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[1] *Previous data supporting this section has been provided to the NMFS for input into your database.*