

CHAPTER 7

Report Preparation

7.1 Coordination and Consultations

Monterey Bay National Marine Sanctuary (MBNMS) has coordinated and consulted with several agencies during the National Environmental Policy Act (NEPA) process for the proposed project to meet the requirements of other federal laws. Summaries are provided below of the current status of consultations with National Marine Fisheries Service (NOAA Fisheries) under Endangered Species Act Section 7 and the Magnuson-Stevens Fishery Conservation and Management Act, with the State Historic Preservation Officer (SHPO) under National Historic Preservation Act (NHPA) Section 106. In addition, MBNMS has invited the U.S. Army (Presidio of Monterey) and the U.S. Army Corps of Engineers to be Cooperating Agencies under NEPA.

7.1.1 Endangered Species Act Section 7

Endangered Species Act Section 7(a)(1) directs federal agencies to use their authority to carry out programs for the conservation of threatened and endangered species. Federal agencies also must consult with NOAA Fisheries under Section 7(a)(2) of the Act on activities that may affect a listed species (16 U.S.C. §1531 et seq.). These interagency Section 7 consultations are intended to assist federal agencies in fulfilling their duty to ensure that federal actions do not jeopardize the continued existence of a species or destroy or adversely modify critical habitat. In the event that NOAA Fisheries determines that a proposed action would jeopardize a species or adversely modify critical habitat (81 Fed. Reg. 7214), it would suggest Reasonable and Prudent Alternatives to the proposed action.

For the proposed project, the MBNMS will initiate consultation through the preparation and submittal of a Biological Assessment (BA) that describes the proposed action to NOAA Fisheries and evaluates the potential effects of the proposed project on listed and proposed species and designated and proposed critical habitat and makes a determination as to whether any such species or habitat are likely to be adversely affected by the project. See generally 50 CFR 402.12. Following review of the BA, NOAA Fisheries is expected to issue a Biological Opinion (BO) that addresses whether or not the proposed project is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. A copy of the BO would be included in the Record of Decision for the proposed the proposed project, when issued.

7.1.2 Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§1801–1884) establishes Essential Fish Habitat (EFH) provisions to identify and protect important habitats of federally managed marine and anadromous fish species. The Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity (16 U.S.C. §1802(10); 50 CFR 600.10). Federal agencies that fund, permit, or undertake activities that may adversely affect EFH are required to consult with NOAA Fisheries regarding the potential effects of their actions on EFH, and respond to NOAA Fisheries' recommendations (16 U.S.C. §1855). Federal agencies consult with NOAA Fisheries under the Magnuson-Stevens Act as part of other existing interagency coordination processes to review proposed projects and other actions that may affect marine resource habitat.

For the proposed project, MBNMS is consulting with NOAA Fisheries as part of the Endangered Species Act Section 7 consultation process. MBNMS notified NOAA Fisheries regarding the proposed federal action, which may adversely affect EFH, in its August 26, 2015 NOI to prepare an EIS for the proposed project (80 Fed. Reg. 51787) and is providing additional information about potential impacts of the proposed project in this Draft EIR/EIS, which describes the proposed project, analyzes the potential for the proposed project to result in adverse impacts to EFH, and draws conclusions about the proposed project's effects on EFH. See Chapter 3, Project Description, and Section 4.5, Marine Biological Resources.

Following receipt and review of this information, NOAA Fisheries will provide EFH Conservation Recommendations to the MBNMS detailing measures, if appropriate, that can be taken by MBNMS to conserve EFH. Within 30 days of receiving recommendations, MBNMS will provide a detailed written response to NOAA Fisheries. The response will describe measures proposed to avoid, mitigate, or offset the impact of the proposed project on EFH.

7.1.3 National Historic Preservation Act Section 106 Consultation

Federal agencies must demonstrate compliance with the NHPA (16 U.S.C. §470 et seq.). NHPA Section 106 requires a federal agency with jurisdiction over a project to take into account the effect of the proposed federal action on historic properties included on, or eligible for inclusion on, the National Register of Historic Places (16 U.S.C. §470f). Federal agencies also must provide the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on the undertaking. Under NHPA Section 106, the MBNMS consults with Indian tribes as part of its responsibilities to identify, evaluate, and resolve adverse effects to historic properties affected by the Sanctuary's undertakings.

Implementation of the proposed project also requires local and state agencies to demonstrate compliance with the California Environmental Quality Act (CEQA), for which specific guidance regarding cultural resources is presented in Appendix K of the CEQA Guidelines. Local agencies

may use the NHPA process to demonstrate compliance with those CEQA requirements. Analysis of impacts in this document and implementation of the mitigation measures in Section 4.15, Cultural and Paleontological Resources, provide evidence of the MBNMS's compliance with Section 106 of the NHPA and NEPA as well as the California Public Utilities Commission's compliance with CEQA with respect to cultural resources. The basic steps in the Section 106 process are described in Section 4.15, Cultural and Paleontological Resources. For the proposed project, MBNMS contacted the Native American Heritage Commission (NAHC) and requested a search of the Sacred Lands File. The search identified no results, and the NAHC recommended MBNMS contact the tribes. MBNMS contacted 10 tribes and received one response.

7.1.4 Coastal Zone Management Act Federal Consistency Review

The federal consistency requirement set forth in Section 307 of the Coastal Zone Management Act (CZMA) requires that activities approved or funded by the federal government that affect any land or water use or natural resource of a state's coastal zone, must be consistent with the enforceable policies of the state's federally approved coastal management program.

For the proposed project, the MBNMS is coordinating with the California Coastal Commission. Under Section 307 of the CZMA (16 U.S.C. §1456), activities that may affect coastal uses or resources that are undertaken by federal agencies, require a federal license or permit, or receive federal funding must be consistent with a State's federally approved coastal management program. California's federally approved coastal management program consists of the California Coastal Act, the McAteer-Petris Act, and the Suisun Marsh Protection Act. The California Coastal Commission implements the California Coastal Act and the federal consistency provisions of the CZMA for activities affecting coastal resources outside of San Francisco Bay.

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