

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 the National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act (for marine species) and the Magnuson-Stevens Fishery Conservation and Management Act for Essential Fish Habitat (EFH); with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act (for terrestrial species); and with the State Historic Preservation Officer (SHPO) under Section 106 of the National Historic Preservation Act (NHPA). 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. See Appendix O, Agency Coordination and Consultation for documents related to consultation undertaken by MBNMS.

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 NMFS 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 NMFS 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, MBNMS is consulting with NMFS and USFWS as part of the Endangered Species Act Section 7 consultation process. MBNMS notified NMFS and USFWS regarding the proposed federal action in its August 26, 2015 Notice of Intent (NOI) to prepare an EIS for the proposed project (80 FR 51787, August 26, 2015) and is providing additional information about potential impacts of the proposed project addressed in this EIR/EIS. In June 2017, MBNMS prepared a Biological Assessment that provides specific information about potential impacts of the proposed project on federally listed species and designated critical habitat pursuant to the ESA, and on essential fish habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§1801–1884). See Chapter 3, Project Description, Section 4.5, Marine Biological Resources and 4.6, Terrestrial Biological Resources.

On April 20, 2016, staff from USFWS, CDFW, MBNMS, AECOM (as a representative of CalAm, the applicant), and other consultants held a project coordination meeting.

On July 25, 2017, MBNMS sent an electronic request to USFWS to initiate consultation on the proposed project, including a copy of a Biological Assessment (BA) that describes the proposed action 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. On September 22, 2017, USFWS responded via letter with a request for additional information not found in the BA. Four more submittals were sent to USFWS responding to additional requests for information on October 13, November 13, and December 1, 2017, and February 20, 2018. MBNMS is awaiting a Biological Opinion from USFWS regarding the proposed project and its effects on subject listed species and designated critical habitats under Section 7(a)(2) of the Federal Endangered Species Act.

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 NMFS regarding the potential effects of their actions on EFH, and respond to NMFS' recommendations (16 U.S.C. §1855). Federal agencies consult with NMFS 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.

On June 30, 2017, MBNMS sent an electronic request to NMFS to initiate consultation on the proposed project, including a copy of a Biological Assessment (BA) that describes the proposed action and evaluates the potential effects of the proposed project on EFH. Staff from NMFS, MBNMS, and their consultant had a conference call on August 9, 2017, to discuss proposed project components related to groundwater sources for the slant wells. The consultant provided additional information on August 30 and September 17, 2017, at which time NMFS determined the information was sufficient to initiate consultation. On October 23, 2017, NMFS issued a letter to MBNMS that determined the brine discharge resulting from the proposed action would adversely affect EFH by establishing mixing zones with salinity levels up to 2.0 ppt greater than ambient ocean conditions within 100 meters (328 feet) from the diffuser discharge area. However, various minimization measures to avoid or minimize impacts on federally managed fisheries will be employed. NMFS has no practical conservation recommendations to provide, in addition to what is already provided, that would further avoid or mitigate these impacts. NMFS concurred with MBNMS' conclusion that there would be no adverse effects for various life stages of fish species managed within the following Fishery Management Plans (FMP) under the Magnuson-Stevens Fishery Conservation and Management Act:

- Pacific Groundfish FMP;
- Coastal Pelagic Species FMP;
- Pacific Coast Salmon FMP, and;
- West Coast Fisheries for Highly Migratory Species FMP.

7.1.3 National Historic Preservation Act Section 106 Consultation

Federal agencies must demonstrate compliance with the National Historic Preservation Act (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 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 sent letters to those tribes on the provided contact list on June 24, 2016 (including members from the Esselen Tribe of Monterey County, Costanoan Rumsen Carmel Tribe, Ohlone/Costanoan Esselen Nation, Amah Mutsun Tribal Band, and Indian Canyon Mutsun Band). In response to the MBNMS letter, Irene Zwierlein from the Amah Mutsun Tribal Band of Mission San Juan Bautista requested additional information including whether a records search had been completed and the name of the consulting archaeologist. On behalf of MBNMS, Environmental Science Associates responded by email.

MBNMS completed follow up phone calls on March 16, 2017. MBNMS spoke with the Tribal Council Woman of the Ohlone/Costanoan Esselen Nation who requested that the letters and project location maps be resent. MBNMS also spoke with the Chairperson of the Amah Mutsun Tribal Band who was interested in project components north of the Salinas River.

Environmental Science Associates prepared a Cultural Resources Report that was included in a March 28, 2017 letter to the California State Historic Preservation Officer (SHPO) requesting concurrence on Section 106 compliance and a finding of "no adverse effect to historic properties"

for the MPWSP. The request included a description of the project location, the project objectives and need, a project description, a description of the methodology employed for the identification of historic properties, a definition of the area of potential effect (APE), the results of the record searches, a description of the field surveys and Native American consultations that were conducted for the proposed project, as well as a determination of effects. In a letter dated May 3, 2017, following review by the Office of Historic Preservation staff, the SHPO found no objections to the APE as defined by MBNMS (pursuant to 36 CFR 800.4(a)(1)), found MBNMS has documented a reasonable and good faith effort to identify historic properties within the APE (pursuant to 36 CFR 800.4(b)), and pursuant to 36 CFR 800.5(b) concurred with MBNMS that the proposed undertaking will result in no adverse effect to historic properties.

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.

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. Subpart D of the federal consistency regulations governs consistency review for activities requiring a federal license or permit. This section requires the applicant to conduct any required consistency review with the state coastal commission, and provide the Federal permitting agency with a consistency certification.

The Coastal Commission considers an application for a coastal development permit to cover the requirement for an applicant submitting a consistency certification to the Coastal Commission if the activity is located in state waters. Typically, the Coastal Commission will provide its response (concurrence, conditional concurrence, or objection) in its staff report for the coastal development permit.

CalAm is currently in discussions with the California Coastal Commission. In addition, a preliminary assessment of project consistency with the enforceable policies of the California Coastal Commission's coastal management program is provided in some of the resource sections within Chapter 4 to facilitate the analysis of potential impacts in these resource areas. The California Coastal Commission will make the final decision as to whether the proposed project is fully consistent.

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