



United States Department of the Interior



FISH AND WILDLIFE SERVICE
San Francisco Bay-Delta Fish & Wildlife Office
650 Capitol Mall, Suite 8-300
Sacramento, California 95814-4700

In reply refer to:
2022-00060157-S7-001

October 14, 2022

Katerina Galacatos, Ph.D.
South Branch Chief
Regulatory Division
United States Department of the Army
Army Corps of Engineers
San Francisco District
450 Golden Gate Avenue
San Francisco, California 94102-3406

Subject: Informal Section 7 Consultation on the Oyster Point Marina Dock Replacement Project, South San Francisco, San Mateo County, California (U.S. Army Corps of Engineers File Number: 2012-00151S)

Dear Dr. Galacatos:

This letter is in response to the U.S. Army Corps of Engineers' (Corps') June 30, 2022, letter requesting initiation of informal consultation with the U.S. Fish and Wildlife Service (Service) for the San Mateo County Harbor District's (Applicant) Oyster Point Marina Dock Replacement Project (Project), located at 95 Harbor Master Road, South San Francisco, San Mateo County, California. At issue are the proposed Project's effects to the federally-listed endangered California clapper rail (*Rallus longirostris obsoletus*)¹. This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR § 402).

The Federal action on which we are consulting is the Corps' issuance of a permit under Section 404 of the Clean Water Act of 1972, as amended, 33 U.S.C. § 1344 *et seq.*, and Section 10 of the Rivers and Harbors Act of 1899, as amended, 33 U.S.C. § 403 *et seq.*, allowing the Applicant to replace existing dock structures, piles and access platforms in 36.05 acres of jurisdictional waters of the U.S. to provide larger berths for newer vessels, improve structural integrity of dock structures, and to provide increased public access to dock facilities in the San Francisco Bay.

¹ Until the Service officially adopts recent nomenclature changes made by the American Ornithologists' Union to clapper Rail (*Rallus obsoletus*), we maintain the use of California clapper rail (*Rallus longirostris obsoletus*) in this correspondence. Note, the change in taxonomic assignment does not change the species' listing status.

In considering your request, we have based our evaluation on the following: (1) the Corps' June 30, 2022, letter requesting informal consultation; (2) the Applicant's May 2022, *Biological Assessment for Oyster Point Marina Dock Replacement*, prepared by Moffatt & Nichol and the October 6, 2022, revision; and (3) other information available to the Service.

Oyster Point Marina is located in the San Francisco Bay in South San Francisco and includes a 408-berth marina (floating docks, gangways, piles), boat launch ramp, public fishing pier, swimming beach, and other landside facilities. A summary of the Project is described below. Please refer to the October 6, 2022 *Biological Assessment for Oyster Point Marina Dock Replacement* for a more detailed description.

The Project involves replacing deteriorating floating Dock 12 through Dock 14 in the East Basin, replacing existing older accessways for Docks 11 through 14, providing long-term access to Dock 1 through 6 in the West Basin (via interim bridgeways and replacing the existing access platforms), and improving public access by adding a kayak launch in the East Basin.

Additionally, the three existing accessways at Docks 1 through 6 will be replaced and lengthened shoreward to re-establish access to the raised shoreline. The replaced docks will incorporate a greater majority of wider slips and provide a side-tie area on Dock 13 to accommodate larger vessels. The replaced docks will have 79 total slips.

The Applicant proposes to implement general conservation measures to minimize the effects of the proposed Project including having a qualified biologist conduct environmental training and either soft-starting or use of a cushion block to minimize impacts from pile driving. Please refer to the October 6, 2022, *Biological Assessment for Oyster Point Marina Dock Replacement* for the complete list of minimization measures.

The Service concurs with the Corps' determination that the proposed Project may affect, but is not likely to adversely affect the California clapper rail. California clapper rails are unlikely to occur in or near the marina. The Project is located in an urban industrial area of San Francisco Bay with little to no habitat which is a small, narrow band of intertidal marsh habitat, lacking tall marsh vegetation that California clapper rails typically rely on for refuge, nesting, and foraging. All project activities will take place within the developed marina and construction noise is not expected to extend into areas of suitable habitat.

REINITIATION – CLOSING STATEMENT

This concludes informal consultation on the Oyster Point Marina Dock Replacement Project. As provided in 50 CFR § 402.16,

(a) Reinitiation of consultation is required and shall be requested by the Federal agency or by the Service, where discretionary Federal involvement or control over the action has been retained or is authorized by law and:

(1) If the amount or extent of taking specified in the incidental take statement is exceeded;

(2) If 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) If 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 biological opinion or written concurrence; or

(4) If a new species is listed or critical habitat designated that may be affected by the identified action.

(b) An agency shall not be required to reinitiate consultation after the approval of a land management plan prepared pursuant to 43 U.S.C. 1712 or 16 U.S.C. 1604 upon listing of a new species or designation of new critical habitat if the land management plan has been adopted by the agency as of the date of listing or designation, provided that any authorized actions that may affect the newly listed species or designated critical habitat will be addressed through a separate action-specific consultation. This exception to reinitiation of consultation shall not apply to those land management plans prepared pursuant to 16 U.S.C. 1604 if:

(1) Fifteen years have passed since the date the agency adopted the land management plan prepared pursuant to 16 U.S.C. 1604; and

(2) Five years have passed since the enactment of Public Law 115-141 [March 23, 2018] or the date of the listing of a species or the designation of critical habitat, whichever is later.

Please address any questions or concerns regarding this response to Kim Squires, Section 7 Division Manager via email at Kim_Squires@fws.gov. Please refer to the Service File Number: 2022-00060157-S7-001 in any future correspondence regarding this Project.

Sincerely,

Jana Affonso
Assistant Field Supervisor

Ecc:

Mr. Jordan Harroun (Jordan.D.Harroun@usace.army.mil), Corps, San Francisco, California