From: Aarreberg, Arn@Wildlife <Arn.Aarreberg@wildlife.ca.gov>
Sent: Tuesday, May 13, 2025 2:05 PM
To: McNulty, Liza
Cc: Waggoner, Claire@Wildlife; Wilkins, Eric@Wildlife; Wines, Brian@Waterboards; Amezcua, Reyna@BCDC
Subject: CDFW Comment Letter - Berkeley Water Transportation Pier Ferry NOP (SCH # 2025040995)
Attachments: CDFW_CommentLtr_BerkeleyPier_NOP_250513.pdf

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Liza McNulty,

Please see attached comment letter regarding the Berkeley Water Transportation Pier Ferry Project Notice of Preparation. If you have any questions, please free to contact me directly.

Arn Aarreberg
Environmental Scientist
Marine Environmental Review and Water Quality Project
California Department of Fish and Wildlife - Marine Region
3637 Westwind Blvd., Santa Rosa, CA 95403
Office: (707) 576-2889 Cell Phone: (707) 791-4195
Arn.Aarreberg@wildlife.ca.gov
www.wildlife.ca.gov

Every Californian should conserve water. Find out how at:

SaveOurWater.com

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Marine Region
1933 Cliff Drive, Suite 9
Santa Barbara, CA 93109
wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

May 13, 2025

Liza McNulty, PE, Project Manager
City of Berkeley Parks, Recreation & Waterfront Department
2180 Milvia Street, 3rd Floor
Berkeley, CA 94704
lmcnulty@berkeleyca.gov

Dear Liza McNulty:

BERKELEY WATER TRANSPORTATION PIER FERRY
NOTICE OF PREPARATION
SCH # 2025040995.

The California Department of Fish and Wildlife (Department) received a Notice of Preparation (NOP) from the City of Berkeley for the Berkeley Water Transportation Pier Ferry (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

DEPARTMENT ROLE

The Department is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, § 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines §15386, subd. (a).) The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marine Life Management Act.

[1] CEQA is codified in the California Public Resources Code in § 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with § 15000.

The Department is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). The Department expects that it may need to exercise regulatory authority pursuant to the Fish and Game Code. To the extent implementation of the Project may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may be necessary.

PROJECT DESCRIPTION SUMMARY

Proponent: City of Berkeley

Objective: The purpose of the Project is to revitalize the Berkeley Waterfront by developing a new dual purpose pier and ancillary uses that support both public recreation and a zero-emission public ferry service.

Location: The Project is located within the City of Berkeley waterfront at the Berkeley Pier, including adjacent land along Seawall Drive and University Avenue.

MARINE BIOLOGICAL SIGNIFICANCE

The San Francisco Bay-Delta is the second largest estuary in the United States and supports numerous aquatic habitats and biological communities. It encompasses 479 square miles, including shallow mudflats. This ecologically significant ecosystem supports both state and federally threatened and endangered species and sustains important commercial and recreational fisheries.

STATE AND FEDERALLY LISTED AND COMMERCIALLY/RECREATIONALLY IMPORTANT SPECIES

Protected species under the State and Federal Endangered Species Acts that could potentially be present near Project activities include:

- Longfin smelt (*Spirinchus thaleichthys*), state-threatened
- Chinook salmon (*Oncorhynchus tshawytscha*), state and federally threatened (Central Valley Spring-run), state and federally endangered (Sacramento River Winter-run), state species of special concern (Central Valley Late Fall Run, Central Valley Fall Run)
- Steelhead (*Oncorhynchus mykiss*), federally threatened (Central California Coast evolutionary significant units)
- Green sturgeon (*Acipenser medirostris)*, federal threatened (Southern Distinct Population Segment)
- White sturgeon (*Acipenser transmontanus)*, state candidate species
- Pacific lamprey (*Entosphenus tridentatus*), state species of special concern

- California Least tern (*Sternula antillarum browni),* state and federally endangered, state fully protected

Several species with important commercial/recreational fisheries value and habitat value for spawning and rearing could potentially be present near Project activities including: Pacific herring (*Clupea pallasii*), eelgrass (*Zostera marina),* surfperches (*Embiotocidae*), rockfish (*Sebastes spp*.), California halibut (*Paralichthys californicus),* and Dungeness crab *(Metacarcinus magister).*

COMMENTS AND RECOMMENDATIONS

The Department offers the following comments and recommendations to assist the City of Berkeley in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

I. Project Level Impacts and Other Considerations

Hydroacoustic Impacts

Comment: The NOP discusses the partial removal of the existing Berkeley Pier and installation of a public pier, 400 foot long breakwater, and infrastructure for a zero emission ferry landing. It is unclear in the NOP the extent to which pile removal and pile driving will be necessary for the removal of the existing pier and installation of the new pier and ferry landing.

Recommendations: The Department recommends the Draft Environmental Impact Report (DEIR) discuss the extent of pile driving that will occur, the expected materials and methods that will be utilized to construct the new bulkhead, and the anticipated hydroacoustic sound levels. The Department recommends the following minimization measures:

- Pile removal and installation should occur during the approved in-water work window of August 1 through November 30 to avoid impacts to aquatic species and the California least tern.
- Pile removal should be conducted using a direct pull method to minimize sediment disturbance. If a direct pull method is not feasible, a vibratory hammer can be used if the structural integrity of the piles allows.
- If a pile breaks during removal, the portion of the pile remaining should be cut off at least two feet below the surface of the sediment.
- A vibratory hammer should be used for driving piles to the maximum extent feasible.
- If an impact a hammer is necessary, a soft start technique should be implemented.

- Impact pile driving should occur at low tide, if possible.
- All impact pile driving should use a wood cushion block between the hammer and pile.
- Impact pile driving larger diameter steel and concrete piles should include a bubble curtain for additional sound attenuation.
- If hydroacoustic sound levels are anticipated to exceed the interim hydroacoustic thresholds for injury to fish, the City of Berkeley will consult with the Department regarding incidental take coverage, via a 2081(b) Incidental Take Permit, for potential take of state listed species.

Recommendation: The Department recommends that if hydroacoustic sound levels are anticipated to exceed the interim hydroacoustic thresholds for injury to fish (Attachment 1), consultation with the Department will be necessary to determine if coverage is needed for incidental take of state listed species.

Dredging

Comment: Dredging has the potential to impact multiple aquatic species and species that depend on the marine environment through entrainment, impingement, destruction of habitat, and disturbance of contaminated sediments. The Department has no record of recent dredging activities within the federal navigation channel adjacent to the existing Berkeley Pier. All dredging activities should be consistent with the guidance and recommendations of the San Francisco Bay Long Term Management Strategy (https://www.spn.usace.army.mil/Portals/68/docs/Dredging/LMTS/entire%20LMTF.pdf).

Additionally, all dredging should be conducted with mechanical methods (clamshell dredge) during the approved work windows to avoid and/or minimize the potential impacts to state listed and recreational/commercially important species. If methods other than mechanical dredging are being considered, consultation with the Department will be recommended.

Recommendation: The Department recommends that the DEIR include discussion on dredging methods and anticipated time of the year in which dredging may occur. The Department recommends the following avoidance and minimization measures as it pertains to dredging:

- All dredging should occur within The San Francisco Bay Long Term Management Strategy environmental work windows for dredging and disposal (Attachment 2).
- All dredged material deemed appropriate by the Dredged Material Management Office should be placed at an approved in-bay beneficial reuse site.

- Dredging should be conducted with mechanical methods to minimize potential impacts to state listed and commercially/recreationally valuable species and their habitat.

Eelgrass

Comment: Native eelgrass beds (*Zostera marina*) have been observed and mapped near the proposed Project. Eelgrass beds are an important part of the San Francisco Bay ecosystem and are recognized by state and federal statutes as both highly valuable and sensitive habitats. Eelgrass provides primary production and nutrients to the ecosystem along with spawning, foraging, and nursery habitat for fish and other species. Pursuant to the federal Magnuson-Stevens Fishery Conservation and Management Act, eelgrass is designated as Essential Fish Habitat for various federally managed fish species within the Pacific Coast Groundfish and Pacific Coast Salmon Fisheries Management Plans (FMP). Eelgrass is also considered a habitat area of particular concern for various species within the Pacific Coast Groundfish FMP. The importance of eelgrass to Pacific herring in San Francisco Bay has been highlighted in the Departments Pacific herring FMP. Eelgrass beds are further protected under state and federal “no-net-loss” policies for wetland habitats and are also listed by the Department as a Sensitive Natural Community with a vulnerable listing status (State Rank S3). Additionally, the importance of eelgrass protection and restoration, as well as the ecological benefits of eelgrass, is identified in the California Public Resources Code (Pub. Resources Code § 35630).

Recommendation: The Department recommends that the DEIR evaluate the Project’s potential to impact eelgrass based on the in-water activities analyzed.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/SubmittingData#44524420-pdf-field-survey-form. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by the

Department. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

The Department appreciates the opportunity to comment on the NOP to assist the City of Berkeley in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed Arn Aarreberg, Environmental Scientist, at (707) 791-4195 or R7CEQA@wildlife.ca.gov.

Sincerely,

Craig Shuman, D. Env
Marine Regional Manager

ATTACHMENTS

Attachment 1 – Agreement in Principle for Interim Criteria for Injury to Fish from Pile Driving Activities

Attachment 2 – San Francisco Bay Long Term Management Strategy Maintenance Dredging Work Windows by Area and Species

ec: Claire Waggoner, Environmental Program Manager
Department of Fish and Wildlife

Eric Wilkins, Senior Environmental Scientist
Department of Fish and Wildlife

Arn Aarreberg, Environmental Scientist
Department of Fish and Wildlife

Brian Wines, Water Resources Control Engineer
San Francisco District Regional Water Quality Control Board

Reyna Amezcua, Regulatory Secretary
San Francisco Bay Conservation and Development Commission

Habitat Conservation Program Branch CEQA Program Coordinator
California Department of Fish and Wildlife

State Clearinghouse (SCH # 2025040995)

Maintenance Dredging Work Windows by Area and Species

Revised Draft Work Windows (Green)
1/06/21

Site	Species	January 1-15	January 16-31	February 1-15	February 16-28	March 1-15	March 16-31	April 1-15	April 16-30	May 1-15	May 16-31	June 1-15	June 16-30	July 1-15	July 16-31	August 1-15	August 16-31	September 1-15	September 16-30	Ocobert 1-15	Ocobert 16-31	November 1-15	November 16-30	December 1-15	December 16-31
SF Bay Bridge to Sherman Island	Chinook Salmon and Steelhead	Consultation Required January to May										Work Window												Consultation Required November to December	
Carquinez Bridge to Collinsville	Delta Smelt Water ≤10' *	Consultation Required January to December																							
	Delta Smelt Water >10' *	Consultation Required January to July														Work Window August to November								Consultation Required November to December	
Napa and Petaluma Rivers, Sonoma Creek	Steelhead	Consultation Required January to July														Work Window August to Ocotber 15				Consultation Required October 16 to December					
Napa River	Delta Smelt	Work Window January		Consultation Required February to July												Work Window August to December									
All areas within 45 meters of eelgrass habitat	Dungeness Crab	Work Window January to April								Consultation Required May to June				Work Window July to December											
San Francisco Bay from Pinole Point to Redwood Creek	Pacific Herring	Consultation Required January to March 15				Work Window March 16 to November																		Consultation Required November to December	
Richardson Bay & San Francisco Waterfront (Hard stop at November 30th)	Pacific Herring	Consultation Required January to March 15				Work Window March 16 to November																		Consultation Required November to December	
Waters of Marin County from the Golden Gate Bridge to Richmond-San Rafael Bridge	Coho Salmon	Consultation Required January to May										Work Window June to October										Consultation Required November to December			
Berkeley Marina to San Lorenzo Creek within 1 mile of coastline	California Least Tern	Work Window January to March 15				Consultation Required March 16 to July										Work Window August to December									
South of Highway 92 Bridge (San Mateo-Hayward)	California Least Tern	Work Window January to May										Consultation Required June to September 15						Work Window September to December							
In areas with eelgrass beds	California Least Tern	Consultation Required January to December																							
Baywide in areas of salt marsh habitat	California Clapper Rail	Consultation Required January to December																							
Baywide within 250 feet of salt marsh habitat	California Clapper Rail	Work Window January		Consultation Required February to August														Work Window September to December							
In and adjacent to salt marsh habitat	Salt Marsh Harvest Mouse	Consultation Required January to December																							
Within 300 feet of known roost site	California Brown Pelican	Work Window Janaury to June												Consultation Required July to September						Work Window October to December					

For more detailed information, see Appendix F of the LTMS Management Plan or the LTMS EIR/EIS.
* Depths are represented in MLLW, and are project depth, not including over dredge allowance
**This chart is for operations and maintenance dredging of existing navigational facilities. Other species may be affected by work in other areas.

WORK WINDOW

CONSULTATION REQUIRED

NOAA's Fisheries Northwest and Southwest Regions	U.S. Fish and Wildlife Service Regions 1 & 8	California/Washington/ Oregon Departments of Transportation	California Department of Fish and Game	U.S. Federal Highway Administration

MEMORANDUM

June 12, 2008

From: Fisheries Hydroacoustic Working Group

Subject: Agreement in Principle for Interim Criteria for Injury to Fish from Pile Driving Activities

To: Applicable Agency Staff

The signatory agencies, identified below, have agreed in principle to use the attached Interim Criteria for Injury to Fish from Pile Driving Activities. The agreement was concluded at a meeting in Vancouver, Washington on June 10-11, 2008 with key technical and policy staff from the Federal Highway Administration, NOAA Fisheries, U.S. Fish and Wildlife Service, the Departments of Transportation from California, Oregon, and Washington; and national experts on sound propagation activities that affect fish and wildlife species of concern. The agreed upon criteria identify sound pressure levels of 206 dB peak and 187 dB accumulated sound exposure level(SEL) for all listed fish except those that are less than 2 grams. In that case, the criteria for the accumulated SEL will be 183 dB.

These criteria will apply to all new projects beginning no later than 60 days from the date of this memorandum. During the interim 60 day period, the Transportation Agencies will work with the Services to identify projects currently in the consultation process and reach agreement on which criteria will be used to assess project effects.

The agencies agree to review the science periodically and revise the threshold and cumulative levels as needed to reflect current information. Behavioral impacts to fish and impacts to marine mammals are not addressed in this agreement. Sub-injurious effects will continue to be discussed in future meetings.

The respective agencies also agree to develop appropriate training for staff on these revised criteria, as well as a process to review and possibly refine the criteria, when appropriate.

For questions or concerns about the revised criteria, we recommend staff contact their agency environmental coordinator or agency expert on pile driving issues.

Carol H. Adkins

Federal Highway Administration*

*FHWA supports the use of these interim criteria in the states signing this agreement in principle. FHWA leaves the schedule for implementation to the discretion of the state DOTs in cooperation with their respective FHWA Division Offices and the Services.

Michael Crouse

NOAA Fisheries – NWR

Russell M Strach

NOAA Fisheries – SWR

Ken S Berg

US Fish and Wildlife Service Region 1

Michael E Dayton Jr.

US Fish and Wildlife Service Region 8

California Department of Transportation

California Department of Fish and Game

Geo - Environmental Mgr

Oregon Department of Transportation

Washington State Department of Transportation