



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, California 95825-1846

In Reply Refer To
FWS/EC

APR 24 2012

Mr. John Chesnutt
Chief, Navy and Army Section
Superfund Division
U.S. Environmental Protection Agency (USEPA), Region 9
75 Hawthorne Street
San Francisco, California 94105

Subject: Identification of Applicable or Relevant and Appropriate Requirements (ARARs) for Response Actions and Initiation of Coordination at Yosemite Creek Sediment Site, San Francisco, California

Dear Mr. Chesnutt:

This letter is in response to your letter of October 11, 2012 which initiated coordination between interested parties including the Natural Resource Trustees (Trustees) at the Yosemite Creek Sediment site (the Site). Your letter requested information on any specific natural resource related concerns regarding the contamination in Yosemite Slough, information on current and future beneficial uses of the slough, and any natural resources that may be present at the site and adjacent areas. The U.S. Fish and Wildlife Service (the Service) appreciates this coordination effort and has been working with USEPA staff in this capacity.

During our coordination efforts, USEPA staff requested the Service to identify any ARARs for natural resources pursuant to response actions at the Site. The National Contingency Plan (40 CFR Part 300) designates the Secretary of the Interior as one of several Federal natural resource trustees. Trustees are responsible for determining injury to their trust resources as a result of chemical releases. On behalf of the Secretary of the Interior, the U.S. Fish and Wildlife Service (Service) is responsible for issues relating to anadromous fish, migratory birds, endangered species, and some marine mammals. The specific Federal statutes for the protection of fish and wildlife resources and their habitats that might be applicable or relevant and appropriate for response actions at the Site are provided in the attached table.

In particular, the Service notes use of the site by migratory birds and potential use of the site by California clapper rail (*Rallus longirostris obsoletus*), a listed species under the Federal Endangered Species Act. Clean-up levels that are protective of these resources are of particular

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concern for the Service. Therefore, we will continue to coordinate with USEPA staff regarding clean-up levels for chemicals of concern in order to minimize any potential impacts to these resources.

Please note the ARARs provided in the enclosed table are specific to the Service. Requests for other Department of the Interior ARARs should be addressed to Ms. Patricia Port, Department of the Interior, Office of Environmental Policy and Compliance, 333 Bush Street, Suite 515, San Francisco, California 94104, phone (415) 296-3350.

If you have questions please contact Janet Whitlock at (916) 414-6599.

Sincerely,



Daniel Welsh
Assistant Field Supervisor

Enclosure

cc:

Patricia Port, DOI OEPC, San Francisco, CA
Ned Black, USEPA Region 9, San Francisco, CA
Craig Cooper, USEPA Region 9, San Francisco, CA
Melinda Garvey, USEPA Region 9, San Francisco, CA
Joseph Dillon, NMFS, Santa Rosa, CA
Gary Stern, NMFS, Santa Rosa, CA
Mike Anderson, CFDG, Sacramento, CA
Ross Steenson, SFRWQCB, Oakland, CA
Ryan Miya, DTSC, Berkeley, CA
Rafael Montes, BCDC, San Francisco, CA

APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS

NAME	U.S. CODE	REQUIREMENT	COMMENTS
Endangered Species Act	16 USC 1531-1543	<ol style="list-style-type: none"> 1. Prohibits take. 2. Federal agency review of actions. 3. Informal or formal consultation with USFWS. 	<ol style="list-style-type: none"> 1. Applicable on site-specific basis. 2. Considered in ecorisk.
Fish and Wildlife Coordination Act	16 USC 661-666c	<ol style="list-style-type: none"> 1. Consultation with USFWS for alteration of streams/water bodies. 2. Consultation shall provide for development and improvement. 3. Exemption for bodies 10 acres or less; those designated for land management purposes. 	<ol style="list-style-type: none"> 1. Applicable on a site-specific basis.
Clean Water Act	33 USC 1251-1376	<ol style="list-style-type: none"> 1. USFWS review of NPDES permits. 2. Review of wetlands fill permits. 3. Mitigation policy. 	<ol style="list-style-type: none"> 1. Applicable on a site-specific basis. 2. Nationwide permit 38 may apply with okay of COE and no endangered species.
Migratory Bird Treaty Act	16 USC 703-711	<ol style="list-style-type: none"> 1. Prohibits take of designated migratory birds, nests, eggs and young. 2. Response actions should be designed to avoid take. 	<ol style="list-style-type: none"> 1. Applicable on a site-specific basis. 2. Considered in ecorisk.
Anadromous Fish Conservation Act	16 USC 757a-757f	<ol style="list-style-type: none"> 1. Secretary of the Interior recommends to EPA elimination or reduction of 	<ol style="list-style-type: none"> 1. Applicable where releases to water occur. 2. Considered in ecorisk.

NAME	U.S. CODE	REQUIREMENT	COMMENTS
Marine Mammal Protection Act	16 USC 1361-1407	<p>polluting substances detrimental to fish and wildlife in interstate or navigable waters and tributaries.</p> <p>2. Response actions should be consistent when such recommendations exist.</p> <p>1. Establishes Federal responsibility for management of marine mammals.</p> <p>2. USFWS responsible for sea otters.</p> <p>3. Response actions should avoid take.</p>	<p>1. Applicable on a site-specific basis.</p> <p>2. Considered in ecorisk.</p>