



Linda S. Adams
Secretary for
Environmental Protection



Department of Toxic Substances Control

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ALAMEDA POINT
SSIC NO. 5090.3



Arnold Schwarzenegger
Governor

November 13, 2006

Mr. Thomas L. Macchiarella
Code BPMOW.TLM
Department of the Navy
Base Realignment and Closure Program
Management Office West
1455 Frazee Road, Suite 900
San Diego, California 92108-4310

REVIEW OF DRAFT ACTION MEMORANDUM TIME CRITICAL REMOVAL ACTION
WORKPLAN, INSTALLATION RESTORATION SITES 1, 2, AND 32, FORMER NAVAL
AIR STATION ALAMEDA, ALAMEDA COUNTY

Dear Mr. Macchiarella:

The Department of Toxic Substances Control (DTSC), in conjunction with the California Department of Fish and Game (DFG) and California Department of Health Services (DHS), has reviewed the Action Memorandum cited above. Our collective comments are included, below.

The action is to identify and remove radioactive contamination as well as material that may potentially present an explosive hazard. Removal and off-site disposal will comply with applicable or relevant and appropriate requirements (ARARs). However, the Action Memorandum does not include all of the California DFG ARARs, and the discussion of the various alternatives does not contain analysis of whether or not the alternative is consistent with California DFG ARARs. Please provide this analysis in the Final Action Memorandum. The attached table includes California DFG ARARs for these sites.

Numerous species of marine and terrestrial birds and waterfowl may frequent Alameda Point. The Navy should avoid jeopardizing any birds during the removal action. If at any time during this removal action any bird is harmed and/or killed, the Navy should immediately contact a California DFG biologist.

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If you have any questions, please contact me at (916) 255-6449 or by e-mail at dlofstro@dtsc.ca.gov.

Sincerely,



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Attachment

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**CALIFORNIA DEPARTMENT OF FISH AND GAME
LOCATION AND ACTION SPECIFIC ARARs AND TBCs
FOR SITES 1, 2, AND 32, ALAMEDA POINT**

LOCATION	STANDARD	SPECIFIC CITATION	ARAR/TBC EXPLANATION
Aquatic habitat/species	Action must be taken if toxic materials are placed where they can enter waters of the State. There can be no release that would have a deleterious effect on species or habitat.	Fish and Game Code section 5650 (a), (b) & (f)	This code section prohibits depositing or placing where it can pass into waters of the state any petroleum products (Section 5650(a)(1)), factory refuse (section 5650(a)(4)), sawdust, shavings, slabs or edgings (section 5650(a)(3)), and any substance deleterious to fish, plant life or bird life (section 5650(a)(6)). These are substantive, promulgated environmental protection requirements. These requirements impose strict criminal liability on violators. (<i>People v. Chevron Chemical Company (1983) 143 Cal. App. 3d 50</i>). This imposition of strict criminal liability imposes a standard that is more stringent than federal law. The extent to which each subdivision of section 5650 is relevant and appropriate depends on the site characterization and the potential for contaminants to be deposited near or within waters of the state.
Wildlife Species	Action must be taken to prohibit the taking of birds and mammals, including the taking by poison	Fish and Game Code section 3005 (Stats. 1957, c. 456, p. 1353 section 3005)	This code section prohibits the taking of birds and mammals, including taking by poison. ATake@ is defined by Fish and Game Code section 86 to include killing. APoison@ is not defined in the code. Although there is no state authority on this point, federal law recognizes that poison, such as Strychnine, may affect incidental taking. (<i>Defenders of Wildlife v. Administrator, Environmental Protection Agency (1989) 882. F. 2d. 1295</i>). This code section imposes a substantive, promulgated environmental protection requirement.
Endangered Species	Action must be taken to conserve endangered species, there can be no releases and/or actions	Fish and Game Code section 2080 (Added by	This section prohibits the take, possession, purchase or sell within the state, any species (including rare native plant species), or any product thereof, that the commission determines to be an endangered or threatened species, or the attempt of any of these acts. This section is applicable and relevant to the extent

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	that would have a deleterious effect on species or habitat.	Stats. 1984, c. 1240, section 2).	<p>that there are endangered or threatened species in the area which have the potential of being affected if actions are not taken to conserve the species. This section prohibits releases and/or actions that would have a deleterious effect on species or their habitat. This section and applicable Title 14 regulations should be considered as ARARs.</p> <p><i>California Code of Regulations Title 14 sections 670.2</i> provides a listing the plants of California declared to be Endangered, Threatened or Rare.</p> <p><i>California Code of Regulations Title 14 section 670.5</i> provides a listing of Animals of California declared to be endangered or threatened.</p> <p><i>California Code of Regulations Title 14 section 783 et. seq.</i>, provides the implementation regulations for the California Endangered Species Act.</p>
Fully protected bird species/habitat	Action must be taken to prevent the taking of fully protected birds	Fish and Game Code section 3511 (Added by Stats.1970, c. 1036, p. 1848 section 4)	<p>This section provides that it is unlawful to take or possess any of the following fully protected birds:</p> <ul style="list-style-type: none"> (a). American peregrine falcon <u>(b). Brown Pelican</u> (c). California black rail (d). California clapper rail (e). California condor <u>(f). California least tern</u> (g). Golden eagle (h). Greater sandhill crane

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			<ul style="list-style-type: none"> (i). Light-footed clapper rail (j). Southern bald eagle (k). Trumpeter swan (l). White-tailed kite (m). Yuma clapper rail <p>This should be considered Applicable and Relevant to the extent that such fully protected birds or their habitat are detected on or near the site. The Brown Pelican and California least tern are known to occur on or near this site.</p>
Wetlands	Actions must be taken to assure that there is no net loss of wetlands acreage or habitat value. Action must be taken to preserve, protect, restore and enhance California's wetland acreage and habitat values.	Fish and Game Commission Wetlands Policy (adopted 1987) included in Fish and Game Code Addenda	This policy seeks to provide for the protection, preservation, restoration, enhancement and expansion of wetland habitat in California. Further, it opposes any development or conversion of wetland that would result in a reduction of wetland acreage or habitat value. It adopts the USFWS definition of a wetland which utilizes hydric soils, saturation or inundation, and vegetable criteria, and requires the presence of at least one of these criteria (rather than all three) in order to classify an area as a wetland. This policy is not a regulatory program and should be included as a TBC.
Fully Protected Mammals	Actions must be taken to assure that no fully protected mammals are	Fish and Game Code section 4700	This section prohibits the take or possession of any of the fully protected mammals or their parts. The following are fully protected mammals: (a) Morro Bay kangaroo rat

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	taken or possessed at any time.	(Added by Stats. 1970, c. 1036, p. 1848 section 6)	<p>(b) Bighorn sheep except Nelson bighorn sheep (c) Northern elephant seal (d) Guadalupe fur seal (e) Ring-tailed cat (f) Pacific right whale (g) Salt-marsh harvest mouse (h) Southern sea otter (i) Wolverine</p> <p>This section is applicable, relevant, and appropriate to the extent that such mammals and/or their habitat are located on or near the site.</p>
Fully Protected Reptiles and Amphibians	Actions must be taken to prevent the take or possession of any fully protected reptile or amphibian.	Fish and Game Code section 5050 (Added by Stats. 1970, c. 1036, p. 1849, section 7)	<p>This section prohibits the take or possession of fully protected reptiles and amphibians or parts thereof. The following are fully protected reptiles and amphibians:</p> <p>(1) Blunt-nosed leopard lizard (2) San Francisco garter snake (3) Santa Cruz long-toed salamander (4) Limestone salamander (5) Black toad</p> <p>This section is applicable, relevant and appropriate to the extent that these amphibians or reptiles and/or their habitat are located on or near the site.</p>
	Action must be taken to	Fish and	This section prohibits the take, possession, or needless destruction of the nest or

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Birds	avoid the take or destruction of the nest or eggs of any bird	Game Code section 3503	eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto.
Birds of Prey	Action must be taken to prevent the take, possession, or destruction of any birds-of prey or their eggs	Fish and Game Code section 3503.5 (Added by Stats. 1985, c. 1334, section 6)	This section prohibits the take, possession, or destruction of any birds in the orders of Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto. This section will be applicable and relevant to the extent that such species or their eggs are located on or near the site.
Nongame birds	Actions must be taken to prevent the take of nongame birds.	Fish and Game Code section 3800 (Added by Stats. 1971, c. 1470, p. 2906, section 13)	This section prohibits the take of nongame birds, except in accordance with regulations of the commission, or when related to mining operations with a mitigation plan approved by the department. This section further provides requirements concerning mitigation plans related to mining. This section is applicable and relevant to the extent that nongame birds or their eggs are located on or near the site and such species have not been included in the fish and wildlife conservation plan filed pursuant to the Federal Fish and Wildlife Conservation Act. Species included in the plan will be protected at the federal standard making this section an ARAR to the extent that it is more stringent than the federal standard of protection.
Fur-bearing mammals	Provides manners under which fur-	Fish and Game Code	This section provides that a fur-bearing mammal may be taken only with a trap, a firearm, bow and arrow, poison under a proper permit, or with the use of dogs.

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	bearing mammals may be taken	section 4000, et. Seq. (Stats. 1957, c. 456, p. 1380, section 4000)	
Nongame mammals	Action must be taken to avoid the take or possession of nongame mammals	Fish and Game Code section 4150 (Added by Stats. 1971, c. 1470, p. 2907, section 21)	Nongame mammals are those occurring naturally in California which are not game mammals, fully protected mammals, or fur-bearing mammals. These mammals, or their parts, may not be taken or possessed except as provided in this code or in accordance with regulations adopted by the commission.
Nongame Animals	Action must be taken to avoid the take of nongame mammals except as provided in applicable regulations	Title 14 California Code of Regulations (hereinafter referred as C.C.R.) section 472 (effective 07/01/74)	<p>This Regulation provides that nongame birds and mammals may not be taken except as provided in subsections (a) through (d) below and in Sections 478 and 485.</p> <p>a). The following nongame birds and mammals may be taken except as provided in Chapter 6: English Sparrow, starling, coyote, weasels, skunks, opossum, moles and rodents (excludes tree and flying squirrels, and those listed as furbearers, endangered or threatened species);</p> <p>b). Fallow, sambar, sika, and axis deer may be taken concurrently with the general deer season.</p> <p>c). Aoudad, mouflon, tahr, and feral goats may be taken all year.</p> <p>d). American crows may be taken only under provisions of section 485 and by landowners or tenants, or person authorized by landowners or tenants, when</p>

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			American crows are committing or about to commit depredations upon ornamental shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance. If required by Federal regulations, landowners or tenants shall obtain a Federal migratory bird depredation permit before taking any American crows or authorizing any other person to take them.
Tidal Invertebrates	Action must be taken to avoid the take or possession of mollusks, crustaceans, or other invertebrates	Fish and Game Code section 8500(Added by Stats. 1972, c. 1248, p. 2436. Section 2, eff. Dec. 13, 1972)	It is unlawful to possess or take, unless otherwise expressly permitted in this chapter, mollusks, crustaceans, or other invertebrates, unless a valid tidal invertebrate permit has been issued. The taking, possessing, or landing of such invertebrates pursuant to this section shall be subject to regulations adopted by the commission.
Protected Amphibians	Action must be taken to avoid the take or possession of protected amphibians.	Title 14 C.C.R. sections 40 (Section 40 designated effective	This regulation makes it unlawful to capture, collect, intentionally kill or injure, possess, purchase, propagate, sell, transport, import, or export any native reptile or amphibian, or parts thereof unless under special permit from the department issued pursuant to Title 14 C.C.R. sections 650, 670.7, or 783 of these regulations, or as otherwise provided in the Fish and Game Code or these

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		03/01/74)	regulations.