



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

MAR 22 2010

David Smith
U.S. Environmental Protection Agency
Region IX
NPDES Permits Office
75 Hawthorne Street
San Francisco, California 94105

Dear Mr. Smith:

NOAA's National Marine Fisheries Service (NMFS) has reviewed a letter dated May 22, 2009, and a letter dated February 18, 2010, regarding the Goleta Sanitary District Wastewater Treatment Plant (Plant) and the 301(h) Tentative Decision Document (TDD) regarding the renewal of a National Pollutant Discharge Elimination System (NPDES) 301(h) waiver permit for wastewater discharge into the Pacific Ocean by the Goleta Sanitary District (Goleta). This waiver permits the discharge of wastewater without full compliance with the secondary treatment requirements of the Clean Water Act which involves the removal of dissolved and suspended biological matter (see 40 CFR §125 *et seq.*). As part of the permit renewal application process, Goleta has solicited comments from NMFS regarding whether proposed project may be adversely affecting essential fish habitat (EFH) as defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) or information about whether the water in the area of the discharge supports threatened or endangered species as defined in the Endangered Species Act (ESA). Additional communications between Goleta and my staff in February, 2010, reiterated this request by Goleta, per the regulations of the U.S. Environmental Protection Agency. In response, NMFS' Southwest Regional Office (SWR) offers the following comments pursuant to the ESA, MSA, and the Fish and Wildlife Coordination Act.

Project Description

The Plant provides full primary and partial secondary wastewater treatment for a service population of 82,000 and is designed to accommodate an average dry-weather flow of 9.0 million gallons per day (mgd) and a peak wet-weather flow of 25.4 mgd. According to the applicant, the actual annual average flow in 2008 was 5.0 mgd. The application is based on the plant's existing modified permit, an average dry-weather flow limited to 7.64 mgd. The disinfected effluent discharges to the Pacific Ocean through a 5,912 foot outfall pipe offshore Goleta, which terminates in a 280 foot long multiport diffuser at an average depth of 87 feet. The 4 inch diameter ports are located on alternate sides of the diffuser and very in depth from 74 to 92 feet below the mean lower low surface.

Magnuson-Stevens Fishery Conservation and Management Act Comments

The proposed project outfall occurs within essential fish habitat for various federally managed fish species under the Pacific Groundfish Species, Coastal Pelagics Species, and Highly Migratory Species Fishery Management Plans (FMP). In addition, the project occurs within the vicinity of rocky reef, canopy kelp



Item No. 22 Attachment No. 5
Goleta Sanitary District
May 12-13, 2010 Meeting

and seagrass habitats, which are considered habitat areas of particular concern (HAPC) for various federally managed fish species within the Pacific Groundfish FMP. HAPC are described in the regulations as subsets of EFH which are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area. Designated HAPC are not afforded any additional regulatory protection under MSA; however, federal projects with potential adverse impacts to HAPC will be more carefully scrutinized during the consultation process.

In the TDD, EPA recommends that the applicant be allowed to retain the 301(h) variance contingent upon the satisfaction of a number of conditions. One of these conditions requires a determination by NMFS that the issuance of the permit does not conflict with applicable provisions of the MSA. Furthermore, in the February 2010 letter, EPA indicates that they may be required to consult with NMFS if the proposed action may adversely affect (EFH). However, EPA did not provide a determination as to whether the action may adversely affect EFH nor an EFH Assessment.

An EFH Assessment is a review of the proposed project and its potential impacts to EFH. As set forth in the regulations (50 CFR 600.920(e)), EFH Assessments must include: (1) a description of the proposed action; (2) an analysis of the effects, including cumulative effects, of the action on EFH, the managed species, and associated species by life history stage; (3) the Federal agency's views regarding the effects of the action on EFH; and (4) proposed mitigation, if applicable. If appropriate, the assessment should also include: the results of an on-site inspection; the views of recognized experts on the habitat or species affects; a literature review; an analysis of alternatives to the proposed action; and any other relevant information. The EFH Assessment is intended to form the basis upon which NMFS provides EFH conservation recommendations.

The TTD does provide some information related to impacts to marine biological resources. For example, it references the output of SEDDEP model calculations for sediment deposition. Based upon the predicted elliptical deposition area of 1,067 meters (m) by 366 m and the predicted deposition rate of organic material, the discharge is expected to result in a changed, organically enriched benthic community over an approximate 75.8 acre area. Specifically, the benthic community in this area is expected to increase in biomass and abundance accompanied by a shift in dominant feeding type. However, based upon monitoring data, EPA has concluded that the outfall is not degrading the fish and macroinvertebrate community structures.

Based upon the information provided, it does not appear that the proposed project is having a substantial adverse effect to EFH, but the localized organic enrichment of approximately 75.8 acres may still result in some level of adverse effects to EFH. Therefore, NMFS recommends that the EPA develop an EFH Assessment that more clearly defines the potential adverse effects to EFH. In addition to following the regulatory guidance provided above regarding the contents of the EFH Assessment, NMFS requests that the EPA clearly delineate benthic habitat types in relationship to the outfall, the area of initial dilution, and area of organic deposition. If a comprehensive habitat survey has not already been done in the project vicinity, then NMFS believes an on-site survey is appropriate and should clearly identify the presence of any HAPC in the project area (e.g. seagrass, rocky reef, and/or canopy kelp). In addition, NMFS recommends further elaboration of the data and analyses examining effects to fish and macroinvertebrate community structure with additional consideration given to federally managed fish species. Lastly, NMFS requests that EPA describe any feasible alternatives to the proposed discharge and any mitigation measures that could be considered. Upon receipt of this EFH Assessment, NMFS will further review the impacts to EFH and will provide conservation recommendations, if deemed necessary.

Endangered Species Act

The following is a list of species listed as endangered or threatened that may be found in the area of the discharge:

Marine Mammals	Status
Blue whale (<i>Balaenoptera musculus</i>)	Endangered
Fin whale (<i>Balaenoptera physalus</i>)	Endangered
Humpback whale (<i>Megaptera novaeangliae</i>)	Endangered
Sei whale (<i>Balaenoptera borealis</i>)	Endangered
Sperm whale (<i>Physeter macrocephalus</i>)	Endangered
North Pacific right whale (<i>Eubalaena japonica</i>)	Endangered
Guadalupe fur seal (<i>Arctocephalus townsendi</i>)	Threatened
Sea turtles	
Leatherback turtle* (<i>Dermochelys coriacea</i>)	Endangered
Loggerhead turtle (<i>Caretta caretta</i>)	Threatened
Olive ridley (<i>Lepidochelys olivacea</i>)	Endangered/Threatened
Green turtle (<i>Chelonia mydas</i>)	Endangered/Threatened
Marine invertebrates	
White abalone (<i>Haliotis sorenseni</i>)	Endangered
Black abalone (<i>Haliotis cracherodii</i>)	Endangered
Salmonids	
Steelhead (<i>Oncorhynchus mykiss</i>) – Southern California DPS	Endangered

*A critical habitat designation for leatherback sea turtles that includes the vicinity of the Goleta wastewater discharge was proposed on January 5, 2010 (75 FR 310).

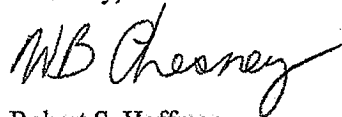
There is no new information available that would indicate that the discharge of blended primary and secondary-treated wastewater 1.1 miles offshore of Goleta at a depth of about 30 meters is having direct impacts on any ESA-listed species under the jurisdiction of NMFS. Based on the information presented in the annual monitoring reports released by the Goleta, the range of influence of the discharge on the local benthic environment is difficult to distinguish from the ambient variation in various physical and biological constituents. If the influence of the discharge plume is small, it is likely that any ESA-listed species with mobility (marine mammals, sea turtles, and fish) that might migrate through the area would easily be able to avoid or escape the influence of the discharge plume. NMFS expects that the presence of these ESA-listed species in the vicinity of the discharge would typically be ephemeral. However, the depth of the outfall is located within the depth range in which the more sedentary ESA-listed abalone, white abalone in particular, may be expected to be found. It is unknown if any ESA-listed abalone reside in the vicinity of the outfall. White abalone is a species known to reside in areas of rocky habitat. If this type of habitat is in the vicinity of the outfall, it is possible that white abalone could be found there as well.

At this time, NMFS is not aware of any information that suggests potential indirect impacts associated with long-term bioaccumulation of discharged sediments and constituents by Goleta's blended wastewater discharge are affecting ESA-listed species. However, these processes are generally not well understood or easily attributed to specific point sources given the migratory nature of many marine organisms and the dynamic environment of the ocean.

As defined under the ESA, take means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct.” Incidental take means any take that occurs which “is not the purpose of an otherwise lawful activity.” If Goleta believes the discharge of wastewater at this location is or has the potential to negatively affect ESA-listed species in a manner which may constitute take, Goleta is encouraged to contact the SWR for further information and guidance on compliance with ESA regulations (16 U.S.C. §1536 and §1539).

Thank you for considering our comments. If you have any questions related to the EFH comments, please contact Bryant Chesney at 562-980-4037 or Bryant.Chesney@noaa.gov. If you have any question related to the ESA comments, please contact Dan Lawson at (562) 980-3209 or Dan.Lawson@noaa.gov.

Sincerely,



for Robert S. Hoffman
Assistant Regional Administrator
for Habitat Conservation Division