



United States Department of the Interior



In Reply Refer to:
08ESMF00-
2013-F-0401-R001

FISH AND WILDLIFE SERVICE
Sacramento Fish and Wildlife Office
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Sacramento, California 95825-1846

APR 29 2016

Mr. Aaron O. Allen
Attn: Greg Brown
Department of the Army
San Francisco District, U.S. Army Corps of Engineers
1455 Market Street
San Francisco, California 94103-1398

Subject: Reinitiation of Formal Consultation on the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, from San Francisco Bay to Highway 101, in the City of East Palo Alto, San Mateo County, and the City of Palo Alto, Santa Clara County, California (U.S. Army Corps of Engineers (Corps) file number 2013-00030S)

Dear Mr. Allen:

This letter is in response to the Corps' April 20, 2016, request for reinitiation of formal consultation for the San Francisquito Creek Joint Powers Authority's (SFCJPA) proposed San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project (proposed project), from San Francisco Bay to Highway 101, in the City of East Palo Alto, San Mateo County, and the City of Palo Alto, Santa Clara County, California (Corps file number 2013-00030S). Your request for reinitiation of consultation was received in our office on April 20, 2016. At issue are the proposed project's effects on the federally threatened California red-legged frog (*Rana draytonii*), endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), threatened Pacific Coast population of the western snowy plover (western snowy plover) (*Charadrius alexandrinus nivosus*), endangered California clapper rail (*Rallus longirostris obsoletus*), endangered salt marsh harvest mouse (*Reithrodontomys raviventris*), endangered California least tern (*Sternula antillarum browni*), and endangered California seablite (*Suaeda californica*). Critical habitat has been designated for the California red-legged frog and western snowy plover but does not occur within the action area for the proposed project. 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).

Recent genetic analyses of rail species resulted in a change in the common name and taxonomy of the large, "clapper-type" rails (*Rallus longirostris*) of the west coast of North America to Ridgway's rail (*Rallus obsoletus*) (Maley and Brumfield 2013, Chesser *et al.* 2014). Thus the California clapper rail is now referred to in the scientific community as the California Ridgway's rail (*Rallus obsoletus obsoletus*). The change in the common name and taxonomy of the California clapper rail, however, does not change the listing status of the species.

In considering your request, we based our evaluation on the following: (1) the Service's biological opinion on the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation

Project from San Francisco Bay to Highway 101, in the City of East Palo Alto, San Mateo County, and the City of Palo Alto, Santa Clara County, California (Service file number 08ESMF00-2013-F-0401), dated January 15, 2016; (2) the April 20, 2016, protocol-level survey report for the California clapper rail prepared by the Santa Clara Valley Water District (SCWD) and ICF International; (3) the April 25, 2016, electronic mail message from SFCJPA summarizing proposed project changes; and (4) electronic mail and conversations among the Corps, SFCJPA, SCVWD, California Department of Fish and Wildlife (CDFW), Don Edwards San Francisco Bay National Wildlife Refuge (Refuge), and the Service.

The following additions are made to the **Consultation History** on page 6 of the January 15, 2016, biological opinion:

- January 15, 2016: The Service issued the biological opinion for the proposed project (Service file number 08ESMF00-2013-F-0401).
- April 20, 2016: The Service received the protocol-level survey report for the California clapper rail which showed four breeding California clapper rails within the action area in the middle reach of San Francisquito Creek upstream of Friendship Bridge where the Service's biological opinion for the proposed project had anticipated only infrequent foraging and dispersing individual California clapper rails would occur. The Corps sent via electronic mail to the Service the request to reinstate formal consultation on the proposed project.
- April 25, 2016: The Service participated in a conference call with staff from the SFCJPA, SCVWD, CDFW, and the Refuge to discuss how the finding of the four breeding California clapper rails upstream of Friendship Bridge would affect the proposed project and the construction schedule. The SFCJPA sent via electronic mail to the Service a summary of the changes to the proposed project.

The Service changes the Construction Schedule on page 15 of the January 15, 2016, biological opinion:

From:

Proposed project construction is expected to last two years with work estimated to begin in the spring of 2016. Post-construction monitoring will continue for at least five years.

To:

Proposed project construction is expected to last three years with work estimated to begin in the summer of 2016. Post-construction monitoring will continue for at least five years.

The Service changes California Clapper Rail Measure number 2 in the **Conservation Measures** on page 25 of the January 15, 2016, biological opinion:

From:

2. If work is to be conducted during the California clapper rail's breeding season (February 1 – August 31) within 700 feet of suitable habitat, a permitted biologist will be retained to conduct California clapper rail protocol-level surveys at the proposed project site in appropriate habitat for the California clapper rail. The surveys will be conducted following the Service's June 2015 survey protocol during the appropriate protocol-level survey period (*i.e.*, late January – April) prior to commencement of construction and maintenance activities (http://www.fws.gov/sfbaydelta/documents/June_2015_Final_CCR_protocol.pdf). Proposed project activities occurring within 700 feet of California clapper rail activity centers will occur only between September 1 and January 31 outside of the California clapper rail's breeding season.

To:

2. If work is to be conducted during the California clapper rail's breeding season (February 1 – August 31) within 700 feet of suitable habitat, a permitted biologist will be retained to conduct California clapper rail protocol-level surveys at the proposed project site in appropriate habitat for the California clapper rail. The surveys will be conducted following the Service's June 2015 survey protocol during the appropriate protocol-level survey period (*i.e.*, late January – April) prior to commencement of construction and maintenance activities (http://www.fws.gov/sfbaydelta/documents/June_2015_Final_CCR_protocol.pdf). Proposed project activities occurring within 700 feet of California clapper rail activity centers will occur only between September 1 and January 31 outside of the California clapper rail's breeding season with the following exception: the relocating of a Pacific Gas & Electric Company electrical tower within upland habitat outside of the floodplain may occur during the California clapper rail's breeding season within 650 feet of a California clapper rail activity center (see Figure 1 below).

The Service changes Predator Management Measure number 1(a) in the **Conservation Measures** on page 29 of the January 15, 2016, biological opinion:

From:

- a. Financial contributions towards predator management activities. Since predation is believed to represent the greatest threat and in order to provide the maximum benefit possible to the salt marsh harvest mouse and California clapper rail, the SFCJPA will provide funding to augment current predator trapping activities, so that the desired activities in and around Faber and Laumeister Tract marshes are fully funded. The SFCJPA will enter in to a formal agreement with U.S. Department of Agriculture Wildlife Services for the provision of \$8,000 per year with a 5 percent annual increase, the first payment to be made within 30 days after a Clean Water Act Section 404 permit is issued for the proposed project, for a total of five years.

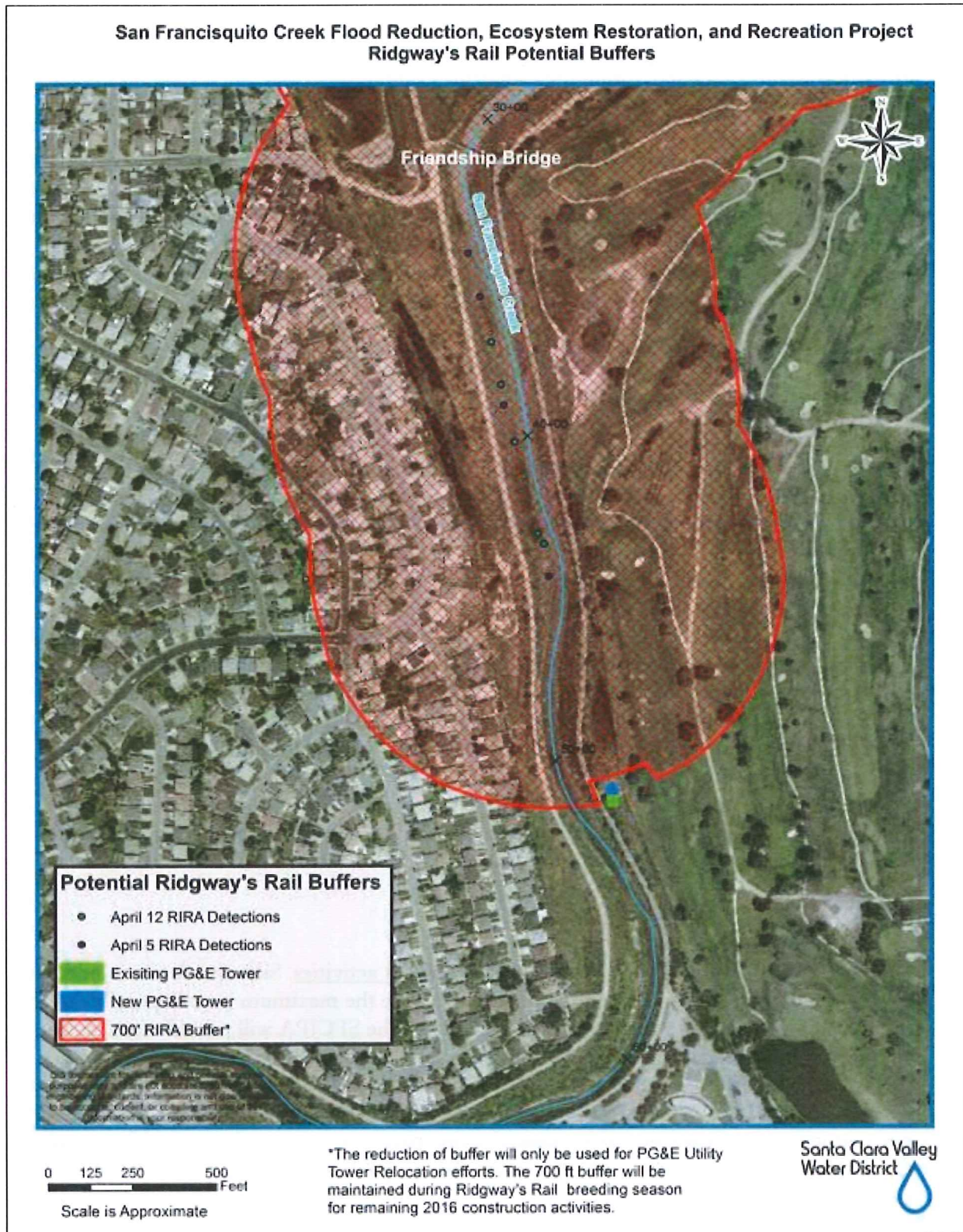


Figure 1. Buffers from California clapper rails in the middle reach of San Francisquito Creek during the breeding season.

To:

- a. Financial contributions towards predator management activities. Since predation is believed to represent the greatest threat and in order to provide the maximum benefit possible to the salt marsh harvest mouse and California clapper rail, the SFCJPA will provide funding to augment current predator trapping activities, so that the desired activities in and around Faber and Laumeister Tract marshes are fully funded. The SFCJPA will enter in to a formal agreement with U.S. Department of Agriculture Wildlife Services for the provision of \$8,000 per year with a 5 percent annual increase, the first payment to be made within 30 days after a Clean Water Act Section 404 permit is issued for the proposed project, for a total of six years.

The Service adds to the **Environmental Baseline** section for the California clapper rail on page 50 of the January 15, 2016, biological opinion:

Protocol-level surveys for the California clapper rail detected four breeding California clapper rails within the middle reach of San Francisquito Creek upstream of Friendship Bridge during two survey dates in April 2016. Therefore, the Service believes that California clapper rails are likely to breed within the middle reach of San Francisquito Creek upstream of Friendship Bridge.

The Service adds to the **Effects of the Proposed Project** section for the California clapper rail on page 56 of the January 15, 2016, biological opinion:

The proposed project will result in the temporary disturbance of about 2.07 acres and the permanent loss of about 0.46 acre of occupied tidal marsh breeding habitat for the California clapper rail in the middle reach of San Francisquito Creek upstream of Friendship Bridge. Thus in total about 2.92 acres of tidal marsh breeding habitat for the California clapper rail will be temporarily disturbed and about 0.52 acre of tidal marsh breeding habitat will be permanently lost within the action area along the lower and middle reaches of San Francisquito Creek (Table 3). Therefore, in summary the proposed project will result in the temporary disturbance of about 3.83 acres and the permanent loss of about 0.82 acre of tidal marsh habitat for California clapper rail during the construction of the proposed project (*i.e.*, construction of the San Francisquito Creek levees and widened channel, filling in low spots in the Main Faber Marsh levee, and accessing and degrading the Bay levee). The widening of the San Francisquito Creek channel will result in a net increase of about 6.90 acres of tidal marsh breeding habitat for the California clapper rail within the action area along the San Francisquito Creek channel (Table 4). The tidal marsh habitat within the widened San Francisquito Creek channel will be monitored and revegetated under a Service-approved five-year Mitigation and Monitoring Plan.

The Service replaces Table 3 on page 52 of the **Effects of the Proposed Project** section of the January 15, 2016, biological opinion with the following:

Table 3. Habitat loss and disturbance.

Habitat Type	Temporary Disturbance		Permanent Loss	
	Acres	Linear Feet ¹	Acres	Linear Feet ¹
Salt Marsh Harvest Mouse Only				
Diked Marsh	1.89	n/a	0.79	n/a
Ruderal Grassland				
Construction	13.05	n/a	1.28	n/a
Ongoing O&M (levee mowing) ²	0.00	n/a	6.49	n/a
Salt Marsh Harvest Mouse Only Subtotal	14.94	n/a	8.56	n/a
Salt Marsh Harvest Mouse and California Clapper Rail				
Tidal Salt Marsh				
Main Faber Marsh Southern Levee	0.32	475	0.30	598
Bay Levee	0.40	636	0.00	0
Bay Levee access	0.00	0	0.00	0
Outer Faber High-Tide Refugia Islands ³	0.19	n/a	0.00	n/a
All other construction (creek channel)	2.92	n/a	0.52	n/a
Tidal Salt Marsh Subtotal	3.83	n/a	0.82	n/a
Upland Refugia/Transition Zone				
Main Faber Marsh Southern Levee ⁴	1.03	1,018	0.27	488
Transition Zone Habitat Enhancement ⁴	5.66	5,120	0.00	n/a
Bay Levee	0.93	651	0.00	0
Bay Levee access ⁴	0.44	1,150	0.00	0
All other construction (creek channel)	0.06	n/a	0.00	n/a
Upland Refugia/Transition Zone Subtotal	8.12	n/a	0.27	n/a
Salt Marsh Harvest Mouse and California Clapper Rail Subtotal	11.95	n/a	1.09	n/a
GRAND TOTAL	26.89	n/a	9.65	n/a

¹ Linear footage of disturbance is only reported for effects incurred from construction of the Main Faber Marsh levee, Bay levee lowering, access, and levee habitat enhancement along the Main Faber Marsh and Outer Faber Marsh levees (n/a = not applicable).

² Ongoing O&M effects from annual mowing of grassland habitat along the levees is counted as a permanent effect. However, salt marsh harvest mouse forage and dispersal habitat will be present, especially seasonally between mowing events, when vegetation is taller.

³ High-tide refuge islands will likely establish as jurisdictional wetlands (*i.e.*, tidal marsh) with wetland plant palette and saturated subsoils. The 0.19 acre of marsh disturbance will be temporary.

⁴ A total of about 5,120 linear feet of habitat will be disturbed during transition zone enhancement along the northern, eastern, and southern Main Faber Marsh levees including 1,540 linear feet of the southern levee which partially overlaps with the 1,018 linear feet of disturbance from construction along the southern levee. However, the 5.66-acre estimate for transition zone enhancement does not include the impacts from construction activities along the southern levee.

The Service replaces Table 4 on page 53 of the **Effects of the Proposed Project** section of the January 15, 2016, biological opinion with the following:

Table 4. Post-construction changes in the areal extent of suitable habitat within the action area.

Habitat Type	Post-Construction Surface Area (acres)	Net Gain or Loss (acres)	Habitat Enhanced ² (acres)
California Clapper Rail and Salt Marsh Harvest Mouse			
Tidal Marsh ¹	11.41	+6.90	n/a
Upland Refugia/Transition Zone ²	7.83	+1.64	5.66 ²
Salt Marsh Harvest Mouse Only			
Diked Marsh	1.06	-1.61	n/a
Upland Foraging/Dispersal ³ (Ruderal Grassland)	14.70	-6.12 ³	n/a

¹ Tidal marsh along the lower reach of San Francisquito Creek downstream of Friendship Bridge and along the middle reach of San Francisquito Creek between Friendship Bridge and the ends of Geng Road and Daphne Way is counted as suitable habitat for both California clapper rail and salt marsh harvest mouse. Tidal marsh along the upper reach of San Francisquito Creek upstream of the ends of Geng Road and Daphne Way are not counted as suitable habitat for the California clapper rail or salt marsh harvest mouse.

² The enhancement of 5.66 acres of upland refugia/transition zone habitat along the southern, northern, and eastern levees of Main Faber Marsh and the western levee of Outer Faber Marsh through invasive plant control and planting suitable native transition zone plant species (n/a = not applicable).

³ The ongoing disturbance of 6.49 acres of grassland habitat from annual levee mowing is counted as a net loss of habitat; however, the grassland will be available as salt marsh harvest mouse foraging and dispersal habitat in between mowing events, especially during the wet season. Some potential upland foraging/dispersal habitat would be created on the new levee on the Palo Alto side due to the increase in surface area of the levee on the Palo Alto side post-construction.

The Service changes the **Amount or Extent of Take** of the California clapper rail on pages 65 and 66 of the January 15, 2016, biological opinion:

From:

1. The harassment and non-lethal harm of all California clapper rails within the 1.57 acres of suitable tidal marsh habitat and 2.46 acres of suitable upland refugia/transition zone habitat temporarily disturbed during the construction of the proposed project (*i.e.*, construction of the San Francisquito Creek levees and widened channel, filling in low spots in the Main Faber Marsh levee, and accessing and degrading the Bay levee).
2. The harassment and non-lethal harm of all California clapper rails within the 0.36 acre of suitable tidal marsh habitat and 0.27 acre of suitable upland refugia/transition zone habitat permanently lost during the construction of the proposed project (*i.e.*, construction of the San Francisquito Creek levees and widened channel, filling in low spots in the Main Faber Marsh levee, and accessing and degrading the Bay levee).

To:

1. The harassment and non-lethal harm of all California clapper rails within the 3.83 acres of suitable tidal marsh habitat and 2.46 acres of suitable upland refugia/transition zone habitat temporarily disturbed during the construction of the proposed project (*i.e.*, construction of the San Francisquito Creek levees and widened channel, filling in low spots in the Main Faber Marsh levee, and accessing and degrading the Bay levee).
2. The harassment and non-lethal harm of all California clapper rails within the 0.82 acre of suitable tidal marsh habitat and 0.27 acre of suitable upland refugia/transition zone habitat permanently lost during the construction of the proposed project (*i.e.*, construction of the San Francisquito Creek levees and widened channel, filling in low spots in the Main Faber Marsh levee, and accessing and degrading the Bay levee).

Conclusion

The above changes to the biological opinion for the proposed San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project do not change the Service's conclusion that the proposed San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, as proposed, is not likely to jeopardize the continued existence of the salt marsh harvest mouse because there would be no change in the effects to the salt marsh harvest mouse.

The above changes to the biological opinion for the proposed San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project do not change the Service's conclusion that the proposed San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, as proposed, is not likely to jeopardize the continued existence of the California clapper rail because: (1) no breeding California clapper rails will be disturbed due to the maintenance of buffers from California clapper rails during the breeding season; (2) although the proposed project will temporarily disturb about 3.83 acres and permanently remove about 0.82 acre of suitable tidal marsh breeding habitat for California clapper rail, the widening of the San Francisquito Creek channel will result in a net increase of about 6.90 acres of suitable tidal marsh breeding habitat for California clapper rail within the action area along the San Francisquito Creek channel; and (3) the tidal marsh habitat within the widened San Francisquito Creek channel will be revegetated and monitored under a Service-approved Mitigation and Monitoring Plan.

This concludes formal consultation on the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project. As provided in 50 CFR §402.16, reinitiation of formal consultation is required and shall be requested by the Federal agency or by the Service where discretionary Federal agency involvement or control over the action has been retained or is authorized by law and: (a) if the amount or extent of taking specified in the incidental take statement is exceeded; (b) 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; (c) 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 (d) if a new species is listed or critical habitat designated that may be affected by the identified action.

If you have questions concerning this reinitiation of the biological opinion for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project in San Mateo and Santa Clara Counties, California, please contact Joseph Terry, Senior Biologist, or Ryan Olah, Coast/Bay Division Chief, at the letterhead address, at telephone number (916) 414-6623, or email (joseph_terry@fws.gov) or (ryan_olah@fws.gov.)

Sincerely,



Jennifer M. Norris
Field Supervisor

cc:

Anne Morkill, San Francisco Bay National Wildlife Refuge Complex, Fremont, California
Kim Squires, Bay/Delta Fish and Wildlife Office, Sacramento, California
Tami Schane, California Department of Fish and Wildlife, Napa, California
Susan Glendening, San Francisco Bay Regional Water Quality Control Board, Oakland, California
Len Materman, San Francisquito Creek Joint Powers Authority, Menlo Park, California
Amanda Morrison, National Oceanic and Atmospheric Administration/National Marine Fisheries Service, Santa Rosa, California
Brenda Goeden, San Francisco Bay Conservation and Development Commission, San Francisco, California

