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8.1 OVERVIEW

The three major laws guiding the restoration of the injured resources and services for the Montrose Settlements Restoration Program (MSRP) are the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the National Environmental Policy Act (NEPA), and the California Environmental Quality Act (CEQA). These statutes set forth a specific process of impact analysis and public review. The Natural Resource Trustees for the Montrose case (Trustees) must also comply with other applicable laws, regulations, and policies at the federal, state, and local levels.

The potentially relevant laws, regulations, and policies are set forth below. In addition to laws and regulations, the Trustees must consider relevant environmental or economic programs or plans that are ongoing or planned in or near the study area. The Trustees must ensure that their restoration activities neither impede nor duplicate such programs or plans. By coordinating restoration with other relevant programs and plans, the Trustees can enhance the overall effort to improve the environment affected by the contaminant releases at issue in the Montrose case.

8.2 KEY STATUTES, REGULATIONS, AND POLICIES

8.2.1 Federal Statutes and Executive Orders

CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.)

CERCLA, otherwise known as the Superfund law, provides the basic legal framework for the cleanup and restoration of the nation's hazardous substances sites. Under CERCLA, responsible parties are liable for damages, including reasonable assessment costs, for injuries to, or the loss of, natural resources. The term "natural resources" is broadly defined by CERCLA to mean "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, … any state or local government, any foreign government, or any Indian tribe…." The state provides that parties responsible for contamination of sites and the current owners or operators of contaminated sites are liable for the cost of cleanup and for damages to natural resources. Compensation is used to restore, replace, rehabilitate, or acquire the equivalent of natural resources and services. The MSRP will operate in accordance with the requirements of CERCLA.

Federal and state agencies and Indian tribes may act as Trustees on behalf of the public to assess the injuries, scale restoration to compensate for those injuries, and implement restoration. This Restoration Plan/Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) has been prepared jointly by the six trustee agencies that form the Montrose Trustee Council: the National Oceanic and Atmospheric Administration (NOAA) (lead agency for the federal government), the U.S. Fish and Wildlife Service (USFWS), the National Park Service (NPS), the California Department of Fish and Game (CDFG) (lead agency for the State of California), the California Department of Parks and Recreation (CDPR), and the California State Lands Commission (CSLC). CERCLA and its implementing regulations for natural resource damage

assessment and restoration (Title 43 Code of Federal Regulations [CFR] Part 11) mandate that the designated Trustees shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources and lost services.

National Environmental Policy Act, 42 U.S.C. 4321, et seq.; 40 C.F.R. Parts 1500–1508

NEPA sets forth a specific process of impact analysis and public review. NEPA is the basic national charter for the protection of the environment. Its purpose is to "encourage productive and enjoyable harmony between man and the environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the Nation." The law requires the government to consider the consequences of major federal actions on human and natural aspects of the environment to minimize, where possible, adverse impacts. Equally important, NEPA established a process of environmental review and public notification for federal planning and decision making.

Generally, when it is uncertain whether an action will have a significant effect, federal agencies will begin the NEPA planning process by preparing an Environmental Assessment (EA). Alternatively, the federal agencies may proceed directly to the preparation of an EIS. The Trustees have chosen to bypass the EA step and proceed directly to the preparation of a programmatic EIS, due to the broad-reaching nature of the actions being proposed under the MSRP and the fact that some of the specific restoration actions and locations have yet to be determined at this time.

The Trustees have integrated CERCLA restoration planning with the NEPA process to comply, in part, with those requirements. This integrated approach allows the Trustees to meet the public involvement requirement of CERCLA and NEPA concurrently.

The Clean Water Act, 33 U.S.C. 1251, et seq.

The Clean Water Act (CWA) is the principal statute governing water quality. The goal of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The CWA regulates both the direct and indirect discharge of pollutants into the nation's waters. Section 301 of the CWA prohibits the discharge into navigable waters of any pollutant by any person from a point source unless it is in compliance with a National Pollution Discharge Elimination System permit.

Section 311 of the CWA regulates the discharge of oil and other hazardous substances into navigable waters and waters of the contiguous zone, as well as onto adjoining shorelines, that may be harmful to the public or to natural resources. The CWA allows the federal government to remove the substance and assess the removal costs against the responsible party. Under the CWA, removal costs include those associated with the restoration or replacement of the natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance.

Section 404 of the act authorizes the U.S. Army Corps of Engineers to issue permits, after notice and opportunity for public hearings, for the disposal of dredged and fill material into navigable waters. Generally, projects that discharge dredged or fill material into waters including wetlands require Section 404 permits. Section 401 of the CWA provides that projects that involve discharge or fill to wetlands or navigable waters must obtain certification of compliance with

state water quality standards. The Trustees anticipate that artificial reef construction, fishing access improvements, wetlands restoration actions, and potentially other actions such as seabird roost creation or enhancement will require permits under the CWA; the implementing agency for each project will apply for these permits as appropriate after sufficient site-specific information is developed.

The Clean Air Act, 42 U.S.C. 7401, et seq.

The Clean Air Act (CAA) is the principal statute governing air quality. The primary goal of the CAA is to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population. The CAA regulates both the direct and indirect discharge of airborne pollutants. Section 7471 of the CAA states that applicable implementation plans shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality.

The Trustees anticipate that artificial reef construction, fishing access improvements, wetlands restoration actions, and potentially other actions such as seabird roost creation or enhancement will require discussion of general conformity requirements; the implementing agency for each project will address these requirements after sufficient site-specific information is developed.

Coastal Zone Management Act, 16 U.S.C. 1451, et seq.

The goal of the Coastal Zone Management Act (CZMA) is to encourage states to preserve, protect, develop, and, where possible, restore and enhance valuable natural coastal resources. Participation by states is voluntary. The State of California has enacted the federally approved California Coastal Act.

Section 1456 of the CZMA requires that any federal action inside or outside of the coastal zone that affects any land or water use or natural resources of the coastal zone shall be consistent, to the maximum extent practicable, with the enforceable policies of approved state management programs. It states that no federal license or permit may be granted without giving the state the opportunity to concur that the project is consistent with the state's coastal policies. The regulations outline the consistency procedures.

The Trustees do not believe that the MSRP will adversely affect the State of California's coastal zone. However, to comply with the CZMA, the Trustees intend to seek the concurrence of the State of California that the preferred restoration projects are consistent to the maximum extent practicable with the enforceable policies of the state coastal program.

Endangered Species Act, 16 U.S.C. 1531, et seq.

The purpose of the Endangered Species Act (ESA) is to conserve endangered and threatened species and the ecosystems on which they depend. The ESA directs all federal agencies to use their authorities to further these purposes. Pursuant to Section 7 of the ESA, each federal agency shall, in consultation with the secretary, ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat.

Under the ESA, NOAA and the USFWS publish lists of endangered and threatened species. Before initiating an action, the federal action agency, or its non-federal permit applicant, must ask the USFWS and/or NOAA to provide a list of threatened, endangered, proposed, and candidate species and designated critical habitats that may be present in the project area. If no species or critical habitats are present, the federal action agency has no further ESA obligation under Section 7. If a listed species is present and the federal action agency determines that the project may affect a listed species, consultation is required. The first phase of consultation is informal. For major construction activities, a biological assessment is required to assist in the determination of whether the proposed action is likely to adversely affect listed species and critical habitats. For actions that are not major construction activities, the federal action agency must provide the USFWS and/or NOAA with an account of the basis for evaluating the likely effects of the action.

If the federal action agency concludes that the project will not adversely affect listed species or critical habitats, the agency submits a “not likely to adversely affect” determination to the USFWS and/or NOAA for its concurrence. If the USFWS and/or NOAA concurs with the federal action agency that the project is not likely to adversely affect any listed species, then the consultation (informal to this point) is concluded and the decision is put in writing. Although not required, the federal action agency may request written concurrence from the UFWS and/or NOAA that the proposed action will have no effect on listed species or critical habitats.

If the federal action agency determines that a project may adversely affect a listed species or a designated critical habitat, formal consultation is required. There is a designated period of time in which to consult (90 days), and beyond that, another set period of time for the USFWS and/or NOAA to prepare a biological opinion (45 days). The determination of whether or not the proposed action would be likely to jeopardize the species or adversely modify its critical habitat is contained in the biological opinion. If a jeopardy or adverse modification determination is made, the biological opinion must identify any reasonable and prudent alternatives that could allow the project to move forward.

Multiple threatened and endangered species occur in the study area for this Restoration Plan (see Tables 3.4-4 and 3.4-5). Several of the preferred projects target restoration of federally listed species, including the endangered California brown pelican and the threatened bald eagle. Other listed species, such as the endangered island fox, may be affected by proposed projects. For each project that is selected as preferred in the final Restoration Plan, the Trustees will evaluate the potential effects of the project on listed species and critical habitat. Based on this analysis, the Trustees will perform the appropriate level of consultation with the USFWS and/or NOAA Fisheries pursuant to Section 7 of the ESA.

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801, et seq.

The federal Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended and reauthorized by the Sustainable Fisheries Act (Public Law 104-297) establishes a program to promote the protection of essential fish habitat (EFH) in the review of projects conducted under federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After an EFH has been described and identified in fishery management plans by the regional fishery management councils, federal agencies are obligated to consult with the Secretary of Commerce with respect to any action authorized, funded, or

undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH.

None of the projects for which this programmatic EIS/EIR represents final environmental review have the potential to affect an EFH. For other projects requiring subsequent analysis and having the potential to affect EFH, the Trustees will consult with appropriate NOAA officials after sufficient site-specific information is developed.

Fish and Wildlife Coordination Act, 16 U.S.C. 661, et seq.

The federal Fish and Wildlife Coordination Act requires that federal agencies consult with the USFWS, NOAA Fisheries, and state wildlife agencies for activities that affect, control, or modify waters of any stream or bodies of water in order to minimize the adverse impacts of such actions on fish and wildlife resources and habitat. This consultation is generally incorporated into the process of complying with Section 404 of the CWA, NEPA, or other federal permit, license, or review requirements.

The Trustees will consult with the appropriate agencies as they pursue permitting for specific actions that may trigger such consultation.

Marine Mammal Protection Act, 16 U.S.C. 3371, et seq.

Under the Marine Mammal Protection Act (MMPA), the Secretary of Commerce is responsible for the conservation and management of pinnipeds (other than walruses) and cetaceans. The Secretary of the Interior is responsible for walruses, sea otters, polar bears, manatees, and dugongs. The Secretary of Commerce delegated MMPA authority to NOAA Fisheries. Title II of the act established an independent Marine Mammal Commission and its Committee of Scientific Advisors to oversee and recommend actions necessary to meet the intents and provisions of the act. The act provides that the Secretary shall allow the incidental, but not intentional, taking, by U.S. citizens engaged in activities other than commercial fishing of small numbers of depleted as well as non-depleted marine mammals if, after notice and opportunity for public comment, the secretary finds that the total of such taking will have a negligible impact on the affected species or stock, and prescribes regulations setting forth permissible methods of taking, and requirements for monitoring and reporting such taking." However, the 1994 amendments provide that this regulation requirement may be waived provided that the proposed activity results in only harassment, and no serious injury or mortality is anticipated.

None of the projects for which this programmatic EIS/EIR represents final environmental review have the potential to affect marine mammals. For other projects requiring subsequent analysis and having the potential to affect marine mammals, the Trustees will consult with appropriate NOAA or USFWS officials after sufficient site-specific information is developed.

Migratory Bird Treaty Act of 1918, 16 U.S.C. 703, et seq.

The Migratory Bird Treaty Act (MBTA) implements four international treaties involving protection of migratory birds, including all marine birds, and is one of the earliest statutes (amended several times) to provide for avian protection by the federal government. Among its other provisions, it broadly prohibits actions to "pursue, hunt, take, capture, kill, attempt to take, kill, possess, offer for sale, sell, offer to purchase, deliver for shipment, ship, cause to be shipped,

deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird...or any part, nest, or egg of such bird." Exceptions to these prohibitions are only allowed under regulations or permits issued by USFWS. Hunting of game birds, including waterfowl and certain shore birds, is annually regulated through a process in which the USFWS sets "framework regulations" based on the best current population data available, and states pass regulations that conform to those federal regulations. All other prohibited actions are only allowed under specific permits issued by the USFWS. Criminal violations of this act are enforced by USFWS, and it is also the primary statute under which USFWS and U.S. Department of Interior have responsibility to manage all migratory birds wherever they occur, including marine birds.

The MBTA is also the basis for USFWS oversight and permitting of collection and preservation or rehabilitation of birds oiled during spill response, which usually provides the primary data for determining extent of injury to marine birds and the need for restoration.

Projects identified in this Restoration Plan and programmatic EIS/EIR will be conducted in full compliance with the MBTA.

National Marine Sanctuaries Act, 16 U.S.C. 1431, et seq.

The National Marine Sanctuaries Act (NMSA) prohibits the destruction, loss of, or injury to any sanctuary resource and any violation of the act, any regulations, or permits issued pursuant to the NMSA. The Secretary of Commerce (Secretary) is required to conduct such enforcement activities as are necessary and reasonable to carry out the NMSA. The Secretary may issue special use permits that authorize specific activities in a sanctuary to establish conditions of access to and use of any sanctuary resource, or to promote public use and understanding of a sanctuary resource.

The NMSA also establishes liability for response costs and natural resource damages for injury to sanctuary natural resources. Under the NMSA, the Secretary may undertake or authorize all necessary actions to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury. Furthermore, the Secretary shall assess damage to sanctuary resources. The act defines natural resource damages to include (1) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource, (2) the value of the lost use of the resource pending its restoration, (3) the cost of damage assessments, and (4) reasonable monitoring costs. The Secretary is required to use recovered response costs and damages to finance response actions and damage assessments to restore, replace, or acquire the equivalent of the injured sanctuary resource, and to manage and improve national marine sanctuaries.

The Channel Islands National Marine Sanctuary is located within the study area of the Restoration Plan. None of the projects for which this programmatic EIS/EIR represents final environmental review have the potential to affect this sanctuary. For other projects requiring subsequent analysis and having the potential to affect resources within the sanctuary, the Trustees will consult with and as appropriate apply for a permit from the Channel Islands National Marine Sanctuary office after sufficient site-specific information is developed.

Park System Resource Protection Act, 16 U.S.C. 19jj

Public Law 101-337, the Park System Resource Protections Act (PSRPA) (16 United States Code [U.S.C.] 19jj), requires the Secretary of the Interior (Secretary) to assess and monitor injuries to NPS resources. A "park system resource" is defined by the PSRPA as "any living or nonliving resource that is located within the boundaries of a unit of the National Park System…." The act specifically allows the Secretary to recover response costs and damages from the responsible party causing the destruction, loss of, or injury to park system resources. "Response costs" are defined by the act to include the costs of actions taken by the Secretary to prevent, abate, or minimize the destruction, loss, or injury or imminent risk of such destruction, loss, or injury. Response costs also include monitoring ongoing effects of incidents causing such destruction, loss, or injury.

The Channel Islands National Park is located within the study area of the Restoration Plan, and several projects will occur on NPS lands. However, none of the projects for which this programmatic EIS/EIR represents final environmental review have the potential to negatively affect NPS resources. For other projects requiring subsequent analysis and having the potential to affect NPS resources, the Trustees will consult with and, as appropriate, apply for a permit from the Channel Islands National Park office after sufficient site-specific information is developed.

Rivers and Harbors Act, 33 U.S.C. 401, et seq.

The federal Rivers and Harbors Act regulates development and use of the nation's navigable waterways. Section 10 of the act prohibits unauthorized obstruction or alteration of navigable waters and vests the U.S. Army Corps of Engineers with authority to regulate discharges of fill and other materials into such waters. Restoration actions that require Section 404 CWA permits are likely also to require permits under Section 10 of the Rivers and Harbors Act. However, a single permit usually serves for both. Therefore, the Trustees can ensure compliance with the Rivers and Harbors Act through the same mechanism.

The Trustees do not believe that any of the projects for which this programmatic EIS/EIR represents final environmental review have the potential to negatively affect navigable waters. For other projects requiring subsequent analysis and having the potential to affect navigable waterways (e.g. artificial reefs), the Trustees will consult with appropriate U.S. Army Corps of Engineers officials after sufficient site-specific information is developed.

Executive Order 11988: Construction in Flood Plains

This 1977 executive order (EO) directs federal agencies to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of development in floodplains wherever there is a practicable alternative. Each agency is responsible for evaluating the potential effects of any action it may take in a floodplain. Before taking an action, the federal agency should determine whether the proposed action would occur in a floodplain. For any major federal action significantly affecting the quality of the human environment, the evaluation would be included in the agency's NEPA compliance document(s). The agency should consider alternatives to avoid adverse effects and incompatible development in floodplains. If the only practicable alternative requires siting in a floodplain, the agency should: (1) design or modify the action to minimize

potential harm and (2) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

None of the projects for which this programmatic EIS/EIR represents final environmental review will occur in a floodplain. For other projects requiring subsequent analysis and having the potential to occur in a floodplain (e.g., wetland restoration), the Trustees will consult with appropriate officials after sufficient site-specific information is developed.

Executive Order 13112: Invasive Species

EO 13112 applies to all federal agencies whose actions may affect the status of invasive species and requires agencies to identify such actions and to the extent practicable and permitted by law (1) take actions specified in the order to address the problem consistent with their authorities and budgetary resources; and (2) not authorize, fund, or carry out actions that they believe are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, "pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions."

The Trustees do not believe that any of the projects for which this programmatic EIS/EIR represents final environmental review have the potential to cause or promote the introduction or spread of invasive species. For other projects requiring subsequent analysis and having the potential to affect the status of invasive species, the Trustees will consult with appropriate officials after sufficient site-specific information is developed.

Executive Order 13186: Protection of Migratory Birds

EO 13186, titled the Responsibilities of Federal Agencies to Protect Migratory Birds, requires federal agencies to avoid or minimize the effects of their actions on migratory birds, and, in some cases, to evaluate the effects of actions and plans on migratory birds during environmental analyses. The EO further directs federal agencies taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations to develop and implement, within two years, a Memorandum of Understanding with the USFWS that shall promote the conservation of migratory bird populations.

None of the projects for which this programmatic EIS/EIR represents final environmental review have the potential to affect migratory birds. For other projects requiring subsequent analysis and having the potential to affect migratory species, the Trustees will consult with appropriate USFWS officials after sufficient site-specific information is developed.

Executive Order 12898: Environmental Justice

On February 11, 1994, President Clinton issued EO 12898, titled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. This EO requires each federal agency to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The U.S. Environmental Protection Agency (EPA) and the Council on Environmental Quality have emphasized the importance of incorporating environmental justice

review in the analyses conducted by federal agencies under NEPA and of developing mitigation measures that avoid disproportionate environmental effects on minority and low-income populations. The Trustees have concluded that there are no low-income or ethnic minority communities that would be adversely affected by the MSRP. Rather, MSRP actions that would restore fishing services would benefit subsistence fishers and in concert with the EPA's institutional controls program, would reduce exposures to contaminated fish that may currently be disproportionately affecting minority and low-income populations.

Environmental Justice further requires federal agencies to provide opportunities for community input in the NEPA process. The Trustees will make every effort to involve the affected community by providing notice to members of the public and access to related documents.

Information Quality Law, Public Law 106-554, Section 515

Information disseminated by federal agencies to the public after October 1, 2002, is subject to information quality guidelines developed by each agency pursuant to Section 515 of Public Law 106-554. These guidelines are intended to ensure and maximize the quality of the objectivity, utility, and integrity of such information. This Restoration Plan/EIS/EIR is an information product covered by the information quality guidelines established by NOAA and the Department of the Interior for this purpose. The quality of the information contained herein is consistent with these guidelines, as applicable.

8.2.2 State Statutes

California Environmental Quality Act, Pub. Res. Code 21000–21178.1

CEQA was adopted in 1970, and its basic purposes are to inform California governmental agencies and the public about the potentially significant effects of proposed activities, identify ways that environmental damage can be avoided or significantly reduced, prevent significant avoidable damage to the environment through adoption of feasible alternatives or mitigation measures, and to disclose the reasons for agency approval of a project resulting in significant environmental effects.

The CEQA process begins with a preliminary review as to whether CEQA applies to the project in question. Generally, a project is subject to CEQA if it involves a discretionary action that is carried out, funded or authorized by an agency, and that has the potential to impact the environment. Once the agency determines that the project is subject to CEQA, the lead agency must then determine whether the action is exempt under either a statutory or categorical exemption.

If the lead agency determines that the project is not exempt, then an Initial Study is generally prepared to determine whether the project may have a potentially significant effect on the environment. Based on the results of the Initial Study, the lead agency determines whether to prepare a Negative Declaration (i.e., the project will not result in significant adverse effects to the environment) or an EIR. Alternatively, the agency may proceed directly to the preparation of an EIR. Although the restoration program is not likely to have significant adverse environmental impacts, the Trustees have chosen to prepare an EIR because the program covers a broad range in types and locations of actions, some of which are still conceptual and which will need

subsequent environmental analysis. Thus, the Trustees have prepared a programmatic EIR that covers several specific actions (Table 6-1) and the MSRP effort as a whole that may later be incorporated by reference in subsequent CEQA analysis. The Trustees have integrated both NEPA and CEQA requirements into this Restoration Plan and programmatic EIS/EIR.

The list of agencies expected to use the EIR in their decision-making include, but are not necessarily limited to, the CSLC, the California Coastal Commission, the CDPR, the CDFG, the State Water Resources Control Board, the Department of Water Resources, the U.S. Army Corps of Engineers, the USFWS, NOAA, the NPS, the EPA, and local planning departments, boards, or commissions.

California Coastal Act, California Public Resources Code Sections 30000, et seq.

The California Coastal Act was enacted by the California State Legislature in 1976 to provide long-term protection of California's 1,100-mile coastline for the benefit of current and future generations. The Coastal Act created a partnership between the state (acting through the California Coastal Commission [Commission]) and local government (15 coastal counties and 58 cities) to manage the conservation and development of coastal resources through a comprehensive planning and regulatory program. New development in the Coastal Zone may require a permit from the Commission or the appropriate local government agency. The Commission also reviews and approves Local Coastal Programs, which are the basic planning tools used by local governments to guide development in the Coastal Zone.

For all of the California coast, except San Francisco Bay, the Commission implements the federal Coastal Zone Management Act of 1972 (in the San Francisco Bay area, the implementing agency is the San Francisco Bay Conservation and Development Commission). The Commission is responsible for reviewing proposed federal and federally authorized activities to assess their consistency with the approved state coastal management program. The Commission developed the California Coastal Management Program pursuant to the requirements of the federal Coastal Zone Management Act of 1972. After NOAA approved the California Coastal Management Program in 1977, all federal activities affecting Coastal Zone resources became subject to the Commission's regulatory jurisdiction. A federal agency must conduct its activities (including federal development projects, permits and licenses, and assistance to state and local governments) in a manner consistent with the California Coastal Management Program. The process established to implement this requirement is called a consistency determination for federal activities and development projects and a consistency certification for federal permits and licenses and federal support to state and local agencies.

The Trustees do not believe that the projects implemented by the MSRP will adversely affect California's Coastal Zone resources. However, the Trustees intend to seek the Commission's concurrence that their preferred alternative is consistent with California's federally approved Coastal Management Program.

California Endangered Species Act, Fish and Game Code 2050 et seq.

Pursuant to the California Endangered Species Act (CESA) (California Fish and Game Code Sections 2050 et seq.), it is the policy of the State of California that state agencies should not approve projects as proposed that would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat

essential to the continued existence of those species if there are reasonable and prudent alternatives available. However, if reasonable alternatives are infeasible, individual projects may be approved if appropriate mitigation and enhancement measures are provided.

Pursuant to the CESA, the Fish and Game Commission has established a list of threatened and endangered species based on criteria recommended by the California Department of Fish and Game. Section 2080 of the California Fish and Game Code prohibits "take" of any species that the Commission determines to be an endangered species or a threatened species. Take is defined in Section 86 of the Fish and Game Code as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." The CESA allows for take incidental to otherwise lawful development projects. The CESA emphasizes early consultation to avoid potential impacts to rare, endangered, or threatened species and to develop appropriate mitigation planning to offset project-caused losses of populations of listed species and their essential habitats.

Multiple threatened and endangered species occur in the study area for this Restoration Plan (see Tables 3.4-4 and 3.4-5). Several of the preferred projects target restoration of state-listed species, including the endangered bald eagle, peregrine falcon, California brown pelican, and marbled murrelet as well as the threatened Xantus's murrelet. Other listed species may be affected by proposed projects, such as the state-threatened island fox. For each project that is selected as preferred in the final Restoration Plan, the Trustees will evaluate the potential effects of the project on listed species and critical habitats. Based on this analysis, the Trustees will perform the appropriate level of consultation with the California Department of Fish and Game.

Marine Life Protection Act

In 1999, the California State Legislature found that the marine habitat and biological diversity in the state's ocean waters were threatened by coastal development, water pollution, and other human activities, and passed the Marine Life Protection Act (MLPA). The MLPA mandates that the state design and manage an improved network of marine protected areas to, among other things, protect marine life and habitats, marine ecosystems, and marine natural heritage.

Under the MLPA, the state is required to develop a master plan for the integrated management of existing and new reserves for the entire state. The development of the MLPA master plan was placed on hold by the State of California in January of 2004 due to lack of funding, but the program was revitalized later in 2004 through a combination of public and private funding. At a future date should the MLPA master plan propose creation of new Marine Protected Areas (MPAs) within the MSRP study area, the Trustees would seek to participate in planning efforts to ensure coordination with MSRP restoration projects and to optimize the potential benefits to injured resources and lost services.

Public Resources Code, Division 6, Sections 6001, et seq.

The Public Resources Code, Division 6, gives the CSLC jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable rivers, sloughs, lakes, etc. The CSLC has certain residual and review authority for tide and submerged lands legislatively granted in trust to local jurisdictions (Public Resources Code §6301 and §6306). All tide and submerged lands, granted or ungranted, as well as navigable rivers, sloughs, etc., are impressed with the common law public trust. A lease may be required from the CSLC if a restoration project is located on such lands.

8.2.3 Other Potentially Applicable Statutes and Regulations

Additional statues may be applicable to Natural Resource Damage Assessment (NRDA) restoration planning activities. The statutes listed below, or their implementing regulations, may require permits from federal or state permitting authorities.

- National Park Act of August 19, 1916 (Organic Act), 16 U.S.C. 1, et seq.
- Archaeological Resources Protection Act, 16 U.S.C. 460, et seq.
- National Historic Preservation Act of 1966 as amended (16 U.S.C. 470-470t, 110)
- Executive Order 11514 – Protection and Enhancement of Environmental Quality
- Executive Order 11990 – Protection of Wetlands
- Executive Order 11991 – Relating to the Protection and Enhancement of Environmental Quality
- Porter-Cologne Water Quality Control Act (Porter-Cologne)

8.2.4 List of Potential Permits or Other Approvals

Many of the restoration actions described in this Restoration Plan require further development and will be subject to further regulatory requirements prior to implementation. Table 8-1 summarizes the further permitting and/or other environmental consultation or review requirements that the Trustees currently anticipate may be required for implementation of the various restoration actions.

Table 8-1
List of Permits, Consultations, or Other Approvals That May Be Required for MSRP Restoration Actions

Restoration Actions	Additional NEPA or CEQA Review	Section 404 and/or Section 10 of CWA	CAA	CZMA	ESA	CESA	EFH	MMPA	MBTA	State Lands Commission Lease	Channel Islands Nat. Park Permit	National Marine Sanctuary Permit	Other: Local	Other: Navy	Extraterritorial Env. Requirements*
Fishing and Fish Habitat															
Construct artificial reefs and fishing access improvements	X	X	X	X	X	X	X			X			X		
Provide public information to restore lost fishing services													X		
Restore full tidal exchange wetlands	X	X	X	X	X	X				X					
Augment funds for implementing Marine Protected Areas in California															

Table 8-1
List of Permits, Consultations, or Other Approvals That May Be Required for MSRP Restoration Actions

Restoration Actions	Additional NEPA or CEQA Review	Section 404 and/or Section 10 of CWA	CAA	CZMA	ESA	CESA	EFH	MMPA	MBTA	State Lands Commission Lease	Channel Islands Nat. Park Permit	National Marine Sanctuary Permit	Other: Local	Other: Navy	Extraterritorial Env. Requirements*
Bald Eagles															
Complete the NCI Bald Eagle Feasibility Study before deciding on further restoration actions					X	X					X				
Complete the NCI Bald Eagle Feasibility Study; regardless of its outcome, continue funding Santa Catalina Island Bald Eagle Program					X	X									
Peregrine Falcons															
Restore peregrine falcons to the Channel Islands	X				X								X		
Monitor the recovery of peregrine falcons on the Channel Islands															
Restore peregrine falcons to the Baja California Pacific Islands															X
Seabirds															
Restore seabirds to San Miguel Island	X			X	X	X	X	X	X		X	X			
Restore alcids to Santa Barbara Island	X				X	X					X				
Restore seabirds to San Nicolas Island	X				X	X								X	
Restore seabirds to Scorpion and Orizaba Rocks	X				X	X					X				
Restore seabirds to Baja California Pacific Islands															X
Create/enhance/protect California brown pelican roost habitat	X	X	X	X	X	X							X		

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Implement an entanglement reduction and outreach program to protect seabird populations													X		
Restore ashy storm-petrels to Anacapa Island	X				X	X					X				

*These projects would be implemented outside of the United States of America under the jurisdiction of another sovereign state (Mexico) and as such may be subject to applicable Mexican environmental requirements.

CAA = Clean Air Act

CEQA = California Environmental Policy Act

CESA = California Endangered Species Act

CWA = Clean Water Act

CZMA = Coastal Zone Management Act

EFH = essential fish habitat

ESA = Endangered Species Act

MBTA = Migratory Bird Treaty Act

MMPA = Marine Mammal Protection Act

NEPA = National Environmental Policy Act