



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE

West Coast Region  
777 Sonoma Avenue, Room 325  
Santa Rosa, California 95404

June 16, 2016

Bruce H. Wolfe  
Executive Officer  
SF Bay Regional Water Board  
1515 Clay Street, Suite 1400  
Oakland, California 94612

Subject: Administrative Civil Liability Complaint No. R2-2016-1008 for Unauthorized Discharge of Fill and Failure to Obtain a Water Quality Certification, Point Buckler Island, Suisun Marsh, Solano County; Tentative Cleanup and Abatement Order

Dear Mr. Wolfe,

NOAA's National Marine Fisheries Service (NMFS) wishes to express our support for the enforcement actions of the San Francisco Bay Regional Water Quality Control Board regarding violations of the Federal Water Pollution Control Act (Clean Water Act) and the California Water Code for unauthorized discharges at Point Buckler Island (also known as Suisun Club No. 801 or Annie Mason Point Club) located in the Suisun Marsh, Solano County, California. These unpermitted activities resulted in the diking off and filling of tidal marsh areas and removal of tidal flow to the former tidal channels within the interior of Point Buckler Island in violation of the Clean Water Act and the California Water Code.

Available information indicates the following Federal Endangered Species Act (ESA) listed species Distinct Population Segments [DPS] and Evolutionary Significant Units [ESU] and critical habitat under the jurisdiction of NMFS may have been negatively impacted by the unpermitted project:

- Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) ESU**  
Endangered (70 FR 37160; June 28, 2005)  
Critical habitat (58 FR 33212; June 16, 1993);
- Central Valley spring-run Chinook salmon (*O. tshawytscha*) ESU**  
Threatened (70 FR 37160; June 28, 2005);
- Central California Coast steelhead (*O. mykiss*) DPS**  
Threatened (71 FR 834; January 5, 2006)  
Critical habitat (70 FR 52488; September 2, 2005);
- California Central Valley steelhead (*O. mykiss*) DPS**  
Threatened (71 FR 834; January 5, 2006); and
- North American Green Sturgeon (*Acipenser medirostris*) southern DPS**  
Threatened (71 FR 17757; April 7, 2006)  
Critical habitat (74 FR 52300; October 9, 2009).



The area affected by the unpermitted project is also located within an area identified as essential fish habitat (EFH) under the Magnuson-Stevens Fishery Conservation Act (MSA) for various life stages of fish species managed through the following Fisheries Management Plans (FMP) by the Pacific Fisheries Management Council:

**Pacific Coast Salmon FMP** (Chinook and coho salmon);  
**Pacific Groundfish FMP** (starry flounder, English sole, sand sole, *etc.*); and  
**Coastal Pelagic FMP** (northern anchovy, Pacific sardine, *etc.*).

Point Buckler Island is also within an area designated as a Habitat Area of Particular Concern (HAPC) for various federally-managed fish species within the Pacific Groundfish FMP. HAPC are subsets of EFH that are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area. As defined in the Pacific Groundfish FMP, San Francisco Bay, including Point Buckler, is identified as estuary HAPC.

Construction activities associated with the unpermitted action likely resulted in effects on ESA listed species, critical habitat, and EFH in the form of degradation of water quality; and the in-water excavations and filling of tidal channels for levee construction may have directly injured or killed fish by crushing or causing other physical injuries. However, the larger impact of the unauthorized activities on listed fish and EFH is associated with the loss of tidal marsh habitat. Cutting off tidal flow and the burying of vegetation in the former tidal channels of Point Buckler Island has reduced the amount and diminished the value of critical habitat and EFH in the Suisun Marsh, Solano County. Tidal marsh habitat in Suisun Bay supports ESA listed fish and EFH by providing habitat for prey species, foraging areas, and cover/shelter for protection from predators during the physiological transition of juveniles from fresh to saltwater osmoregulation (smolting). Based on the impacts to tidal marsh habitat in Suisun Marsh resulting from unauthorized discharges at Point Buckler Island, NMFS supports the San Francisco Bay Regional Water Quality Control Board's proposed enforcement action in the matter of John D. Sweeney and the Point Buckler Club, LLC.

Thank you for the opportunity to comment on this matter. If you have any questions regarding these comments, please contact John McKeon of my staff at 707-575-6069, or [john.mckeon@noaa.gov](mailto:john.mckeon@noaa.gov).

Sincerely



for

Alecia Van Atta  
Assistant Regional Administrator  
California Coastal Office