



Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board

Executive Office

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Arnold Schwarzenegger
Governor

JUN 14 2005

Mr. Larry Week, Chief
Native Anadromous Fish and Watershed Branch
Department of Fish and Game
830 S Street
Sacramento, CA 95814

Dear Mr. Week:

ORDER FOR CONDITIONAL WATER QUALITY CERTIFICATION: DEPARTMENT OF FISH AND GAME, 2005 FISHERIES RESTORATION GRANT PROGRAM (CORPS SAN FRANCISCO DISTRICT FILE #223232N; LOS ANGELES DISTRICT FILE #200301123)

This Order responds to your April 20, 2005 request for Clean Water Act (CWA) section 401 Water Quality Certification for the Department of Fish and Game's (DFG) 2005 Fisheries Restoration Grant Program (FRGP). The FRGP funds projects to restore habitat in non-tidal reaches of rivers and streams, improve watershed conditions, and otherwise improve the survival, growth, migration, and reproduction of anadromous fish. The FRGP is described further in Enclosure 1. This Conditional Water Quality Certification (Certification) authorizes the one hundred eleven (111) restoration projects funded through FRGP's 2005 grant cycle as listed in Enclosure 2, with the exception of Project No. 107, "Adobe Creek Restoration Project – Sonoma County" which DFG withdrew from this Certification per a May 24, 2005 email. Project No. 107 will be individually considered for Certification by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board). All restoration projects funded by the FRGP are consistent with DFG's *California Salmonid Stream Habitat Restoration Manual* (3rd Edition, January 1998). The FRGP area of coverage is mapped in Enclosures 3a-3c.

Pursuant to the California Environmental Quality Act (CEQA), DFG has adopted a Mitigated Negative Declaration (MND) for the projects listed in Enclosure 2. The U.S. Army Corps of Engineers (Corps), San Francisco District has issued Regional General Permit (RGP) No. 12 for the FRGP.

ACTION

Order for Standard Certification

☒ Order for Technically Conditioned Certification

☐ Order for Waiver of Waste Discharge Requirements

Order for Denial of Certification

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STANDARD CONDITIONS

This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and Article 6 (commencing with section 3867) of Chapter 28, Title 23 of the California Code of Regulations (CCR 23).

- 2 This Certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to subsection 3855(b) of Chapter 28, CCR 23, and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- 3 This Certification is conditioned upon total payment of any fee required under Chapter 28, CCR 23, and owed by the applicant.

ADDITIONAL CONDITIONS

Endangered Species. Projects proceeding under the FRGP shall not result in the take of any endangered, threatened, or candidate species or the habitat of such species except as authorized pursuant to the State and federal Endangered Species Acts.

- 2 **Other State Permits.** All projects shall comply with all applicable National Pollutant Discharge Elimination System permits and Waste Discharge Requirements.
- 3 **Toxic Substances.** Projects shall not discharge substances in concentrations toxic to human, plant, animal, or aquatic life or that produce detrimental physiological responses.
- 4 **Hazardous Substances.** Projects shall not discharge waste classified as "hazardous" as defined in Title 22 CCR section 66261 and California Water Code section 13173.
- 5 **Notification.** No later than 15 days prior to the start of construction, or 30 days for any project involving the placement of a new culvert or a channel liner, project proponents shall submit to the 401 Program Manager of the appropriate Regional Water Board(s) a notification indicating the expected start and completion dates of project activities (see addresses below).
- 6 **Culvert and Channel Liner.** This Certification does not apply to any project, which includes the placement of any culvert or channel liner in any water body that previously had none, unless the project has been approved in writing by the Executive Officer of the appropriate Regional Water Board(s). Such project will be identified by DFG in the notification submitted to the Regional Water Board as required in Condition Number 5 (Notification) above. If the Executive Officer has not disapproved certification within 30 days of receipt of the notification, the project may proceed under this Certification.

7. **Reporting.** While this Certification is in effect, or until all projects have been completed or de-funded, and for as long as required monitoring is occurring, DFG will submit annual reports on July 1 of each year to the 401 Program Managers of the State Water Resources Control Board (State Water Board) and the appropriate Regional Water Board(s) documenting work undertaken during the preceding year and identifying for all such work:
- a. project name and grant number as listed in Enclosure 2;
 - b. project purpose and summary work description;
 - c. name(s) of affected water body(ies);
 - d. latitude/longitude in decimal degrees to at least four decimals;
 - e. type(s) of receiving water body(ies) (e.g., at a minimum: river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, or wetland type);
 - f. for each water body type affected, the quantity of waters of the United States temporarily impacted and permanently impacted. Fill/excavation discharges shall be reported in acres and fill/excavation discharges for channels, shorelines, riparian corridors, and other linear habitat shall also be reported in linear feet;
 - g. the total quantity in acres of each type of receiving water body temporarily impacted and permanently impacted by all the work reported;
 - h. actual construction start and end-dates for each project; and
 - i. whether each project is on-going or completed. For multi-year projects completed during the year, the Annual Report will document impacts (per items "f" and "g" of this condition) for that year and will also report the total multi-year impacts of the overall project.

Notifications and Annual Reports shall be directed to "Program Manager, Certification and Wetlands Program" at the following Water Board offices:

State Water Resources Control Board
Division of Water Quality
1001 "I" Street, 15th Floor
Sacramento, CA 95814

North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

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Los Angeles Regional Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

8. **Projects in Streams with Historical Mining.** For projects in streams with historical mining activity, as identified in Enclosure 2, that will either disturb the channel bottom or import gravels for instream restoration, the following avoidance and mitigation measures shall be taken:
- a. Any gravel imported from offsite will be from a source known to not contain historic hydraulic gold mine tailings, dredger tailings, or mercury mine waste or tailings.
 - b. For work, which will disturb the channel bottom (grading and channel dredging), pre- and post-project testing of mercury in the tissue of macro-invertebrates in the area will be performed. This testing will consist of:
 - Prior to project implementation, a mercury bioassay of macro-invertebrates expressed as total mercury in milligrams (mg/g) will be performed directly upstream and downstream of the project site, in accordance with methods described in DFG's December 2003 *California Stream Bio-assessment Procedure* and the May 7, 2003 laboratory protocol titled *Mercury in Tissue* (FIMS Mercury Rev. 3), both attached to DFG's previous 401 application, dated June 4, 2004.
 - ii. The results of the pre-project mercury bioassay will be reported to the appropriate Regional Water Board(s) at least 30 days prior to project initiation. If mercury is detected, the project may proceed only with Regional Water Board concurrence or if the Regional Water Board does not disapprove Certification within 30 days of receipt of the data.
 - iii. Immediately following implementation of the project, and for one additional season thereafter (i.e., two sampling events), complementary rapid bio-assessment and a total mercury bioassay of macro-invertebrates (total mercury/mg) will be performed directly upstream and downstream of the project site. The results of the post-project monitoring will be reported in DFG's Annual Reports.
9. **Project Changes.** DFG shall report promptly to the State Water Board and affected Regional Water Board any proposed material change in the character, location, area, and/or



volume of discharges. DFG shall obtain confirmation from the Regional Water Board that such proposed modifications do not disqualify the discharger from coverage under this Certification. Confirmation from the Regional Water Board, or a new or amended Certification from the State Water Board, shall be obtained before any modifications are implemented. If the Regional Water Board Executive Officer does not disapprove the proposed change within 30 days of receiving a written report describing the proposed change, the discharge may proceed in accordance with the proposed modifications.

10. **Violations.** DFG shall report to the State Water Board and affected Regional Water Board in writing all violations of any term or condition of this Certification within seven (7) consecutive days of the time DFG becomes aware of the violation. The written report shall contain (a) a description of the violation and its cause; (b) the period of the violation event, including dates and times, and if the violation has not been corrected, the anticipated time it is expected to continue; and (c) steps taken or planned to reduce, eliminate, and prevent recurrence of the violation. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under State law. For purposes of CWA section 401(d), the applicability of any State law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification Order.
- a. In response to a suspected violation of any condition of this Certification Order, the State Water Board may require the holder of any permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 - b. In response to any violation of the conditions of this Certification Order, the State Water Board may add to or modify the conditions of this Certification as appropriate to ensure compliance.

This Certification Order will expire at the end of the construction season of the fifth year following the date of its issuance.

WATER QUALITY CERTIFICATION

I hereby issue an order certifying that discharges from the projects listed in Enclosure 2 comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of CWA, and with other applicable requirements of State law. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredged and Fill

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Discharges that have received State Water Quality Certification, " which requires compliance with all conditions of this Water Quality Certification. This General Waste Discharge Requirement can be accessed at <http://www.swrcb.ca.gov/cwa401/index.html>.

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in compliance with the applicants' project description and the enclosed Project Information Sheet (Enclosure 1), and (b) compliance with all applicable requirements of the appropriate Regional Water Board's Water Quality Control Plan.

If you have any questions, please direct them to Oscar Balaguer, Chief of the Water Quality Certification Unit, at 916-341-5485 or email: obalaguer@waterboards.ca.gov. You may also contact James Maughan, Chief of the Wastewater Section, at 916-341-5522 or jmaughan@waterboards.ca.gov.

Sincerely,

ORIGINAL SIGNED BY

Celeste Cantú
Executive Director

Enclosure

cc: Mr. Tim Vendlinski
Wetlands Regulatory Office (WTR-8)
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

Mr. Mark D'Avignon
Regulatory Branch
San Francisco District
Department of the Army
U.S. Army Corps of Engineers
333 Market Street
San Francisco, CA 94105

cc: (Continued next page)

California Environmental Protection Agency

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cc: (Continuation page)

Mr. Bruce Henderson
Regulatory Branch
Los Angeles District
Ventura Field Office
Department of the Army
U.S. Army Corps of Engineers
2151 Alessandro Drive, Suite 255
Ventura, CA 93001

Ms. Cecilia Brown
Sacramento Field Office
Endangered Species Division
U.S. Fish and Wildlife Service
2800 Cottage Way, W-2605
Sacramento, CA 95825

Mr. David Pereksta
Ventura Office
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

Mr. Rodney R. McInnis
National Marine Fisheries Service, Santa Rosa Area Office
777 Sonoma Avenue, Room 325-OD-0A
Santa Rosa, CA 95404

Mr. Rick Rogers
National Marine Fisheries Service
1655 Heindon Road
Arcata, CA 95521

Ms. Gail Newton
Native Anadromous Fish and Watershed Branch
Department of Fish and Game
830 S Street
Sacramento, CA 95814

cc: (Continued next page)

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cc: (Continuation page)

Mr. Bob Coey
Watershed Restoration Program, CCR
Department of Fish and Game
P. O. Box 47
Yountville, CA 94599

Ms. Catherine Kuhlman
Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Mr. Roger W. Briggs
Executive Officer
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Mr. Jonathan Bishop
Los Angeles Regional Water Quality Control Board
320 W. 4th Street, Suite 200
Los Angeles, CA 90013

Mr. Gerard J. Thirbeault
Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

Mr. John H. Robertus
Executive Officer
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340



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bc: John Short, North Coast RWQCB
Shin-Roei Lee, San Francisco Bay RWQCB
Elizabeth Morrison, San Francisco Bay RWQCB
Chris Adair, Central Coast RWQCB
Corinne Huckaby, Central Coast RWQCB
Melinda Becker, Los Angeles RWQCB
Adam Fisher, Santa Ana RWQCB
Stacey Baczkowski, San Diego RWQCB

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California Environmental Protection Agency



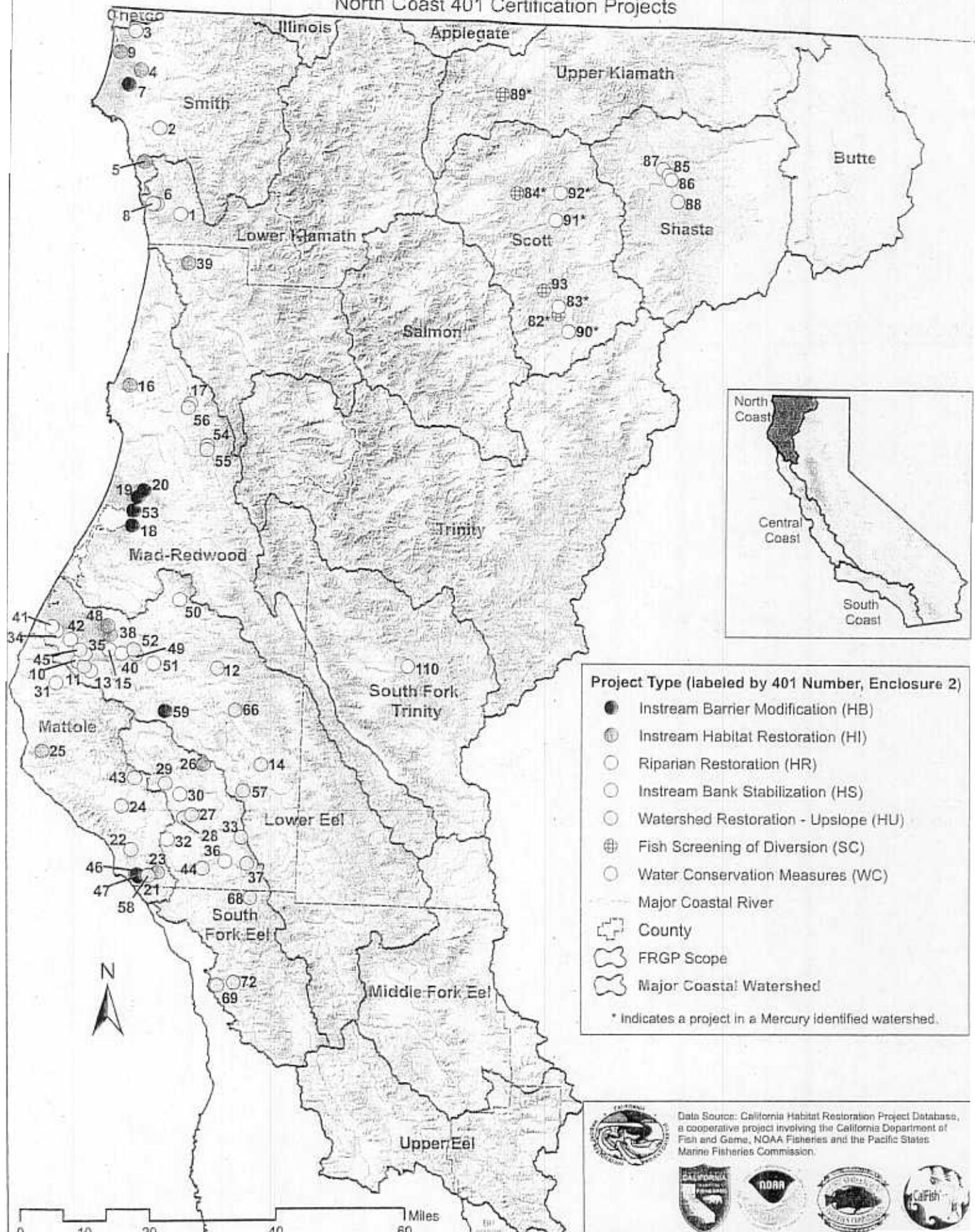
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PROJECT INFORMATION SHEET
CALIFORNIA DEPARTMENT OF FISH AND GAME
2005 FISHERIES RESTORATION GRANT PROGRAM

| | | |
|----|---|--|
| 1. | Applicant | <p>Mr. Larry Week Department of Fish and Game Native Anadromous Fish and Watershed Branch 830 S Street, Sacramento, CA 95814</p> <p>DFG Contact Person: Ms. Holly Sherardin Department of Fish and Game Native Anadromous Fish and Watershed Branch 830 S Street, Sacramento, CA 95814</p> |
| 2. | Project Purpose and Description | <p>CALIFORNIA DEPARTMENT OF FISH AND GAME 2005 FISHERIES RESTORATION GRANT PROGRAM (CORPS SAN FRANCISCO DISTRICT FILE #223232N AND CORPS LOS ANGELES DISTRICT FILE #200301123)</p> <p>The purpose of the Fisheries Restoration Grant Program (FRGP) is to restore anadromous fish habitat in non-tidal reaches of rivers and streams, improve watershed conditions impacting salmonid streams, and improve the survival, growth, migration, and reproduction of anadromous fish.</p> <p>The California Department of Fish and Game (DFG), through the FRGP, uses funds mandated under Public Resources Code section 6217 to fund the 2005 FRGP projects that will restore degraded anadromous/salmonid fish habitats in coastal streams. <u>Enclosure 2</u> identifies the 111 restoration projects reviewed under FRGP's 2005 Mitigated Negative Declarations and covered by this Certification, and <u>Enclosure 3</u> shows the statewide coastal coverage of FRGP. These 111 projects sponsored under the 2005 FRGP grant cycle have been determined by DFG to be consistent with DFG's "California Salmonid Stream Habitat Restoration Manual" (3rd Edition, January 1998). Only restoration projects consistent with the manual's guidelines are funded by the grant program.</p> |
| 3. | Receiving Water(s) Name | See Enclosure 2. |
| 4. | Water Body Types/ Area of Filled/ Excavated (Acres) | Not applicable. However, through a Notification process, project-specific information will be provided by the project proponents proceeding under this Certification. |
| 5. | Federal Permit(s) | <ul style="list-style-type: none"> San Francisco District – RGP 12 Los Angeles District – Individual or applicable Nationwide Permits <p>Biological Opinion:</p> <ul style="list-style-type: none"> National Marine Fisheries Service – File #151422SWR03AR8912:FRR/JTJ) U. S. Fish and Wildlife Service: <ul style="list-style-type: none"> Arcata Office – File #1-14-2004-2129 Sacramento Office – File #1-1-03-F-273 Ventura Office – File #1-8-03-F/C-49 |
| 6. | Non-Compensatory Mitigation | DFG will implement the mitigation measures identified in Appendix B of the FRGP's 2005 Mitigated Negative Declarations and those identified in DFG's April 20, 2005 401 application, Section 11, <i>Other Actions/Best Management Practices</i> . |
| 7. | Compensatory Mitigation | Not applicable. |
| 8. | Additional Information | California Environmental Quality Act: Lead Agency – DFG. Mitigated Negative Declaration (SCH #2005042095). SCH NOD receipt May 19, 2005. |

"Enclosure 2 is not included in this electronic copy because of its large size."

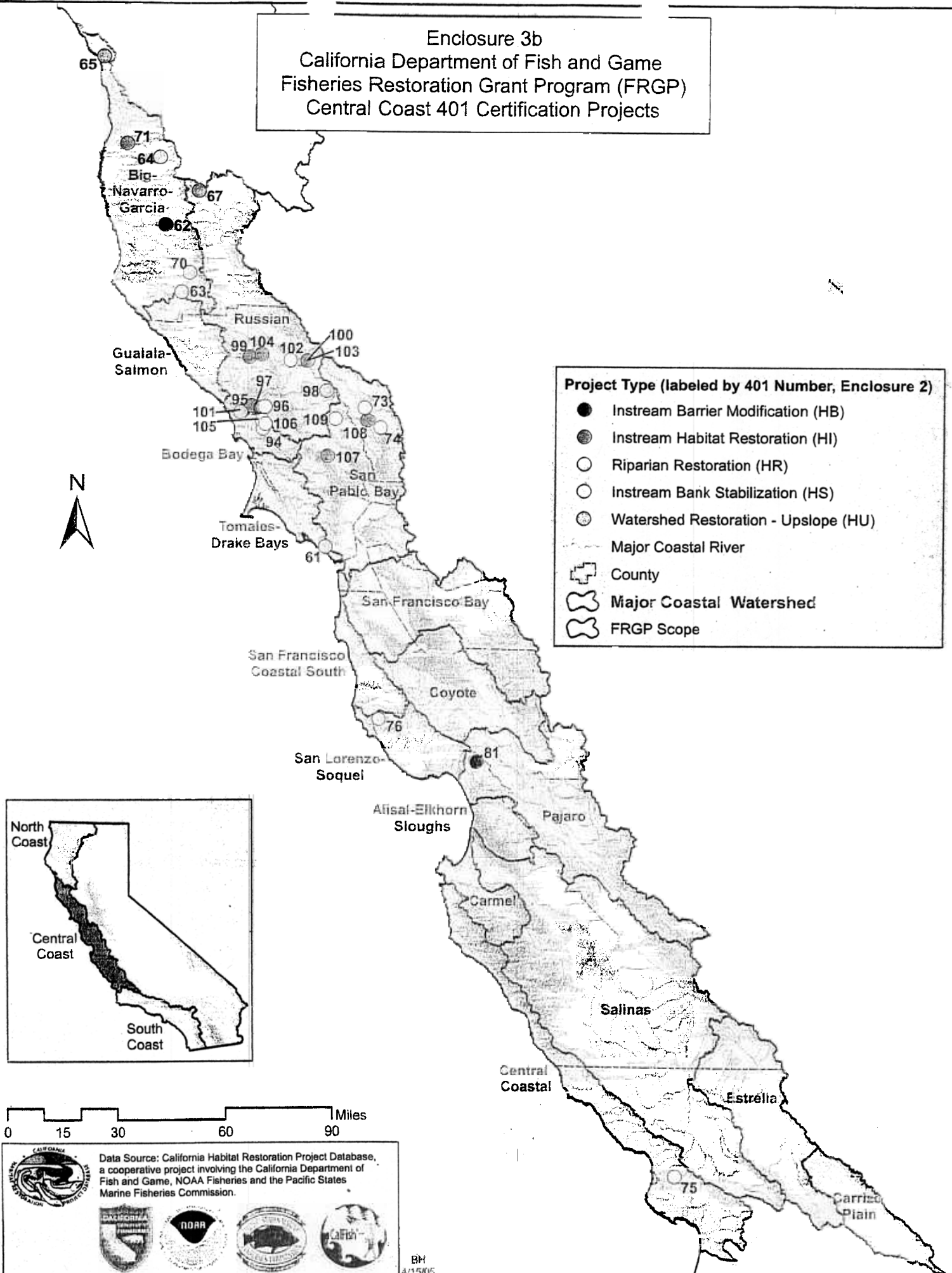
Enclosure 3a
California Department of Fish and Game - Fisheries Restoration Grant Program (FRGP)
North Coast 401 Certification Projects



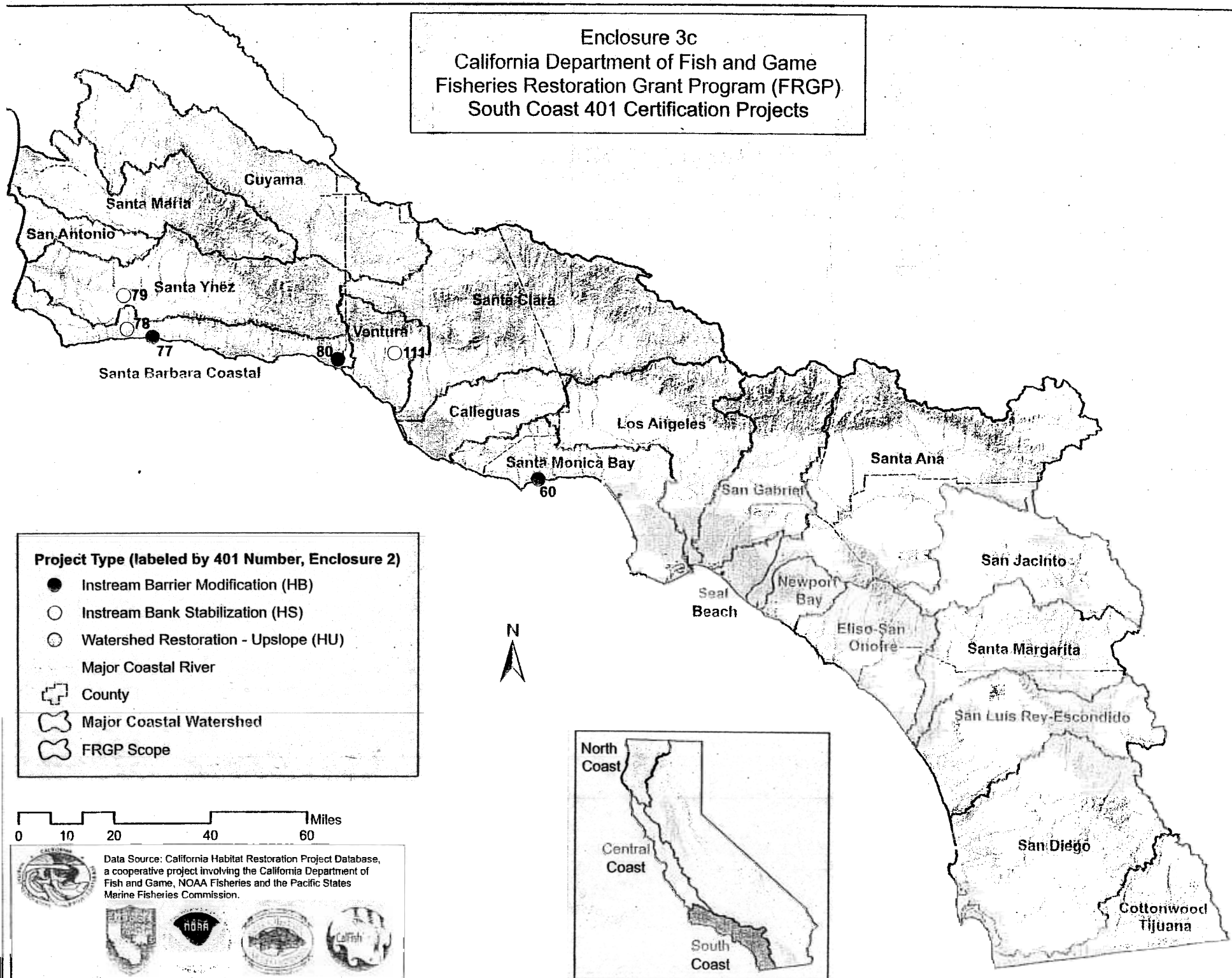
Data Source: California Habitat Restoration Project Database, a cooperative project involving the California Department of Fish and Game, NOAA Fisheries and the Pacific States Marine Fisheries Commission.



Enclosure 3b
California Department of Fish and Game
Fisheries Restoration Grant Program (FRGP)
Central Coast 401 Certification Projects



Enclosure 3c
California Department of Fish and Game
Fisheries Restoration Grant Program (FRGP)
South Coast 401 Certification Projects



Data Source: California Habitat Restoration Project Database, a cooperative project involving the California Department of Fish and Game, NOAA Fisheries and the Pacific States Marine Fisheries Commission.

