



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

PUBLIC NOTICE

PROJECT: REGIONAL GENERAL PERMIT FOR EELGRASS RESTORATION, REHABILITATION, AND EXPANSION

PUBLIC NOTICE NUMBER: 2013-00408N

PUBLIC NOTICE DATE: January 23, 2014

COMMENTS DUE DATE: February 24, 2014

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1. **INTRODUCTION:** The National Marine Fisheries Service (NMFS) (POC: Ms. Korie Schaeffer, 707-575-6087), 777 Sonoma Avenue, Santa Rosa, California has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Regional General Permit (RGP) to conduct work within Waters of the United States related to eelgrass (*Zostera marina*) restoration, rehabilitation, and expansion within San Francisco Bay. This Department of the Army permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*), and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*).

2. PROPOSED PROJECT:

Project Site Location: The geographic extent of the proposed Regional General Permit would be sixteen (16) eelgrass restoration sites located within San Francisco Bay (see Figure 1). Potential sites include: San Rafael Bay, Corte Madera shoreline, Richardson Bay, Eastern shoreline within the East Bay Regional Park District, West of Point San Pedro along the shoreline of China Camp State Park, North Richmond Bed from Richmond Bridge to Carquinez Bridge, Albany and Berkeley shorelines, Emeryville Crescent, Oakland Middle Harbor, Alameda Naval Air Station, Hayward Shoreline (Eden Landing Ecological Reserve), Coyote Point area of San Mateo, and Piers 94 and 98 in San Francisco, (see Figures 2-17).

Project Site Description: Potential project sites were selected based on their identification in the San Francisco Bay Subtidal Habitat Goals Project (Subtidal Habitat Goals Report 2011; www.sfbaysubtidal.org) or for their potential for eelgrass restoration success as identified by

the Caltrans/NOAA-Fisheries Baywide Ecological Limits Viability and Sustainability (ELVS) model. The suitability of selected sites is based on conditions such as appropriate depth profile, sediment type, waves and currents, salinity patterns, and turbidity.

Project Description: NMFS proposes to conduct work and discharge fill material within Waters of the United States related to eelgrass habitat restoration and expansion projects around San Francisco Bay (the Bay). Projects implemented under this RGP would be funded through NMFS, with mitigation funds from the San Francisco-Oakland Bay Bridge East Span Seismic Safety Project and from the Cosco Busan oil spill. Up to nine acres of eelgrass restoration would occur annually under the proposed RGP. Project sites would range from one acre to nine acres in size.

Restoration would occur via two methods: bareroot transplanting and seed buoys. Bareroot transplanting would involve collecting vegetative shoots with a portion of the rhizome, and then planting them individually or in bunches, securing them with biodegradable anchors, such as bamboo skewers or popsicle sticks, (see Figure 18). The Horizontal Rhizome Method would entail using bent bamboo skewers to secure two shoots with rhizomes oriented in opposite directions. Another bareroot transplanting technique would involve planting individual vegetative shoots wrapped loosely at the base with a small piece of burlap and secured about 15 cm from the top of a bamboo stake with a twist-tie. The bamboo stakes would then be pushed down into the sediment so that they emerge about 10 cm (with 35 cm beneath the sediment surface), permitting good root contact with the sediment while securely holding the plants in place until roots establish. Bamboo stakes would typically be placed in

one meter-square quadrats that have an average of 64 planting units. The number of quadrats at a site would depend on the size of the site and conditions specific to the site.

Seed buoy restoration projects would involve harvested flowering shoots suspended in mesh bags buoyed above the sediment of a targeted restoration area, (see Figure 19). Buoys would be attached to the sediment via a cinder block; both the buoy and the cinder block would be left out for no more than 12 months and then removed. Seed buoys simulate long distance dispersal of detached reproductive shoots and take advantage of the natural slow release of seeds as they mature. Approximately 8.8-cubic yards of cinder blocks, total, would be placed in waters of the U.S. Cinder block dimensions are 39.4 centimeters (cm) x 19cm x 8.9cm. At a one acre site there would be approximately ten cinder blocks (cinder blocks would be spaced between one and five meters apart, depending on restoration size).

Work allowed under the proposed RGP would also include removal of artificial structures that are inhibiting eelgrass expansion, such as tires, abandoned vessels, and creosote-treated wood. This type of removal work would be conducted on-shore to the extent feasible with use of equipment such as a crane truck.

In addition to the active restoration work, NMFS proposes to conduct annual monitoring of restored eelgrass beds and collect the following information: acres created and/or enhanced, expanded; percent vegetated cover; turion (shoot) density; plant height; seedling recruitment and survival. Additionally, baywide inventories of eelgrass would be funded through NMFS to map current and potential locations of eelgrass.

The anticipated work window would be June through November of each year. Direct planting would most likely occur in June, and monitoring would occur in the late summer/fall months.

Basic Project Purpose: The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by USACE to determine whether the project is water dependent. The basic project purpose is eelgrass restoration.

Overall Project Purpose: The overall project purpose serves as the basis for the Section 404(b)(1) alternatives analysis, and is determined by further defining the basic project purpose in a manner that more

specifically describes the applicant's goals for the project, while allowing a reasonable range of alternatives to be analyzed. The overall project purpose is to restore and expand eelgrass habitat in the Bay.

Project Impacts: The proposed RGP would allow up to nine acres of eelgrass restoration work per year. The projects would entail the gradual shift of unvegetated shallow subtidal habitat to vegetated habitat. The subtidal habitats in the Bay are approximately 120,000 hectares or 300,000 acres at mean sea level. More than 90% of the subtidal environment in the Bay is composed of soft-bottom habitats, while eelgrass comprises only about 1% of the total estuarine area. Impacts from eelgrass restoration authorized under the RGP would be minimal to soft bottom habitats and would only enhance habitat complexity at sites on which eelgrass restoration occurs.

Discharge of fill material into waters of the U.S. would be extremely minimal. As previously mentioned, approximately 8.8-cubic yards of cinder blocks, total, would be placed in waters of the U.S. Cinder block dimensions are 39.4 centimeters (cm) x 19cm x 8.9cm. At a one acre site there would be approximately ten cinder blocks (cinder blocks would be spaced between one and five meters apart, depending on restoration size).

Proposed Mitigation: To avoid and minimize project impacts under the RGP, a number of best management practices (BMPs) are proposed. The use of a silt curtain to contain sediments would be evaluated if a debris or structure removal project is located near eelgrass or other sensitive habitats, or if there is potential for rare/sensitive organisms to be impacted. Other BMPs for contaminated sediments would be employed, such as capping any holes left after removal and conducting work during low tide periods. Restoration work would not exceed more than one low tide cycle in one day, and work would not extend more than a few days in a row. Work would be conducted at low tide, which would reduce the amount of turbidity in the water column. No compensatory mitigation is proposed.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver is a prerequisite for the issuance of a Department of the Army Permit to conduct any activity which may result in a fill or pollutant discharge into waters of the United States, pursuant to Section 401 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1341 *et seq.*). The applicant has recently submitted an

application to the California Regional Water Quality Control Board (RWQCB) to obtain water quality certification for the projects covered by the potential RGP. No Department of the Army Permit will be issued until the applicant obtains the required certification or a waiver of certification. A waiver can be explicit, or it may be presumed, if the RWQCB fails or refuses to act on a complete application for water quality certification within 60 days of receipt, unless the District Engineer determines a shorter or longer period is a reasonable time for the RWQCB to act.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612, by the close of the comment period.

Coastal Zone Management: Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456(c) *et seq.*), requires a Federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Determination that indicates the activity conforms with the State's coastal zone management program. Generally, no federal license or permit will be granted until the appropriate State agency has issued a Consistency Determination or has waived its right to do so. Since the projects potentially included in RGP occur in the coastal zone or may affect coastal zone resources, the applicant has applied for a Consistency Determination from the San Francisco Bay Conservation and Development Commission to comply with this requirement.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation and Development Commission, 50 California Street, Suite 2600, San Francisco, California 94111, by the close of the comment period.

Other Local Approvals: The applicant will be required to apply for any additional local governmental authorizations for the project that may be required.

4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act (NEPA): Upon review of the Department of the Army permit application and other supporting documentation, USACE has made a *preliminary* determination that the issuance of the RGP

neither qualifies for a Categorical Exclusion nor requires the preparation of an Environmental Impact Statement for the purposes of NEPA. At the conclusion of the public comment period, USACE will assess the environmental impacts of the project in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347), the Council on Environmental Quality's Regulations at 40 C.F.R. Parts 1500-1508, and USACE Regulations at 33 C.F.R. Part 325. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of USACE and other non-regulated activities USACE determines to be within its purview of Federal control and responsibility to justify an expanded scope of analysis for NEPA purposes. The final NEPA analysis will be incorporated in the decision documentation that provides the rationale for issuing or denying a Department of the Army Permit for the project. The final NEPA analysis and supporting documentation will be on file with the San Francisco District, Regulatory Division.

Endangered Species Act (ESA): Section 7(a)(2) of the ESA of 1973, as amended (16 U.S.C. § 1531 *et seq.*), requires Federal agencies to consult with either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to ensure actions authorized, funded, or undertaken by the agency are not likely to jeopardize the continued existence of any Federally-listed species or result in the adverse modification of designated critical habitat. As the Federal lead agency for this project, NMFS will be responsible for determining the presence or absence of Federally-listed species and designated critical habitat, and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army RGP for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA): Section 305(b)(2) of the MSFCMA of 1966, as amended (16 U.S.C. § 1801 *et seq.*), requires Federal agencies to consult with the NMFS on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH is designated only for those species managed under a Federal Fisheries

Management Plan (FMP), such as the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, and the *Pacific Coast Salmon FMP*. As the Federal lead agency for this project, NMFS will be responsible for determining the presence or absence of EFH, and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army RGP, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army RGP, or other permit, for the proposed projects.

Marine Protection, Research, and Sanctuaries Act (MPRSA): Section 302 of the MPRS of 1972, as amended (16 U.S.C. § 1432 *et seq.*), authorizes the Secretary of Commerce, in part, to designate areas of ocean waters, such as the Cordell Bank, Gulf of the Farallones, and Monterey Bay, as National Marine Sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After such designation, activities in sanctuary waters authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with Title III of the Act. No Department of the Army Permit will be issued until the applicant obtains the required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely affect sanctuary resources. This presumption of effect, however, remains subject to a final determination by the Secretary of Commerce, or his designee.

National Historic Preservation Act (NHPA): Section 106 of the NHPA of 1966, as amended (16 U.S.C. § 470 *et seq.*), requires Federal agencies to consult with the appropriate State Historic Preservation Officer to take into account the effects of their undertakings on historic properties listed in or eligible for listing in the *National Register of Historic Places*. Section 106 of the Act further requires Federal agencies to consult with the appropriate Tribal Historic Preservation Officer or any Indian tribe to take into account the effects of their undertakings on historic properties, including traditional cultural properties, trust resources, and sacred sites, to which Indian tribes attach historic, religious, and cultural significance. As the Federal lead agency for this project, the NMFS will be responsible for determining the presence or absence of historic properties or archaeological resources, and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the

Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until USACE concludes Section 106 consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer to take into account any project related impacts to those resources.

5. COMPLIANCE WITH THE SECTION 404(b)(1) GUIDELINES: Projects resulting in discharges of dredged or fill material into waters of the United States must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. § 1344(b)). An evaluation pursuant to the Guidelines indicates the project is dependent on location in or proximity to waters of the United States to achieve the basic project purpose. This conclusion raises the (rebuttable) presumption of the availability of a practicable alternative to the project that would result in less adverse impact to the aquatic ecosystem, while not causing other major adverse environmental consequences.

6. PUBLIC INTEREST EVALUTION: The decision on whether to issue a Department of the Army Permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the project and its intended use on the public interest. Evaluation of the probable impacts requires a careful weighing of the public interest factors relevant in each particular case. The benefits that may accrue from the project must be balanced against any reasonably foreseeable detriments of project implementation. The decision on permit issuance will, therefore, reflect the national concern for both protection and utilization of important resources. Public interest factors which may be relevant to the decision process include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

7. CONSIDERATION OF COMMENTS: USACE is soliciting comments from the public; Federal, State and

local agencies and officials; Native American Nations or other tribal governments; and other interested parties in order to consider and evaluate the impacts of the project. All comments received by USACE will be considered in the decision on whether to issue, modify, condition, or deny a Department of the Army Permit for the project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, and other environmental or public interest factors addressed in a final environmental assessment or environmental impact statement. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the project.

8. **SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to David Wickens, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-1398; comment letters should cite the project name, applicant name, and public notice number to facilitate review by the Regulatory Permit Manager. Comments may include a request for a public hearing on the project prior to a determination on the Department of the Army permit application; such requests shall state, with particularity, the reasons for holding a public hearing. All substantive comments will be forwarded to the applicant for resolution or rebuttal. Additional project information or details on any subsequent project modifications of a minor nature may be obtained from the applicant and/or agent, or by contacting the Regulatory Permit Manager by telephone or e-mail cited in the public notice letterhead. An electronic version of this public notice may be viewed under the *Public Notices* tab on the USACE website: <http://www.spn.usace.army.mil/Missions/Regulatory>.