



US Army Corps
of Engineers

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

NUMBER: 28254N Dredging – Clipper Yacht Harbor, basin 2 deepening

DATE: April 5, 2004

RESPONSE REQUIRED BY: May 5, 2004

Regulatory Branch
333 Market Street

San Francisco, CA 94105-2197

PERMIT MANAGER: Clyde Davis

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1. INTRODUCTION: The Clipper Yacht Company, LLC (through its agent, Tim Martin, P.O. Box 187, Harbor Drive, Sausalito, California, 94966, 415-720-7422) has applied for a Department of the Army permit to reconfigure a portion of their Basin 2 by conducting new work dredging for deepening, constructing new docks with larger slips and to perform routine maintenance dredging over a ten year period as needed. The purpose of the proposed dredging is to allow deeper draft vessels to use the basin and to maintain safe, operational depths at the berths. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

2. PROJECT DESCRIPTION: As shown in the attached drawings, the applicant plans to remove 16,636 square feet of wooden walkways and slips along with 58 wooden piles and replace with a new 29,773 square foot floating concrete system with 82 concrete piles. Dredging will remove up to 16,829 cubic yards (cy) of sediment from the approximately 2.6-acre dredge site for this deepening. Existing depths in the berthing area to be deepened, range from 0.0 feet MLLW (mean lower low water) to -10.4 feet MLLW. The new design depth for the area is -11 feet MLLW plus an additional 1-foot overdredge allowance. The material would be removed using a clamshell and barged to the Alcatraz Disposal Site (SF-11) or another acceptable site.

Prior to this deepening project and each maintenance episode, the sediments to be dredged will be sampled and tested for agency review and determination of suitability for aquatic disposal.

3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act of 1969 (NEPA): The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et. seq.), the Council on Environmental Quality's Regulations, 40 CFR 1500-1508, and Corps' Regulations, 33 CFR 230 and 325, Appendix B. Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197.

Endangered Species Act of 1973 (ESA): Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat. There are a variety of federally listed animal species that may occur in the vicinity of the proposed project area and/or disposal area. Therefore, dredging and disposal will be performed during the work windows identified in the *Management Plan 2001*, Long Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay, dated July 2001 (LTMS) as established by the existing Biological Opinions of the Resource agencies.

However, if work is to be conducted outside of the work windows, the Corps will initiate consultation with the U.S. Fish and Wildlife Service and/or the National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) as required by Section 7 of the Endangered Species Act.

Species and critical habitat currently identified as potentially being adversely affected include:

Sacramento River Winter-Run evolutionarily significant unit (ESU) Chinook salmon (*Oncorhynchus tshawytscha*) listed as endangered (January 4, 1994, 59 FR 440). The ESU includes populations of winter-run Chinook salmon in the Sacramento River and its tributaries in California. The disposal site is located within the designated critical habitat for this ESU. Adults migrate through San Francisco Bay, San Pablo Bay, Suisun Bay, and Honker Bay, to spawning areas in the upper Sacramento River during the late fall and early winter. Juvenals travel downstream through San Francisco Bay to the Pacific Ocean in the late fall.

Central Valley Spring-Run ESU Chinook salmon (*Oncorhynchus tshawytscha*) is listed as threatened (September 16, 1999, 64 FR 50394). The ESU includes all naturally spawned populations of spring-run Chinook salmon in the Sacramento River and its tributaries in California. Adult Central Valley Spring-Run Chinook salmon migrate through San Francisco Bay, San Pablo Bay, Suisun Bay, and Honker Bay, to spawning areas in the upper reaches of the river system during the spring. Juveniles travel downstream through San Francisco Bay to the Pacific Ocean in the late fall.

Central California Coast ESU Coho salmon (*Oncorhynchus kisutch*) - threatened (October 31, 1996, 61 FR 56138). The dredging project is located within designated critical habitat for Central California Coast Coho salmon (May 5, 1999, 64 FR 24049). No potential adverse effects to Coho salmon are anticipated, however, because the

dredging will be performed during the window from June 1 to October 31.

Central California Coast ESU steelhead (*Oncorhynchus mykiss*) is listed as threatened (August 18, 1997, 62 FR 43937). The ESU includes all naturally spawned populations of steelhead (and their progeny) in California streams from the Russian River to Aptos Creek, and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), excluding the Sacramento-San Joaquin River Basin.

If a permit is issued for this proposed project it will contain a condition that dredging is allowed only between June 1 and November 30 without prior consultation and with approval from the National Oceanic and Atmospheric Administration (NOAA) Fisheries and the Corps of Engineers.

The Corps has concerns regarding potential impacts to Pacific herring during its annual spawning season. Therefore, the Corps will condition the permit (if issued) so that dredging will not be allowed during the peak of the spawning season.

Magnuson-Stevens Fisheries Conservation and Management Act: This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The proposal would impact approximately 2.6 acres at the project site and 45.9 acres at the disposal site of EFH utilized by various species of Pacific Groundfish, Coastal Pelagics, and Pacific Coast Salmon. Our initial determination is that the proposed action would not have a substantial adverse impact on EFH or Federally managed fisheries in California waters. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NOAA Fisheries.

Clean Water Act of 1972 (CWA):

a. **Water Quality:** Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued. The applicant has provided the Corps with evidence that he has submitted a valid request for State water quality certification to the San Francisco Bay Regional Water Quality Control Board. No Corps permit will be granted until the applicant obtains the required water quality certification. The Corps may assume a waiver of water quality certification if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issues that may be associated with this project should write 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 of this Public Notice.

b. **Alternatives:** Evaluation of this proposed activity's impact includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). The applicant has submitted an Analysis of Alternatives for the project and it will be reviewed for compliance with the guidelines. The applicant states that there are no practicable alternatives for his project. An evaluation has been made by this office under the guidelines and it was determined that the proposed project is water or wetland dependent.

Coastal Zone Management Act of 1972 (CZMA): Section 307 of the Coastal Zone Management Act requires the applicant to certify that the proposed

project will comply with the State's Coastal Zone Management Program, if applicable. No Corps permit will be issued until the State has concurred with the applicant's certification. Coastal development issues should be directed to the San Francisco Bay Conservation and Development Commission (BCDC), 50 California Street, Suite 2600, San Francisco, California 94111.

National Historic Preservation Act of 1966 (NHPA): Based on a review of survey data on file with various City, State and Federal agencies, no historic or archeological resources are known to occur in the project vicinity. If unrecorded resources are discovered during construction of the project, operations will be suspended until the Corps completes consultation with the State Historic Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act.

4. **PUBLIC INTEREST EVALUATION:** The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline 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.

5. CONSIDERATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the proposed activity.

Details on any changes of a minor nature which are made in the final permit action will be provided upon request.

6. SUBMISSION OF COMMENTS: Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting Clyde Davis of our office at telephone 415-977-8449 or E-mail: clyde.r.davis@spd02.usace.army.mil.