



US Army Corps
of Engineers

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

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

PROJECT: Marina Bay Yacht Harbor Maintenance Dredging
NUMBER: 2010 – 00117S
DATE: April 15, 2010
RESPONSE REQUIRED BY: May 15, 2010

PERMIT MANAGER: Mark D'Avignon; PHONE: (415) 503-6806; E-mail: mark.r.d'avignon@usace.army.mil

1. INTRODUCTION: The Richmond Bay Marina LLC (contact: William Rhoten, Richmond Bay Marina LLC, 1340 Marina Way South, Richmond, California 94804) has applied for a ten-year Department of the Army permit to maintenance dredge the Marina Bay Yacht Harbor located at 1340 Marina Way South, Contra Costa, County, California. The purpose of the proposed dredging is to return the Marina Bay Yacht Harbor berthing areas and entrance channel to their original design depths in order to facilitate safe navigation for recreational boats utilizing the marina. 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 approximately 47,000 cubic yards (cys) of sediment from the 8.4-acres (approximately) entrance channel in an initial dredging episode and a total of approximately 114,000 cys of sediment from the total dredging footprint over the life of the permit. Approximately 40,000 cys would be removed from three areas totaling 28.5 acres within the yacht harbor (Marina Areas A, B, and C) in subsequent dredging episodes. Existing depths range from - 5.1 feet to - 14.5 feet mean lower low water (MLLW) in the entrance channel. The design depth for the yacht harbor and entrance channel is -12 feet MLLW plus an additional 1-foot overdredge allowance. The dredged material would be removed using a mechanical clamshell dredge and would be transported by scow (i.e. barge) for placement at the

either the Alcatraz Dredged Material Disposal Site (SF-11), the San Pablo Bay Dredged Material Disposal Site (SF-10), or at the San Francisco Deep Ocean Disposal Site (SF-DODS).

Prior to each dredging episode, the Dredge Material Management Office (DMMO) will evaluate the sediments to be dredged for disposal or reuse suitability. The DMMO includes representatives from the U.S. Environmental Protection Agency, San Francisco Bay Conservation and Development Commission (BCDC), San Francisco Bay Regional Water Quality Control Board (RWQCB), and the U.S. Army Corps of Engineers (Corps). The DMMO is tasked with approving sampling and analysis plans in conformity with testing manuals, reviewing the test results and reaching consensus regarding a suitable disposition for the material.

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. Section 4371 et. seq.), the Council on Environmental Quality's Regulations, 40 C.F.R. Part 1500-1508, and Corps' Regulations, 33 C.F.R. Part 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, 1455 Market Street, San Francisco, California 94103-1398.

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. Species and critical habitat currently identified as potentially impacted by the proposed project include green sturgeon, chinook salmon and steelhead trout.

Please note that Programmatic Biological Opinions (BOs) were issued by FWS (March 12, 1999) and NMFS (September 18, 1998) for the Long Term Management Strategy (LTMS) for the placement of dredged material in the San Francisco Bay region. As a result of the BOs there are allowable time frames to dredge to protect the habitat for threatened (and endangered) species and the species themselves per Section 7 of the Endangered Species Act of 1973, as amended. If the dredge work is conducted within those time frames, there is no need for consultation.

Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) were listed as endangered on January 4, 1994 (59 FR 442) and were again federally listed (i.e. reaffirmed) as threatened on June 28, 2005 (70 FR 37160). Critical habitat was designated on June 16, 1993 (58 FR 33212). Winter-run chinook salmon migrate through San Francisco Bay, as well as Suisun Bay and Honker Bay, to spawning areas in the upper Sacramento River during the late fall and early winter. Juveniles travel downstream through San Francisco Bay to the Pacific Ocean in the late fall as well. The movements of adult and juvenile salmon through the Bay system are thought to be rapid during these migrations. Since impacts to the water column during disposal events would be short-term, localized and minor in magnitude, no potentially adverse effects to winter-run Chinook salmon that may be near the disposal site are anticipated, if the dredge work is conducted from June 1 through November

30. If a permit is issued for this proposed project it will contain a condition that dredging is allowed only from June 1 through November 30 in any year, without consultation (pursuant to Section 7 of the ESA) with and approval from NMFS and the Corps.

Central Valley Spring-Run ESU chinook salmon (*Oncorhynchus tshawytscha*) were listed as threatened on September 16, 1999 (64 FR 50394) and were again federally listed (i.e. reaffirmed) as threatened on June 28, 2005 (70 FR 37160). Critical habitat was designated on September 2, 2005 (70 FR 52488). Spring-run chinook salmon typically migrate upstream through San Francisco Bay to spawning areas between March and July. Juveniles travel downstream through San Francisco Bay in late fall to spring and out to the Pacific Ocean once they have undergone smoltification. Since impacts to the water column during disposal events would be short-term, localized and minor in magnitude, no potentially adverse effects to spring-run chinook salmon that may be near the disposal site are anticipated, if the dredge work is conducted from June 1 through November 30. If a permit is issued for this proposed project it will contain a condition that dredging is allowed only from June 1 through November 30 in any year, without consultation (pursuant to Section 7 of the ESA) with and approval from NMFS and the Corps.

Central California and California Central Valley populations of steelhead trout (*Oncorhynchus mykiss*) were first classified as federally threatened in August 1997. Subsequently, steelhead were again federally listed (i.e. reaffirmed) as threatened on June 28, 2005 (70 FR 37160) and critical habitat was designated on September 2, 2005 (70 FR 52488). The steelhead that occur in San Francisco Bay are included in the Central California Coast and California Central Valley ESUs (evolutionarily significant units) and therefore receive protection under the Endangered Species Act. There is concern that steelhead migrating through the Bay to streams in the North Bay might enter the project site. If a permit is issued for this proposed project it will contain a condition that dredging is allowed only from June 1 through November 30 in any year,

without consultation (pursuant to Section 7 of the ESA) with and approval from NMFS and the Corps.

On April 7, 2006, NMFS listed the North American green sturgeon (*Acipenser medirostris*) distinct population segment (DPS) south of the Eel River in California as threatened under the Endangered Species Act (71 FR 17757). The Corps and NMFS are currently consulting programmatically on green sturgeon and the LTMS program.

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 36.9 acres of EFH utilized by various species of sole, shark and rockfish. Our initial determination is that the proposed action would not have a substantial adverse impact on EFH or federally managed fisheries in California waters. This determination is based on the fact that the marina has been dredged several times in the past, the disposal sites has been used for many years for disposal of dredged material and, therefore, the sites are considered by the Corps to be disturbed and the proposed activity will result in no new impacts to EFH. It is presumed that fish species utilizing the area would be using it for feeding during a period of growth. When dredging occurs, the fish should be able to find ample and suitable foraging areas adjacent to the dredging area. As the infaunal community recovers in the dredged area, fish species will return to feed. Our final determination relative to project impacts and the need for EFH mitigation measures is subject to review by and coordination with NMFS. The Marina Bay Yacht Harbor entrance channel is located in close proximity to known eelgrass beds. The “Baywide Eelgrass Inventory of San Francisco Bay”, prepared by Merkel and Associates, dated October 2004, shows several areas in close proximity to the south of the Marina Bay Yacht Harbor entrance channel. It is not known whether eelgrass beds exist within the Marina Bay Yacht Harbor proper. It is possible that dredging operations could have an adverse effect on eelgrass beds present in areas adjacent to the Marina Bay Yacht Harbor entrance channel. At

present, the applicant has not performed eelgrass surveys in the yacht harbor and has not proposed mitigation measures for known eelgrass beds adjacent to the entrance channel.

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 a valid request has been submitted to the San Francisco Bay Regional Water Quality Control Board for State water quality certification. 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)). On October 29, 2004 the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, San Francisco Bay Conservation and Development Commission, and the San Francisco Bay Regional Water Quality Control Board adopted the “Small Dredger Programmatic Alternatives Analysis (SDPAA) for Disposal of Maintenance Dredged Material in the San Francisco Bay Region.” Due to the limited disposal alternatives in the San Francisco Bay region, small dredgers (as defined in the SDPAA) are not required to submit an alternatives analysis for disposal of maintenance-

dredged material. The applicant has requested to be included on the list of projects covered by the SDPAA.

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): Because the Marina has been previously dredged, historic or archeological resources are not expected 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.

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 Mark D'Avignon at the U.S. Army Corps of Engineers, San Francisco District, Operations and Readiness Division, 1455 Market Street, San Francisco, California 94103-1398. 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 Mark D'Avignon of our office at telephone number (415) 503-6806 or by E-mail at: mark.r.d'avignon@usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.