



US Army Corps  
of Engineers®  
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division  
1455 Market Street, 16<sup>th</sup> Floor  
San Francisco, CA 94103-1398

# PUBLIC NOTICE

## PROJECT: Monterey Harbor and Marina Maintenance Dredging

PUBLIC NOTICE NUMBER: 2009 – 00221S

PUBLIC NOTICE DATE: February 15, 2011

COMMENTS DUE DATE: March 17, 2011

PERMIT MANAGER: Mark D'Avignon

TELEPHONE: 415-503-6806

E-MAIL: mark.r.d'avignon@usace.army.mil

1. **INTRODUCTION:** The City of Monterey, Office of the Harbor Master, 256 Figueroa Street, Monterey, California 93940 (Contact: Steve Schleiblauber; phone: (831) 646-3950) has applied for a ten-year Department of the Army permit to maintenance dredge accumulated sediment from within the Monterey Harbor and Marina (Marina) located at the intersection of Del Monte and Lighthouse Avenues in the city of Monterey, Monterey County, California. The purpose of the proposed maintenance dredging would be to reestablish and maintain the original design depths within the Marina in order to facilitate safe navigation for recreational and commercial boats. The Marina provides permanent and seasonal mooring and berthing facilities for approximately 600 vessels, and services commercial and recreational fishing, diving, whale watching, sailing, and charter vessels. 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 Description:** As shown in the attached drawings, the applicant plans to remove no more than approximately 10,000 cubic yards of accumulated sediment (primarily sand) on an annual basis from identified shallow areas within two primary dredging areas totaling 22.7-acres (i.e. 19.5 acres within the Marina and 3.2 acres within the U.S. Coast Guard fuel dock area) within the approximately 66-acre Monterey Harbor and Marina, and a total of approximately 100,000 cubic yards of sediment from within the two dredging areas over the life of the permit. The design depth for the proposed maintenance dredging ranges from -7 feet mean lower low water (MLLW) plus an additional 1-foot overdredge allowance to -10 feet MLLW

plus an additional 1-foot overdredge allowance. Currently, depths within the Marina in areas requiring dredging range from -2 feet MLLW to -5 feet MLLW. The applicant is proposing an initial dredging episode that would remove approximately 5,000 cubic yards of sediment from a 1.9-acre dredging footprint within dredging sites 1, 2, and 3 in the Marina (See attached Figure 5). The dredged material for all dredging episodes, including the initial episode, would be removed using an 8-inch floating cutter head hydraulic dredge. Disposal of all dredged material would be at either of two proposed dredged material disposal/beneficial reuse sites located on Del Monte Beach. The first proposed disposal/beneficial reuse site is located just east of the Marina, and the second is located on Del Monte Beach in front of the Del Monte Beach Townhomes located approximately ½ mile to the north of the Marina.

Prior to each dredging episode, the U.S. Army Corps of Engineers (Corps) Dredge Material Management Office (DMMO), the U.S. Environmental Protection Agency (EPA), and the Central Coast Region Regional Water Quality Control Board (RWQCB) will evaluate the sediments to be dredged for disposal or reuse suitability.

**Basic Project Purpose:** The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by the Corps to determine whether the project is water dependent. The basic project purpose is to dispose of dredged material.

**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 carry out

maintenance dredging in order to restore project design depths in the Marina to allow for safe passage of vessels transiting the entrance into berthing areas within the Marina, and to dispose of the dredged material in an environmentally sound manner.

**Project Impacts:** The proposed maintenance dredging would result in the temporary disturbance to the substrate within the designated dredging areas. On any given dredging episode, only a small portion of the substrate within the two dredging areas, which total 22.7 acres, would be disturbed. During dredging operations, there would be relatively little turbidity due to the proposed use of a hydraulic dredge, which generally produces less turbidity than mechanical dredges. It is possible that submerged aquatic vegetation (SAV) within the Marina could be impacted by the hydraulic dredging, but the vegetation would reestablish itself due to the relatively shallow proposed dredging depths. However, no SAV was observed in the Marina during the site inspection by the Corps. There would be minimal adverse effects from the discharge of the dredged material, which would be placed on Del Monte Beach in two locations as shown on the attached drawings. The proposed dredged material placement areas are composed entirely of sand, therefore no vegetation would be covered by dredged sediment. Also, the dredged sediment is primarily sand and would serve to replenish (i.e. nourish) the beach areas where it would be groomed with a tractor and rake. There would likely be short-term adverse effects to noise levels during dredging operations that could temporarily disturb wildlife in the vicinity of the project location. However, the beach areas north of the Marina are regularly groomed and used for recreational activities, therefore wildlife usage in this area is minimal. (Please refer to the section on Endangered Species Act compliance for a description of possible effects to federally-listed threatened and endangered species.) Overall, the adverse environmental effects of the proposed maintenance dredging are expected to be short-term and minor in magnitude.

### 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 submitted an application to the California Regional Water Quality Control Board (RWQCB) to obtain water quality certification for the

project. 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, Central Coast Region, 895 Aerovista Place, Suite 101, San Luis Obispo, California 93401, 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 non-federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Certification 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 Certification or has waived its right to do so. This presumption of effect, however, remains subject to a final determination by the California Coastal Commission. Since the project occurs in the coastal zone or may affect coastal zone resources, the applicant has applied for a Consistency Certification from the California Coastal Commission to comply with this requirement. Coastal zone management issues should be directed to the District Manager, California Coastal Commission, Central Coast District Office, 725 Front Street, Suite 300, Santa Cruz, California 95060-4508, by the close of the comment period.

### 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, the Corps has made a *preliminary* determination that the project 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, the Corps 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 Corps 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 the Corps, and other non-regulated activities the Corps 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 insure 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, USACE has conducted a review of the California Natural Diversity Data Base, digital maps prepared by USFWS and NMFS depicting critical habitat, and other information provided by the applicant, to determine the presence or absence of such species and critical habitat in the project area. Based on this review, the Corps has made a preliminary determination that the following federally-listed species and designated critical habitat are present at the project location or in its vicinity, and may be affected by project implementation.

The California Coastal Evolutionary Significant Unit (ESU) Chinook salmon (*Oncorhynchus tshawytscha*) was listed as threatened on September 16, 1999, and was again federally-listed (i.e. reaffirmed) as threatened on June 28, 2005 (70 Fed. Reg. 37160). Critical habitat was designated on September 2, 2005 (70 Fed. Reg. 52488). Chinook salmon utilize Monterey Bay for feeding and growth to maturity. The Marina would not be a likely place to encounter Chinook salmon, however there is a possibility that Chinook salmon could be present in the project area during dredging operations. Since the applicant is proposing the use of a hydraulic cutterhead dredge, there is a potential for entrainment and incidental take (i.e. harm and/or mortality) of Chinook salmon during dredging operations. Therefore, the Corps will initiate formal consultation under Section 7 of the ESA with NMFS for this species.

The Central California coast coho salmon (*Oncorhynchus kisutch*) ESU was federally listed as threatened on October 31, 1996, and was subsequently downgraded to endangered on June 25, 2005 (64 Fed. Reg. 24049). The critical habitat for this ESU was designated on June 28, 2005 (70 Fed. Reg. 37160). California coast coho are known to occur in the San Lorenzo River and Scott Creek in Santa Cruz County. They utilize coastal waters for feeding and growth to maturity before returning to spawn in their native streams. Although the likelihood of encounter coho salmon in the proposed dredging area is small, it is still possible for coho salmon to be present during dredging operations. Therefore, the Corps will initiate formal consultation under Section 7 of the ESA with NMFS for this species.

The Central California Coast and South-Central California Coast distinct population segments (DPS) of steelhead trout (*Oncorhynchus mykiss*) were first federally listed as threatened in August 1997. Subsequently, various DPSs of West Coast steelhead were again federally listed (i.e. reaffirmed) as threatened on June 28, 2005 (70 Fed. Reg. 37160) and critical habitat was designated on September 2, 2005 (70 Fed. Reg. 52488). The two aforementioned DPSs of steelhead are known to spawn in coastal streams below impassible barriers from, but not including, the Santa Maria River in San Luis Obispo County to the Russian River in Sonoma County and in tributaries to the San Francisco/San Joaquin Rivers and San Francisco Bay estuary. The Monterey Bay coastal area is known feeding habitat for steelhead and there is a potential for steelhead to be present in the project area during dredging. The use of a hydraulic cutterhead dredge could result in adverse effects including entrainment and take of steelhead. Therefore, the Corps will initiate formal consultation under Section 7 of the ESA with NMFS for this species.

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 Fed. Reg. 17757). On October 9, 2009, NMFS issued the final rule designating critical habitat for green sturgeon (74 Fed. Reg. 52300). Green sturgeon are known to occur along the California coast and utilize Monterey Bay for feeding and growth to maturity. The proposed use of a hydraulic cutterhead dredge for this project could result in the entrainment and take of green sturgeon utilizing the habitat within the Monterey Harbor and Marina. Therefore, the

Corps will initiate formal consultation under Section 7 of the ESA with NMFS for this species.

Monterey Bay is also habitat for the southern sea otter (*Enhydra lutris nereis*), which was federally listed as threatened on January 14, 1977 (42 Fed. Reg. 2965). Southern sea otters are known to forage along the shoreline of Monterey within the kelp bed areas. Occasionally, otters will enter the Monterey Harbor and could be in the vicinity of the project site during dredging operations. The proposed project is not likely to result in direct take (i.e. mortality) of southern sea otters, however, there could be noise impacts that could disturb otters, as well as temporary disturbance of foraging habitat, during dredging operations. In 1997, the Corps and the U.S. Fish and Wildlife Service finalized a programmatic consultation entitled, "Programmatic Consultation for Listed Coastal Species in Ventura, Santa Barbara, San Louis Obispo, Monterey, and Santa Cruz Counties". The Corps believes this project qualifies for coverage under that programmatic consultation and will request coverage under the USFWS's Programmatic Biological Opinion, dated August 29, 1997, which includes mitigation measures designed to avoid and minimize adverse effects to southern sea otters and their habitat.

**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 National Marine Fisheries Service (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, the Corps has conducted a review of digital maps prepared by NMFS depicting EFH to determine the presence or absence of EFH in the project area. Based on this review, USACE has made a *preliminary* determination that EFH is present at the project location or in its vicinity, and that the critical elements of EFH may be adversely affected by project implementation.

This public notice initiates the essential fish habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The proposed project would impact approximately 22.7 acres of EFH

utilized by various species of sole, shark and rockfish protected under the Pacific Groundfish Fisheries Management Plan (FMP). Our preliminary 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, and, therefore, 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.

**Marine Protection, Research, and Sanctuaries Act (MPRSA):** Section 302 of the MPRSA 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 MPRSA. 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. Since the project occurs in proximity to sanctuary waters or may affect sanctuary resources, the applicant was advised to contact the Monterey Bay Marine Sanctuary to determine the need for certification or a permit from the Secretary of Commerce, or his designee, to comply with this requirement.

**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 NHPA 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. 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. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

**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)). The applicant has not yet submitted a Section 404 (b) (1) Analysis of Alternatives for the proposed project. Once the required Alternatives Analysis is submitted, it will be reviewed for compliance with the guidelines to determine the project is the least environmentally damaging practicable alternative (LEDPA).

**6. PUBLIC INTEREST EVALUATION:** 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:** The Corps 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 the Corps 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 Mark D'Avignon, San Francisco District, Regulatory Division, 1455 Market Street, 16<sup>th</sup> Floor, San Francisco, California 94103-13978; comment letters should cite the project name, applicant name, and public notice number to facilitate review by the 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 *Current Public Notices* tab located on the Corps San Francisco District website: <http://www.spn.usace.army.mil/regulatory/>.