



US Army Corps
of Engineers

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Amports, Benicia Port Terminal
NUMBER: 2014-00033S

DATE: August 6, 2014

RESPONSE REQUIRED BY: September 5, 2014

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

PERMIT MANAGER: Debra O'Leary; PHONE: (415) 503-6807; E-mail: debra.a.o'leary@usace.army.mil

1. INTRODUCTION: The Amports Port Terminal Company (P.O. Box 315, Benicia, California) has applied for a ten-year Department of the Army permit to maintenance dredge and knock down material at the Benicia Port Terminal (terminal). The terminal is located in Solano County, California. The purpose of the proposed dredging is to maintain originally permitted depths to allow safe navigation of commercial ships. 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 900,000 cubic yards (cys) of sediment from the 8.75-acre (approximately) dredge site over the ten-year life of the permit. Existing depths in the dredge site range from -37 to -39 feet mean lower low water (MLLW). The design depth for the terminal is -39 feet MLLW plus an additional two-foot overdredge allowance.

The material would be removed using a clamshell dredge and removed by barge to a disposal site or beneficial reuse site. The applicant has listed the Carquinez Disposal Site (SF-9), the Montezuma Wetlands Restoration Site (Montezuma) and Winter Island Site as potential dredged material placement sites.

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 Chinook salmon, steelhead trout and delta smelt.

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 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.

Federally-listed endangered adult winter-run Chinook salmon (*Oncorhynchus tshawytscha*) 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.

The Central Valley population segment of steelhead trout (*Oncorhynchus mykiss*) were classified as federally threatened in January 2006. The steelhead that occur east of in Napa County are included in this ESU (evolutionarily significant unit) and therefore receive protection under the Endangered Species Act. There is concern that steelhead migrating through the Carquinez Strait to streams entering the Suisun

Marsh or Sacramento Delta might enter the dredge 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.

In July 6, 2006, NMFS listed the North American green sturgeon (*Acipenser medirostris*) south of the Eel River in California as threatened under the Endangered Species Act. The Corps will be initiating consultation per Section 7 of the Endangered Species Act of 1973 regarding this species. If a permit is issued for this proposed project it will contain any special conditions resulting from that consultation.

Delta smelt (*Hypomesus transpacificus*) was listed as a threatened species on March 5, 1993 (58 FR 12854) and critical habitat for delta smelt was designated on December 19, 1994. Delta smelt are a relatively small (60-70 mm), slender bodied fish that are endemic to the upper Sacramento-San Joaquin estuary. They occur in the Sacramento-San Joaquin Delta below Isleton on the Sacramento River, below Mosdale on the San Joaquin River and in Suisun Bay. They move into freshwater when spawning, which can occur in the Napa River and San Pablo Bay. The Corps will consult under Section 7 of the Endangered Species Act with the USFWS on adverse effects to delta smelt by the proposed project. If a permit is issued for this proposed project it will contain a condition that dredging is allowed only from August 1 through November 30 in any year, without consultation (pursuant to Section 7 of the ESA) with and approval from the USFWS and the Corps.

Magnuson-Stevens Fisheries Conservation and Management Act: 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, the Corps 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. The proposed project is located within an area managed under the Pacific Groundfish, the Coastal Pelagic and/or the Pacific Coast Salmon FMPs.

The Corps and NMFS completed a programmatic EFH consultation on June 9, 2011 for maintenance dredging. One of NMFS's key concerns with dredging is potential impacts to submerged aquatic vegetation including eelgrass beds. The "Baywide Eelgrass Inventory of San Francisco Bay," prepared by Merkel and Associates, dated October 2004, does not show the area in and around the project site as having any eelgrass beds. Eelgrass is not expected to be established in this area. The Corps does not anticipate that the proposed dredging would affect submerged vegetation.

The recently-deposited bottom sediments to be dredged during maintenance dredge activities are composed mainly (approximately 85%) of silts and clays (mud). 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 in the Carquinez Strait. As the infaunal community recovers in the dredged area, fish species will return to feed. Therefore, the proposed dredging is expected to have only short-term, minor adverse effects on EFH.

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)).

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 dredge site 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 Debra O'Leary 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 Debra O'Leary of our office at telephone number (415) 503-6807 or by E-mail at: debra.a.o'leary@usace.army.mil. Details on any changes of a minor nature that are made in the final permit action will be provided upon request.