



US Army Corps
of Engineers®
San Francisco District

Regulatory Division
450 Golden Gate Ave., 4th Floor
San Francisco, CA 94102-3406

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: 2021-00065

PUBLIC NOTICE NUMBER: 2021-00065S

PUBLIC NOTICE DATE: April 6, 2021

COMMENTS DUE DATE: May 6, 2021

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1. **INTRODUCTION:** The Santa Cruz Port District (Port District) (POC: Holland MacLaurie, (831) 475-6161), 135 5th Avenue, Santa Cruz, California 95062, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a Department of the Army Permit to develop a Regional General Permit (RGP) with the Army Corps of Engineers (Corps) for routine maintenance activities in the Santa Cruz Harbor (project). The proposed RGP would authorize routine maintenance activities occurring at the Port District-maintained facilities over a five-year period. The RGP would replace the Nationwide Permit Program as the primary permitting instrument for the Port District's routine maintenance activities with no more than minimal adverse effects on waters of the U.S. Similar to the Nationwide Permit Program, prior to conducting any given maintenance activity regulated by USACE, the Port District would be required to receive written verification from USACE that the activity is authorized under the RGP. 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 RGP would cover routine maintenance activities occurring within the Santa Cruz harbor, extending approximately one mile from Brommer Street Extension, in Santa Cruz, to the outlet of the harbor at Walton Lighthouse. The Santa Cruz Harbor address is 135 5th Avenue, in the City and County of Santa Cruz, California; Township 11S, Range 1W, Sec 17 and 18, (Lat. 36.966268° N, Long. -122.002620° W). See Figure 1.

Project Site Description: The Santa Cruz Harbor (Harbor) was originally constructed in 1964. The Harbor is a federal navigation channel, as well as a federal and state harbor of refuge. The Harbor provides many services, including berthing for recreational, commercial and sport fishing vessels, a seasonal presence for first responders' marine search and rescue units, educational and marine-related community service organizations, and other commercial maritime operations. The 95-acre Harbor consists of a launch ramp, docks, boatyard and vessel haul-out facility, commercial fishery, U.S. Coast Guard substation, public meeting facilities, fueling stations, parking lots, waterfront restaurants, public beaches and commercial buildings.

Project Description: As described in the attached description of activities, the applicant proposes to conduct routine repairs and replacement of existing structural elements that are within the Harbor, as well as repair of outfalls and embankments. Existing wooden, concrete and/or steel piles and pile guides that show significant wear and/or damage would be repaired or replaced based on current industry standards. Routine dock maintenance typically involves replacing dock and brow pier decking, damaged cleats, bumper striping, broken gussets and gusset covers along the dock perimeter, and other appurtenant fixtures. For concrete docks, cracks or gaps that may develop in the concrete portions would require sealing or replacing. Maintenance of electrical infrastructure on the docks include replacing defective/work wiring, outlets, circuit breakers, light fixtures and bulbs. Existing docks, brow piers and gangways that show significant wear and/or damage and deterioration would be replaced with dimensions that substantially match the current footprint. Old docks would be loaded onto a barge and transported to an appropriate disposal facility. Approximately five drainage outfalls are located in the Harbor and some of

these are showing signs of corrosion and erosion. Repair of drainage outfalls could involve reinforcing the outfall with rock or other erosion protection, as well as in-kind replacement of corroded culvert pipe sections at the outfalls. Embankment repair would typically involve removal of debris and organics, placement of geotextile fabric, and placement of rock riprap to stabilize the bank to prevent erosion and failure.

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 to authorize work and structures, including discharges of dredge or fill material in waters of the U.S. to maintain the Harbor structures and facilities, with no more than minimal individual and cumulative adverse environmental effects.

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 facilitate streamlined permitting for minimal-impact Corps-regulated activities conducted as part of the routine maintenance of the Harbor facilities.

Project Impacts: Temporary and permanent fill discharges into waters of the U.S. may result from the program activities, including embankment stabilization, outfall repairs, and pier replacement or repairs. Activities, including pile-driving, would have short-term and localized water quality impacts, such as turbidity from pile removal and replacement, installation of piles using an impact hammer and the hydraulic jetting method; accidental discharges of debris while conducting in-water and over-water work; substrate/habitat disturbance from pile replacement activities, pile repairs dock repairs and replacement activities; and potential hydroacoustic impacts to marine mammals and protected fish species from replacement installation of piles using an impact hammer. The program would avoid permanent impacts to waters of the U.S. to the extent practicable, though some minor fill discharges would be unavoidable. These include minor discharges associated with outfall repairs, embankment repairs and minor net increases in in-water footprints and/or displacement volumes due to some repairs requiring

placement of additional parts/materials on existing structures. There would be no expansion in usable structure (such as docks) footprints.

Proposed Mitigation: The Port District would implement water quality best management practices (BMPs) and species avoidance measures. General minimization measures proposed include construction site BMPs (to prevent movement of sediments downstream), spill plan and spill control, trash confinement, maintenance of vehicles/equipment to avoid leaks, vehicle fueling and storage at a minimum of 50 feet from waterways, complete removal of construction materials from project site after completion, installation of debris barriers during pier and dock removals, and preparation of pier and dock materials onshore when feasible or installing tarp/netting to prevent debris entering the waterways. Species avoidance measures will be determined through consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, and will include at a minimum, worker environmental awareness training, work windows for pile driving/removal activities, measures to minimize hydroacoustic impacts of pile driving, measures to minimize turbidity during pile removal/installation activities, and species-related exclusion zones to avoid impacts to listed species and marine mammals.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver thereof 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 is hereby notified that, unless USACE is provided documentation indicating a complete application for water quality certification has been submitted or is in process to be submitted to the California Regional Water Quality Control Board (RWQCB) within 30 days of this Public Notice date, the District Engineer may consider the Department of the Army permit application to be withdrawn. 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 90 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. Since the project occurs in the coastal zone or may affect coastal zone resources, the applicant is hereby advised to apply 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, USACE 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, 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. § 1500-1508, and USACE regulations at 33 C.F.R. § 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, 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, USACE 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. Southern sea otter (*Enhydra lutris nereis*), North American green sturgeon, Southern Distinct Population Segment DPS (*Acipenser medirostris*), and critical habitat for this species; Coho salmon, California Coastal ESU (*Oncorhynchus kisutch*); steelhead, Central California Coast DPS (*Oncorhynchus mykiss*), and critical habitat for this species; steelhead, South Central California Coast DPS (*O. mykiss*), and Western snowy plover (*Charadrius alexandrinus nivosus*) are present within the project area and may be impacted by activities. To address project related impacts to these species and designated critical habitat, USACE will initiate formal consultation with USFWS and NMFS, pursuant to Section 7(a) of the Act. 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*, or the *Pacific Coast Salmon FMP*. As the Federal lead agency for this project, USACE 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. The following FMPs are present within the project action area: the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, the *Pacific Coast Salmon FMP*. To address project related impacts to EFH, USACE will initiate consultation with NMFS, pursuant to Section 305(5)(b)(2) of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

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 Act. No Department of the Army Permit will be issued until the applicant obtains any required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project is not likely to 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 undertaking, USACE has conducted a review of the latest published version of the *National Register of Historic Places*, survey information on file with various city and county municipalities, and other information provided by the applicant to determine the presence or absence of historic and archaeological resources within the permit area. Based on this review, USACE has made a *preliminary* determination that historic or archaeological resources are present in the permit area and that such resources may be adversely affected by the project. The Santa Cruz Small Craft Harbor may be eligible. To address project related impacts to historic or archaeological resources, USACE will initiate consultation with the State Historic Preservation Officer, pursuant to Section 106 of the Act. 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 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 impacts to the aquatic ecosystem while not causing other major adverse environmental consequences. No analysis of project alternatives was submitted because there are no practicable alternatives to the proposed minor or incidental discharges that would have less adverse effects on the aquatic ecosystem and no alternative locations for conducting the Harbor maintenance activities.

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.

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: <https://www.spn.usace.army.mil/Missions/Regulatory>.

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 in the project.

8. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to Frances Malamud-Roam, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4th Floor, San Francisco, California 94102-3404; 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

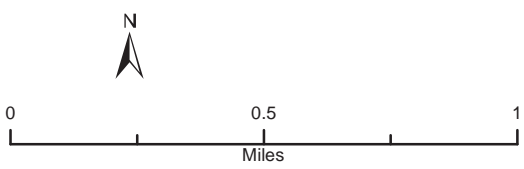
Basemap sources: Esri, DeLorme, National Geographic Society, National Geographic, Esri, Garmin, HERE, IGN, Intermap, iPC, USGS, NASA, ESA, METI, NRCAN, GEBCO, NOAA, TerraMatch, etc.



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Project Area

Data Source: ESRI 2019



Study Area

Figure 1 Study Area Location

