



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

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

PUBLIC NOTICE

PROJECT: Regional General Permit for the
Port of Oakland Maritime Facilities Maintenance

PUBLIC NOTICE NUMBER: 2003-275310S

PUBLIC NOTICE DATE: March 6, 2024

COMMENTS DUE DATE: April 5, 2024

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1. INTRODUCTION: The Port of Oakland (Port) (POC:: Mr. Jan Novak, 510-627-1176, jnovak@portoakland.com), has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, to reissue a Department of the Army Regional General Permit (RGP) to conduct minor maintenance and associated minor construction activities as needed within a five year period along the Port's shoreline in San Francisco Bay, located in the City of Oakland, Alameda County, California. 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 Port's shoreline spans 20.6 miles along the east border of San Francisco Bay (the Bay), with an urban and industrial waterfront, from just north of the San Francisco-Oakland Bay Bridge, near the City of Emeryville border, to Doolittle Pond in San Leandro Bay, near the northern portion of Oakland International Airport, Alameda County, California (Latitude: 38.7843° N, Longitude: 122.2767° W, Figure 1).

Project Site Description: The Port has been in operation for over a century. Aquatic habitat in the action area includes intertidal, subtidal and open-water habitats in Central San Francisco Bay. The shoreline and channels within the action area have been highly modified for various maritime-related

industry, including shipbuilding, military functions, shipping, and goods processing. Shoreline areas are dominated by industrial and transportation development including railroad beds, roads, buildings and parking lots. The channels are regularly dredged for navigation purposes. Substrate in the action area is comprised of sand and sandy-mud. Some subtidal habitats within the action area are known to be inhabited by native eelgrass (*Zostera marina*).

Project Description: Under this RGP, the Port would submit an annual workplan or pre-construction notification (PCN) to USACE and other agencies for approval of proposed maintenance activities for the following 12-month period. Maintenance and minor construction along the Port shoreline would include pile repair and replacement, bank and rip rap repair, debris removal, repair of tide gates and outfalls, shipping navigational aid installation and replacement, abandoned boat removal, survey/sounding activities, fencing replacement, and piping replacement (see attached general plans). These proposed activities were previously eligible for authorization under the Corps Regional General Permit 26 for Port of Oakland Maritime Facilities Maintenance, which expired on December 1, 2023. The proposed activities are similar to those described in Corps Nationwide Permits 1, 5, 6, 7, 12, 13, 14, 18, 19, 20, 22, 25, 27, 28, 33, 36, 38, 45, and 56 (listed online, <http://www.spn.usace.army.mil/Missions/Regulatory/Regulatory-Overview/Nationwide/>). Work would occur as needed within a five year period, after which the Regional General Permit would expire and a new permit would be required.

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 conduct maintenance and associated construction activities within jurisdictional waters of the U.S.

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 conduct maintenance and associated construction activities within jurisdictional waters of the U.S. to ensure safe port operations, safety in public access areas, and to protect the shoreline and Port's facilities.

Project Impacts: The proposed maintenance and minor construction activities would place the minimum volume of fill material into jurisdictional waters and permanently and/or temporarily affect the minimum area of jurisdictional waters necessary to achieve the project purpose. The work area in Section 10 open waters and substrate would be minimized as much as possible. No material would be placed in eel grass beds.

Proposed Mitigation: The applicant would use best management practices to minimize temporary and/or permanent impacts to waters of the U.S.

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 San Francisco Bay Regional Water Quality Control Board (RWQCB) issued a combined 401 certification on July 29, 2019, for all Port of Oakland Shoreline Maintenance activities at the maritime facilities and at the Oakland Airport Port facilities.

Water quality issues should be directed 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.

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 has obtained a Consistency Determination from the San Francisco Bay Conservation and Development Commission to comply with this requirement.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation and Development Commission, 50 California Street, Suite 2600, San Francisco, California 94111, 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. Parts 1500-1508, and USACE 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 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 Central California Coast steelhead (*Oncorhynchus mykiss*), North American green sturgeon southern Distinct Population Segment (*Acipenser medirostris*) and designated critical habitat are present in the vicinity of proposed work and may be affected by project implementation. In addition, the longfin smelt (*Spirinchus thaleichthys*), a federal candidate species, may also occur in the project area. ESA consultation with NMFS was completed in 2016 for a previous iteration of this permit, wherein NMFS concurred with the Corps determinations. USACE is currently assessing the need for additional ESA consultation with USFWS and NMFS. Any required consultations 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*, and 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, and that the critical elements of EFH may be adversely affected by project implementation. There would be localized, temporary degradation of water quality and disturbance to the benthic community affecting the FMPs for Pacific Groundfish and Coastal Pelagics. ESA consultation with NMFS was completed in 2016 for a previous iteration of this permit, wherein NMFS concurred with the Corps determinations. USACE is currently assessing the need for additional ESA consultation with NMFS. Any required consultations 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 MPRS 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 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.

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 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 not likely to be present in the permit area, and that the project either has no potential to cause effects to these resources or has no effect to these resources. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, and Native American Nations or other tribal governments. 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 or the Tribal 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 impact 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 effect on the aquatic ecosystem and no alternative locations for conducting the shoreline 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.

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 of the project.

8. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to Caroline Frentzen, 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 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: <http://www.spn.usace.army.mil/Missions/Regulatory>.