



US Army Corps
of Engineers

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

NUMBER: 2008-00399S

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

DATE: December 15, 2008
RESPONSE REQUIRED BY: January 14, 2009

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

1. INTRODUCTION: Mr. Gary Levin (through his agent, Mr. Jeffry Cotsifas, Pacific Ecorisk) has applied for a ten-year Department of the Army permit to maintenance dredge Berth A of the Levin Richmond Terminal, Contra Costa County, California. The purpose of the proposed dredging is to return Berth A to its originally permitted depth to allow safe navigational depths for commercial ships. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. § 1344), Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 103 of the Ocean Disposal Act (33 U.S.C. § § 1401 et seq.).

2. PROJECT DESCRIPTION: As shown in the attached drawings, the applicant plans to remove approximately 5,126 cubic yards (cys) of sediment from the approximately 2.62 acre berth in the initial episode and a total of 200,000 cys over the next ten years. Existing depths at the site range from -35 to -42.5 feet mean lower low water (MLLW). The design depth of the project is -39 feet MLLW plus an additional 2-foot overdredge allowance. The material would be dredged by a clamshell dredge and removed by barge to an appropriate disposal site.

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. § § 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, Operations and Readiness Division Branch, 1455 Market Street, San Francisco, California 94103-1398.

Endangered Species Act of 1973 (ESA): Section 7 of the ESA 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, and steelhead.

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. The LTMS program includes dredging work windows to minimize potential impacts to listed species. If projects can dredge during these times, then any incidental taking of a species addressed in the LTMS program has been authorized in the Incidental Take Statements of the BOs. On 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 and NMFS are currently consulting on the LTMS program to address concerns for this species.

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.

Central California populations of steelhead (*Oncorhynchus mykiss*) were classified as federally threatened in August 1997. The steelhead that occur in San Francisco Bay are included in this ESU

(evolutionarily significant unit) and therefore receive protection under the ESA. There is concern that steelhead migrating through the bay en route to their natal streams to spawn might enter Richmond Harbor, where the project site is located. 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.

Additionally, the Corps has concerns regarding potential impacts to Pacific herring during its annual spawning season. Although Pacific herring is not a Federally listed species, it is an important commercial species managed by the California Department of Fish and Game. The proposed maintenance dredging will occur within the traditional Pacific herring spawning grounds. As a result, the Corps will condition the permit (if issued) so that dredging will be allowed only from March 1 through November 30 in any year.

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 2.62 acres of EFH utilized by various species of sole, shark and rockfish. Our initial determination is that the proposed dredging 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 project site has been dredged several times in the past and is considered disturbed habitat. The in-bay disposal sites have been in use for several decades. If the material is disposed of on an upland site, then there should not be any impact on aquatic habitat. Therefore, the aquatic sites are considered to be disturbed and the proposed activity will result in no new impacts to EFH. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with NMFS. The Levin Terminal is located along the Richmond Inner Harbor in Richmond, Contra Costa County. The recently-deposited bottom

sediments to be dredged during maintenance dredge activities are composed mainly 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 and along the adjacent channel. As the infaunal community recovers in the dredged area, fish species will return to feed. As the infaunal community recovers in the dredged area, fish species will return to feed. 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 berth as having any eelgrass beds. Eelgrass is not expected to be established in this area.

Clean Water Act of 1972 (CWA):

a. Water Quality: Under Section 401 of the Clean Water Act (33 U.S.C. § 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. § 1344(b)). The applicant has not submitted an Analysis of Alternatives and has been informed that such an Analysis is required and will be reviewed for compliance with the guidelines.

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 berth 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, 16th Floor, San Francisco, CA 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 Debra O'Leary 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.