



SPECIAL PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

BUILDING STRONG®

**PROPOSED REAUTHORIZATION
OF REGIONAL GENERAL PERMIT 54
FOR MAINTENANCE DREDGING ACTIVITIES
IN NEWPORT BAY, ORANGE COUNTY, CALIFORNIA**

Public Notice/Application No.: SPL-2013-00020-GS

Project: RGP 54 Maintenance Dredging in Newport Bay, Newport Beach, Orange County, California
Comment Period: August 7, 2020 through September 6, 2020

Project Manager: Gerardo Salas; (213) 452-3417; Gerardo.Salas@usace.army.mil

Applicant

Chris Miller
City of Newport Beach
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Newport Beach, California 92660

Contact

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Location

The proposed work would take place throughout pre-identified eligible portions of Newport Bay, in the city of Newport Beach, Orange County, California at approximately 33.608795, -117.905268 (Figures 1-2).

Activity

The City of Newport Beach is requesting to renew Regional General Permit (RGP) 54 for maintenance dredging projects in Newport Bay prior to its expiration in December 2020. For approximately 40 years, the City has maintained an RGP that provides a streamlined process for permitting small dredging and dock maintenance projects in eligible areas between the bulkhead and pierhead lines in Newport Harbor. The expiring RGP 54 covers minor maintenance dredging and discharge of dredged material deemed suitable for unconfined placement at adjacent beach sites for beach nourishment, offshore dredged material disposal sites (ODMDS), confined disposal facilities, or at approved upland disposal sites. The current annual maximum dredge volume authorized under RGP 54 is 75,000 cubic yards (CY), and individual maintenance dredging projects are limited to 8,000 CY.

As proposed, the reissued RGP 54 would include the following modifications from the prior RGP 54:

- Providing one additional optional disposal method for material placement along nearshore ocean beaches;
- Including a contingency approach for dredging deeper to remove material in areas that have unacceptable concentrations and to achieve a clean layer of exposed sediment (Z-layer);

- Streamlining application review and processing by delegating responsibility to the City for approval of:
 - Routine bay beach maintenance projects (i.e., relocating sloughed sand from low to high tide) to prevent sediment accumulating below docks; and,
 - Small projects with minimal or no temporary impacts to eelgrass.

For more information, see Additional Project Information section below.

Submittal of Public Comments

Interested parties are hereby notified an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawing(s). We invite you to review today's public notice and provide views on the proposed work. By providing substantive, site-specific comments to the Corps Regulatory Division, you provide information that supports the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered in the decision. This permit will be issued, issued with special conditions, or denied under Section 103 of the Marine Protection, Research and Sanctuaries Act, Section 10 of the Rivers and Harbors Act, and Section 404 of Clean Water Act.

During the Coronavirus Health Emergency, Regulatory Program staff are teleworking. Please do not mail hard copy documents, including comments to any Regulatory staff. Instead, your comments should be submitted electronically to: Gerardo.Salas@usace.army.mil. Should you have any questions or concerns about the Corps' proposed action or our comment period, you may contact Gerardo Salas directly at (213) 452-3417.

The mission of the U.S. Army Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable water and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include

restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

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 of Engineers to determine whether to issue, modify, 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 of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination- A preliminary determination has been made an environmental impact statement is not required for the proposed work.

Water Quality- The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the California Regional Water Quality Control Board. Section 401 requires any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance. An application was filed to the Santa Ana Regional Quality Control Board in November 2019.

Coastal Zone Management- The applicant has certified the proposed activity would comply with and would be conducted in a manner consistent with the approved State Coastal Zone Management Program and Coastal Development Permit (CDP). For those projects in or affecting the coastal zone, the Federal Coastal Zone Management Act requires that prior to issuing the Corps authorization for the project, the applicant must obtain concurrence from the California Coastal Commission (CCC) through their CDP the project is consistent with the State's Coastal Zone Management Plan.

This project is located inside the coastal zone and preliminary review indicates it would affect coastal zone resources. After a review of the comments received on this public notice and in consultation with the CCC under the CDP, the Corps would make a final determination whether this

project affects coastal zone resources after review of the comments received on this Public Notice. An application for a CDP was filed with the CCC in November 2019.

Essential Fish Habitat- The Corps' preliminary determination indicates the proposed activity may adversely affect EFH. Pursuant to Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Los Angeles District will be requesting initiation of EFH consultation for the proposed project.

This notice supplements the EFH consultation requirements of the Act. In order to comply with the MSA, pursuant to 50 CFR 600.920(e)(3), I am providing, enclosing, or otherwise identifying the following information:

1. Description of the proposed action: see project description on page 7 of this public notice.
2. On-site inspection information: see baseline information on page 6 of this public notice.
3. Analysis of the potential adverse effects on EFH: The project may have adverse effects (water quality, benthic disturbance, noise, and vessel and equipment impacts) to the Lower and Upper Newport Bay and the nearshore placement area. The Corps will be consulting with the National Marine Fisheries Service (NMFS) in reference to the EFH impacts to both Coastal Pelagic and Pacific Coast Groundfish Fishery Management Plans.
4. Proposed minimization, conservation, or mitigation measures: Implementation of the City's Eelgrass Management Plan for Newport Bay, and other standard best management practices (BMPs) would be used, such as using a silt curtain when dredging and disposing of construction and trash debris at an approved disposal location, to avoid and minimize any impacts to the EFH resources.
5. Conclusions regarding effects of the proposed project on EFH: Based on the project description and EFH information provided by the applicant, the proposed project would not be expected to have a substantial adverse impact on EFH or federally managed fisheries in California waters. Although localized, short-term impacts may occur during the activities described above, impacts would be short lived and would not significantly impact existing biotic resources.

Therefore, it is my initial determination the proposed activity may adversely affect but would not have a substantial adverse impact on EFH or federally managed fisheries in California waters. My final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NOAA Fisheries.

Cultural Resources- The proposed Program would include maintenance dredging to the original design depths within the footprint of existing development. No dredging would occur in previously undisturbed areas. In addition, no excavation would occur within any upland staging areas. Therefore, maintenance dredging projects would have no potential to cause effects to historic properties or cultural resources. The Corps' "no potential to cause effects" determination is justified per 33 CFR 325 Appendix C (3b) because impacts would be to areas that have been extensively modified. Structural repair and replacement projects would be evaluated on an individual basis to determine whether the structures are eligible for the National Register of Historic Places or whether the activities would have the potential to affect historic properties or cultural resources.

This review constitutes the extent of cultural resources investigations by the District Engineer, and she is otherwise unaware of the presence of such resources.

Endangered Species- Several federally listed threatened and endangered species could potentially occur in the Upper and Lower Newport Bay, and the nearshore placement area. Based on the following analysis, the Corps has made a preliminary determination that activities authorized under the proposed Program would have no effect on federally listed species or their critical habitat.

The green sea turtle (*Chelonia mydas*) and Hawksbill sea turtle (*Eretmochelys imbricata*) occasionally visit the nearshore environment of Orange County, but generally do not use the local marine waters as a permanent breeding or foraging habitat. Both species' occurrences within Newport Bay is expected to be rare, although green sea turtles may utilize the eelgrass beds in Newport Bay as one source of nutrition. Green sea turtles were observed in Newport Harbor in 2017. Activities authorized under the proposed RGP 54 may result in temporary and localized water quality impacts during dredging and nearshore disposal, including increased sediment suspension and benthic habitat disturbance that could affect green sea turtle foraging. Water quality impacts from construction would be avoided or minimized through implementation of BMPs. Temporary impacts from water quality effects would be minimal, as sea turtles are highly mobile and able to move to other suitable habitats throughout Newport Bay and the adjacent nearshore area. The project site is currently an active recreational and commercial port subject to noise from ongoing operations including the use of both large and small vessels. Underwater noise levels would temporarily increase due to operation of dredging equipment within Newport Bay. However, noise attenuates with increasing distance from the source. Startle reactions from green sea turtles that may be in close proximity to barges or other equipment could occur as the result of start-up operations in the morning, or from loud noises resulting from construction activities. These responses are temporary, however, and individuals in the vicinity are prone to habituation. Considering the source sound level, sound attenuation over distance, and the ambient noise from boats and land-based sources, such dredging noise levels would likely be within ambient noise levels and would likely only result in minimal, short-term adverse effects to these species.

The RGP 54 Plan Area and surrounding areas in Lower Newport Bay lack habitat conditions suitable for the California least tern (*Sterna antillarum browni*) or Western snowy plover (*Charadrius alexandrinus nivosus*); however, the proposed nearshore ocean disposal area includes potential foraging habitat for the California least tern and Western snowy plover. Because the proposed nearshore area is one of several dredge disposal location options, the proposed RGP 54 reauthorization would likely only result in minimal, short-term adverse effects to these species. The California least tern nests on barren to sparsely vegetated sites near water, usually on sandy or gravelly substrate, in areas relatively free of human or predatory disturbance, and the western snowy plover typically nests in flat, open areas with sandy or saline substrates. The RGP 54 Plan Area includes beaches or private residences with high levels of human activity and recreation. These areas are not suitable nesting habitat for either bird species. While nesting/roosting birds are not currently anticipated to be in the nearshore disposal areas, the nearshore ocean disposal area is adjacent to predicted habitat for the California least tern and designated critical habitat for the Western snowy plover immediately south of Peninsula Park.

The nearest known nesting sites for the California least tern and Western snowy plover are at Least Tern Island in the northeast portion of Upper Newport Bay and at Balboa Peninsula, respectively. The developed recreational waters at the project area lack the foraging conditions required for the California least tern or the western snowy plover. The California least tern feeds primarily in shallow estuaries, lagoons, near shore in the open, or at mouths of lagoons where small fish are abundant. The Western snowy plover forages on invertebrates in the wet sand and among the surf cast kelp within the intertidal zone, in the dry, sandy areas above the high tide, on salt pans, and along the edges of salt marshes and salt ponds. Furthermore, the Western snowy plover typically forages in areas with little or no human activity and generally avoids areas of high activity, especially

where human use is relatively high. Placement of dredged material along proposed nearshore ocean beaches may cause minor increases in suspended sediments and turbidity, which could affect foraging species' ability to see food normally visible just under the surface of the water. These effects would be extremely minor and, given the size of continuous nearshore habitat comprising the proposed placement area, it is unlikely that any significant foraging would be impacted by discrete disposal locations and activities. In the unlikely event that either species forages in the RGP 54 Plan Area or the proposed nearshore placement area, project effects would be limited to temporary displacement of fish or other prey species away from the immediate turbidity plume.

The proposed project includes avoidance and minimization measures to address potential adverse impacts to Endangered Species Act listed species. With implementation of these and other measures detailed below, adverse impacts are not anticipated. Therefore, the Corps has made a preliminary determination that activities authorized under the proposed Program would have no effect on federally listed species or their critical habitat. Formal consultation under section 7 of the Endangered Species Act does not appear to be required at this time.

Public Hearing- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

Basic Project Purpose- The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the applicant's project is water dependent (i.e., requires access or proximity to or siting within the special aquatic site to fulfill its basic purpose). Establishment of the basic project purpose is necessary only when the proposed activity would discharge dredged or fill material into a special aquatic site (e.g., wetlands, pool and riffle complex, mudflats, coral reefs). The basic project purpose for the proposed project is to restore and maintain navigation. The project is water dependent.

Overall Project Purpose- The overall project purpose serves as the basis for the Corps' 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, and which allows a reasonable range of alternatives to be analyzed. The overall project purpose for the proposed project is to streamline the permitting process for routine maintenance dredging activities that would restore and maintain the navigable capacity within selected areas of Newport Harbor, while balancing beach sand within the bay.

Additional Project Information

Baseline information- RGP 54 was originally issued on August 29, 1989 (Corps File No. 890021100) and has been periodically re-authorized with modifications. The current version of RGP 54 was issued on December 21, 2015, and will expire on December 21, 2020 (Corps File No. 2013-00020-SME). The existing RGP 54 includes several limitations that the City has indicated has decreased the utility of the permit. In this proposed version, the City is seeking to include a broader range of activities covered by the RGP to address the navigation-related needs of more individuals and businesses. The City aims to reduce the cost, processing time, and regulatory burden that would come with separate permitting processes and sediment testing for dredging maintenance projects. The current and proposed RGP 54 coverage area is Newport Harbor and within submerged tidelands granted to the City and County of Orange, as well as some areas considered private waterways. (Figure 1).

Project description- Major project elements of the proposed RGP 54 include the following:

- Maintenance dredging under and adjacent to private, public, and commercial docks, floats, and piers. Maintenance dredging would occur to a maximum depth of -10 feet mean lower low water (MLLW), plus 2 feet of overdepth allowance (1 foot paid and 1 foot unpaid), with an annual maximum dredge volume of 75,000 CY within the coverage areas and not to exceed 8,000 CY per individual project;
- Discharge of dredged material at adjacent beach sites (for beach nourishment), the LA-3 Ocean Dredged Material Disposal Site (ODMDS), nearshore ocean beaches, an approved upland disposal site outside the coastal zone, and an approved confined aquatic disposal (CAD) site; and,
- In conformance with the Eelgrass Plan, the maximum amount of allowable temporary impacts to eelgrass within the RGP 54 Plan Area is limited to a fixed percentage of each zone per year. The City is not proposing any changes to the approved October 2015 Plan, including all conditions and commitments stipulated in the Eelgrass Plan.

The RGP 54 Plan Area within the harbor is defined as bulkhead to pierhead line plus 20 feet bayward, including only those exceptions for structures that extend beyond this boundary in conformance with harbor development regulations defined by Chapter 17.35 of the Newport Beach Municipal Code. This reauthorization is not proposing any changes to the RGP 54 Plan Area.

Disposal Methods

Under the existing RGP 54, there are three disposal areas currently approved by all agencies: beach nourishment, open-ocean disposal, and upland disposal. The Corps also approves the use of confined disposal facilities, but this method is currently not authorized by the other agencies. Under the proposed RGP 54, nearshore ocean beach disposal is also proposed. The five potential disposal areas are described in the following sections.

Beach Nourishment

Beach nourishment is currently the preferred area of disposal, used only if the content of the dredged material is suitable for disposal at this location. To be suitable, the content of the dredged material must be at least 80% sand, or at least 75% sand and within 10% of the receiver beach. For dredged material that is greater than 80% sand, applicants will not need to demonstrate compatibility with the receiver beach.

Nearshore Ocean Beach Disposal

The City is proposing nearshore ocean beaches as a disposal option. Providing this as an additional disposal option would address instances where the required dredge volume is in excess of the quantity of material that can be disposed at adjacent beaches by the applicants. Moreover, the additional proposed disposal option would be beneficial by replenishing nearshore ocean beaches.

The proposed nearshore placement area spans from just south of the Balboa Pier and north to the Santa Ana River. Surface sediment grab samples were collected from 36 stations along four transects from Newport Pier to the Newport Beach entrance channel (Figure 3). Individual grabs from the nearshore receiver site consisted of 0.2% to 21.3% fines. Based on the results, a grain size envelope would be used prior to individual dredging projects to determine compatibility for nearshore placement following guidance provided in the *Final Sand Compatibility and Opportunistic Use Program Plan and Requirements for Sampling, Testing and Data Analysis of Dredged Material* (Figure 4). Because

percent fines from the dredge site cannot exceed those of the receiver site (finest limit is 21.3%) by more than 10%, any dredge site sample greater than 68.7% sand would be compatible for nearshore placement. Grain size testing of the dredge material would be required to verify compatibility for all project areas prior to nearshore placement (along ocean beaches). The Southern California Dredged Material Management Team (SC-DMMT) concurred with this nearshore disposal option during the June 2018 meeting.

To the extent possible, nearshore disposal would not be permitted during the predicted California grunion run. If disposal outside a predicted grunion run is not possible, then monitoring would be conducted to confirm that no spawning activity had occurred.

Open-Ocean Disposal (LA-3)

Within the RGP 54 boundary, material deemed unsuitable for beach replenishment is suitable for disposal at the LA-3 ODMDS. If confirmatory sampling is required, the results must be below the thresholds stipulated in Figure 2.

Confined Aquatic Disposal Site

Should an opportunity for disposal of dredged material not otherwise suitable for beach, nearshore, or ocean disposal to be placed at an approved CAD site, the proposed RGP 54 would allow such disposal site. However, RGP 54 would not be used to establish a new CAD site; a separate approval process would be required.

Upland

Finally, a last alternative location for disposal of dredged material is an approved upland landfill if the material is unsuitable for beach nourishment, nearshore ocean beach nourishment, open-ocean disposal, or a CAD site. A specific disposal facility has not been identified because no specific project is being proposed. Individual applicants would be required to obtain approval for disposal of sediment unsuitable for another disposal method above, or debris at an approved upland facility outside the coastal zone, including completion of any facility-required testing program, if applicable.

Contingency Approach for Dredging to Clean Z-Layer

Confirmatory sampling of the Z-layer is required for specific areas of the harbor. While there is contingency in place for dredged material not meeting thresholds (option to dispose material upland or in a CAD), there is currently no contingency in place for projects exceeding Z-layer thresholds. If the results of the Z-layer testing exceed the allowable thresholds, the City is proposing an option for applicants to dredge deeper to remove contaminated material and achieve a clean Z-layer. Depending on the depth where a clean Z-layer is encountered, dredging may be required beyond the authorized design and allowable overdredge depths stated in the RGP 54. The benefit to this approach is that material exceeding thresholds would be removed from the harbor and a clean surface would remain; however, there are limitations to this approach that could include site specific constraints. Results of the additional confirmatory sampling by the applicant would be included as part of the individual application demonstrating compliance with the specified thresholds for both the dredge cut and Z-layer, as depicted in Figure 2.

Application Review and Processing

The City's Public Works Department is the primary point of contact for applicants seeking authorization under RGP 54. Applications were designed to confirm that each project is consistent with the terms and conditions of the existing RGP 54 and that the application is complete and includes the required information stipulated by each agency. Applications are then submitted monthly in batches to each agency for consideration.

Additional Authority Delegated to City

As demonstrated with the current management of RGP 54, delegating responsibility to the City prevents duplication and increases the efficiency of the program implementation. The City has demonstrated over the past 3 years under the current RGP 54, and historically since the inception of the general permit going back to the 1970s, its ability to manage the numerous requirements and conditions in coordination with the Corps. Under the proposed RGP 54, the City is requesting additional authority delegation, namely for bay beach maintenance activities, as well as for small projects with minimal or no temporary eelgrass impacts. Larger projects while less frequent, would warrant a coordinated City/agency review proportionate with the scope of the projects.

Bay Beach Maintenance Projects

The City is proposing authority to approve routine bay beach maintenance projects. This includes the relocation of sloughed sand from the low tide line (-1 foot MLLW) to the high tide line and is limited to beaches on Balboa Island, Beacon Bay, publicly owned street-end beaches, and other locations. Addressing these locations on an as-needed basis, often as funding becomes available, would address future navigational constraints by relocating sediment before it accumulates below docks. It would also further limit temporary eelgrass impacts by preventing a need for dredging at depths where eelgrass grows (below the low tide line). Bay beach maintenance would involve shallow-depth hydraulic dredging during high tide or traditional tractor work during low tide. Additional components of the proposed bay beach maintenance projects include:

- No impacts to eelgrass would be allowed during any bay beach maintenance projects;
- Pre- and post-bathymetry and topographic surveys for bay beach maintenance projects would be eliminated, as most of the work would occur partially within the water and higher up on the dry beach. Additionally, the volume difference between pre-and post-construction surveys would be difficult to quantify given the overlapping areas where material would be moved. For the purposes of estimating volumes, the City would assume approximately 1 foot of excavation per square foot of beach.

Bay beach maintenance would occur along 25,000 linear feet of shoreline in Newport Harbor. The beach width would be approximately 10 feet wide, requiring excavation of approximately 1 foot throughout the proposed area. Based on 25,000 linear feet of bay beach maintenance, the City is proposing a not-to-exceed annual volume of 9,500 CY over 6 acres. The City is proposing that the bay beach maintenance projects would not count toward the 75,000 CY annual maximum dredge volume limit for RGP 54.

Individual applicants would still be required to submit documentation to the City (or in the case of City projects, submit documentation to the file) to confirm that the areas are within the bay beach maintenance areas and that no temporary impacts to eelgrass would occur, as well as to track areas and presumed volumes. The City would include documentation of these projects in the annual reports to the agencies.

Small Projects with Minimal Temporary Eelgrass Impacts

Under the existing RGP 54, the Corps delegates authority to the City to approve projects dredging up to 1,000 CY with no potential impact to existing eelgrass. The CCC and the California Regional Water Quality Control Board (RWQCB) still require review of all projects proposed under the existing RGP 54. The City is proposing to extend that delegation authority to all agencies, and the City is also proposing authority to approve projects dredging less than 2,500 CY with temporary impacts to eelgrass. This process would increase the efficiency of the review process because the City would be able to manage the numerous smaller projects that have negligible impacts much more quickly than

the agencies, thereby decreasing the agency workload. The total allocated temporary disruption of eelgrass would not change under this proposed modification to the existing RGP 54.

Proposed Mitigation– The proposed mitigation may change as a result of comments received in response to this public notice, the applicant's response to those comments, and/or the need for the project to comply with the 404(b)(1) Guidelines. In consideration of the above, the proposed mitigation sequence (avoidance/minimization/compensation), as applied to the proposed project is summarized below:

Avoidance: The proposed project consists of small maintenance dredging. Dredging of no more than 75,000 CY of sediment would be authorized annually within the project area. Any individual project proposing to dredge more than 8,000 CY of sediment would need a separate Corps authorization. The ecosystem-based Eelgrass Plan is proposed for adoption as a part of the reauthorized RGP 54 program. The applicant has also proposed BMPs to be used to avoid and minimize any temporary construction-related potential effects to water quality, EFH, and federal listed species.

Minimization: The applicant is proposing the following BMPs that would be used to minimize any potential impacts to the waters of the United States:

1. Applicants would comply with all conditions stipulated in the Eelgrass Plan.
2. Applicants may use the *Caulerpa* presence/absence determination from the biennial eelgrass surveys in lieu of commissioning one or more *Caulerpa* surveys as part of the application and pre-construction permit requirements. If the applicants elect to perform their own *Caulerpa* surveys, they would be conducted in accordance with the *Caulerpa* Control Protocol and submitted to the Corps Regulatory Division between 30 and 90 days prior to construction. The results of that survey would be provided to the Corps Regulatory Division, Regional Water Quality Control Board, National Marine Fisheries Service (NMFS), California Coastal Commission (CCC), and California Department of Fish and Wildlife (CDFW) at least 15 calendar days prior to initiation of work in navigable waters. In the event that *Caulerpa* is detected within the project area, work would not commence until the infestation has been isolated and treated and the risk of spread is eliminated as confirmed in writing by the Corps Regulatory Division, in consultation with the NMFS, CCC, and CDFW.
3. Disposal of construction and trash debris into the intertidal zone or the nearshore waters would be prohibited.
4. All construction-related equipment would be maintained in good working order to minimize the potential for hazardous waste spills. Current hazardous material spill prevention and cleanup plans would be maintained on site.
5. All waste material removed from the project site would be relocated to an approved disposal point.
6. Operators of construction equipment and all other project workers would not harass any marine mammals, waterfowl, or fish in the project area.
7. All dredged material would be handled and transported such that it does not re-enter surface waters of the state outside the protected immediate work area.
8. Water quality monitoring would not be required if the total dredging duration would be 2 days or less. If dredging will extend beyond 2 consecutive days, then monitoring would be required every other day, beginning with the third day (monitoring will be required on days 3, 5, 7, etc.). If required, water quality monitoring would be conducted consistent with the Water Quality and Sediment Monitoring Plan approved by the RWQCB for the Lower Newport Bay Dredging Program and Lower Newport Bay Water Quality Monitoring Suspended Sediment Special Study.

9. A silt curtain would be used for maintenance dredging projects exceeding 1,000 CY or where dredging would extend beyond 2 consecutive days.
10. If dredged material is disposed of in the nearshore marine environment between March 1 and August 31, adequate monitoring of grunion spawning would be conducted to avoid any impacts to grunion. If grunion are present at a receiving beach, placement activities that would affect grunion spawning shall cease until the next predicted run period in which no grunion are observed at the receiving beach.

Compensation: This RGP 54 reauthorization does not authorize significant impacts to aquatic resources. Based on any relevant information, the Corps would determine if impacts to aquatic resources have occurred and if mitigation is required. Any required mitigation would be the responsibility of the Permittee and failure to implement Corps-specified mitigation could result in enforcement proceedings. Any impacts to eelgrass would be mitigated or accounted for according to the Eelgrass Plan.

Proposed Special Conditions

No specific special conditions beyond those included under the existing RGP 54 are proposed at this time.

For additional information please call Gerardo Salas of my staff at (213) 452-3417 or via e-mail at Gerardo.Salas@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT
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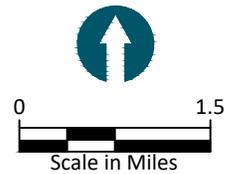
L:\AutoCAD Project Files\090243-01 Newport CAD\Lower Newport Bay\RGP 54\0243RPG-RP-001.dwg VMap FIG-1



Jan 21, 2014 8:09am mpratschner

SOURCE: Image from Bing maps.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

Approximate Project Location:
 33° 36.540', 117° 54.230'





LEGEND:

- Suitable to -10 feet MLLW plus 2 feet of overdepth for unrestricted disposal at the LA-3 ODMDS. Grain size required prior to beach replenishment or nearshore placement to demonstrate suitability.
- Suitable to -7 feet MLLW plus 1 foot of overdepth for unrestricted disposal at the LA-3 ODMDS. Z-layer testing to confirm post-dredge surface contains mercury less than 1 ppm prior to dredging to demonstrate newly exposed surface is clean. Grain size required prior to beach replenishment or nearshore placement to demonstrate suitability.
- - - Area not included under RGP 54.
- Material proposed for disposal at LA-3 ODMDS must have chemical testing for mercury with agency concurrence to verify suitability prior to disposal. Z-Layer testing is required to confirm post-dredge surface contains mercury less than 1 ppm prior to dredging to demonstrate newly exposed surface is clean. Material proposed for beach replenishment or nearshore placement must also have grain size verification prior to placement.
- Material proposed for disposal at LA-3 ODMDS must have chemical testing for mercury and PCBs with agency concurrence to verify suitability prior to disposal. Z-layer testing is required to confirm post-dredge surface contains mercury less than 1 ppm and PCBs less than 100 ppb prior to dredging to demonstrate newly exposed surface is clean. Material proposed for beach replenishment or nearshore placement must also have grain size verification prior to placement.
- - - Suitable to -10 feet MLLW plus 2 feet of overdepth for unrestricted disposal at the LA-3 ODMDS. Material proposed for beach replenishment or nearshore placement must have grain size verification and chemical testing for DDTs with agency concurrence to verify suitability prior to placement. Z-layer testing is required to confirm post-dredge surface contains DDT concentrations less than 18.0 ppb*.

Publish Date August 1, 2018.

SOURCE: Aerial from Bing maps. Coastline extents from City of Newport Beach.

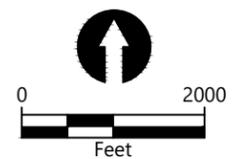
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.

VERTICAL DATUM: Mean Lower Low Water (MLLW).

NOTE:

Areas included in RGP 54 are generally between the bulkhead and pierhead lines with the shoreline/boundary demarcated by the various colors/hatched lines. The colored lines, whether solid or dashed, always follow the shoreline rather than following individual fingers or docks. ODMDS (Ocean Dredged Material Disposal Site) and ppm (parts per million).

* Represents the 95% Upper Confidence Limit for surface sediment concentrations within the RGP permit area.



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 Filepath: K:\Projects\0243-City of Newport Beach\RGP 54\0243 RPG-RP-012 SUITABLE.dwg FIG 16



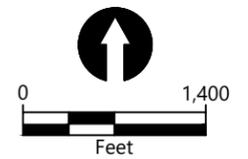
Figure 2
Proposed RGP 54 Boundaries

RGP 54 Reauthorization



LEGEND:

- Transect
- X-## Actual Sampling Location



AERIAL SOURCE: Bing Maps 2016. Dredge depths and boundaries from U.S. Army Corps of Engineers.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83, U.S. Feet.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

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Figure 3
Newport Beach Transects with Actual Sampling Locations

RGP 54 Reauthorization

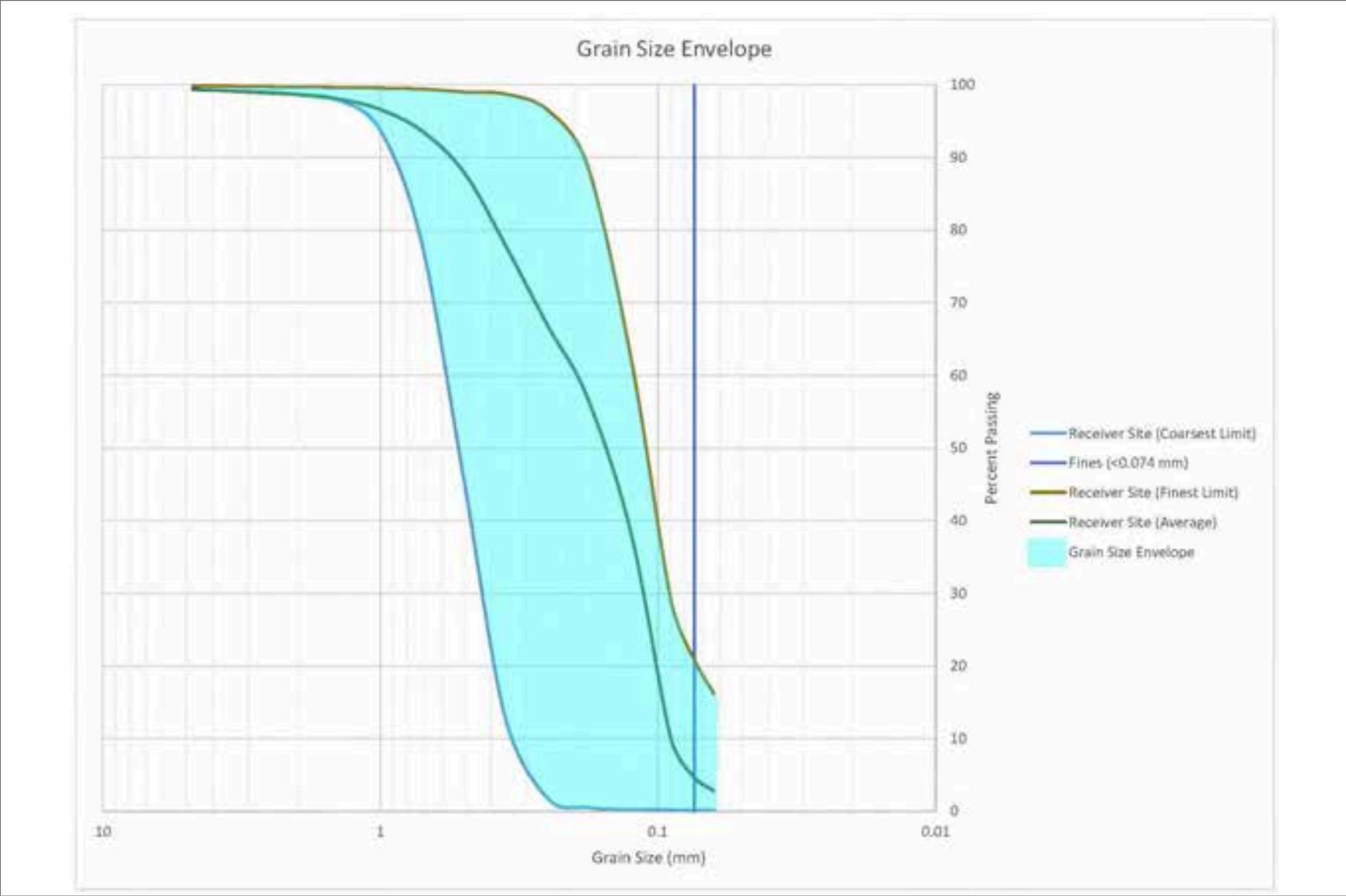


Figure 4
Grain Size Envelope for Newport Beach