

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Fred Hetzel)  
MEETING DATE: September 14, 2016

**ITEM:** 6A

**SUBJECT:** **Port of San Francisco, Port Maintenance Program, San Francisco City/County** – Adoption of Waste Discharge Requirements and Water Quality Certification

**CHRONOLOGY:** The Board has not considered this item before.

**DISCUSSION:** The Revised Tentative Order (Appendix A) would issue waste discharge requirements and water quality certification to the Port of San Francisco (Port) to implement its Port Maintenance Program (Program) as specified in the Port's Maintenance Manual (Manual). The purpose of the Program and the Manual is to ensure that all maintenance activities keep the Port's facilities operational while protecting water quality and beneficial uses. The Order would authorize routine maintenance activities including repair, restoration, replacement, or removal of any authorized structure or fill within the waterfront of San Francisco City and County, consistent with the Program and the Manual.

In taking this approach to maintenance, the Port will reduce maintenance impacts by removing sources of contamination from San Francisco Bay, reducing the amount of fill in the Bay, replacing structures with ones made of inert material, and implementing appropriate best management practices (e.g., floating booms, silt curtains) to reduce turbidity and other temporary impacts. Overall, the Program should protect and enhance natural resources and the environment.

A tentative order was circulated for 30 days on July 22, 2016. We received no comments on the tentative order. The Port had previously requested that we remove a prohibition on concrete curing because estuarine tidal and wave action minimizes potential water quality impacts related to this activity. We concur and have revised the tentative order to remove this prohibition. We have also made minor editorial and formatting revisions to the tentative order. We expect this item to remain uncontested.

**RECOMMEN-  
DATION:** Adoption of the Revised Tentative Order

**APPENDIX A:** Revised Tentative Order

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**REVISED TENTATIVE ORDER No. R2-2016-00XX**

**WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION for:  
PORT OF SAN FRANCISCO  
PORT OF SAN FRANCISCO'S PORT MAINTENANCE PROGRAM  
SAN FRANCISCO CITY AND COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), finds that:

1. The Port of San Francisco (Port) has applied to the Regional Water Board for authorization to implement its Port of San Francisco Maintenance Program (Port Maintenance Program). The Port requires the routine maintenance of its aging shoreline infrastructure and navigational equipment. It is anticipated that routine maintenance activities will keep the Port's facilities operational while improving water quality and protecting beneficial uses.
2. This Order applies to maintenance activities conducted pursuant to the Port Maintenance Program at Port facilities along the waterfront and within the City/County limits of San Francisco (Port Maintenance Area). The Port Maintenance Area extends 7.5 miles south from the Hyde Street Pier (Latitude: 37.48.32.64N, Longitude: 122.25.36.70W), running along the waterfront to the northern edge of India Basin (Latitude: 37.44.14.36N, Longitude: 122.21.59.09W). The Port Maintenance Area includes San Francisco's northern waterfront (Northern Waterfront), extending from Hyde Street Pier to Pier 40, and San Francisco's southern waterfront (Southern Waterfront), extending from Pier 40 to the northern edge of India Basin. The Port Maintenance Area excludes nine properties known or believed to be impacted by hazardous materials.
3. The Port finalized its *Port of San Francisco, Port Wide Maintenance Manual* (Maintenance Manual) (Attachment A) on April 29, 2016, to guide implementation of the Port Maintenance Program. The Maintenance Manual describes maintenance activities, impact avoidance and minimization measures, best management practices (BMPs), program organization, and program responsibilities.
4. The Port initially applied for Waste Discharge Requirements (WDRs) and Water Quality Certification (Certification) with the Regional Water Board on April 14, 2015, and subsequently revised its application on August 5, 2015, and on April 29, 2016.
5. This Order contains WDRs and Certification for the activities covered herein and conducted by the Port consistent with the Order's requirements.

***Port Maintenance Program Description, Impacts, and Mitigation***

6. The Northern Waterfront was designated as a non-navigable water of the United States by Public Law 90-483, title I, paragraph 114 (codified at 33 U.S.C. §59h). The declaration only applied to portions of the Northern Waterfront that were already "bulkheaded and filled or [were] occupied by permanent pile-supported structures" as of the date of the statute, August 13, 1968. (Id.) Thus, standard repair and maintenance activities on pre-1968 bulkheads, fill, and permanent pile structures are not subject to regulation under Section 10 of the Rivers and Harbors Act (33 U.S.C.

403) (U.S. Army Corps of Engineers (Corps) File No. 2015-0015S). Construction of new bulkheads or structures, however, will still require a Corps permit. (See 33 U.S.C. §59h).

7. The Southern Waterfront is a 3.5 mile reach of shoreline between Pier 40 in the north to the northern edge of India Basin in the south. The Southern Waterfront is a navigable water of the United States.
8. The Northern and Southern waterfronts are all waters of the State.
9. The Port Maintenance Program consists of four categories of maintenance activities: 1) repair, 2) restoration, 3) replacement, and 4) removal of existing port infrastructure like reinforced banks, navigational aids/regulatory markers, wooden piles, piers, wharves, fenders, dolphins, whales (including under pier structures such as pipelines and other utilities), pier aprons, minor coring of pier decks (to install related structures), fencing, bulkheads, breakwaters, docking facilities, bollards, cranes, pier canopies, other small appendages, decks, stringers, beams, or girders (Attachment B).
10. This Order authorizes repair and stabilization of existing banks, including unarmored and armored shorelines, seawalls, dikes, and existing riprap, up to 500 linear feet per year and 1,000 linear feet total.
11. Restoration of existing navigation aids and regulatory markers will be approved by and installed in accordance with the requirements of the U.S. Coast Guard. This Order authorizes the restoration of up to 5 existing navigation aids or regulatory markers per year (approximately 1 cubic yard per year) and 25 existing navigation aids or regulatory markers total (approximately 5 cubic yards).
12. This Order authorizes the replacement of up to 1,000 piles per year and 5,000 piles total.
13. This Order authorizes the repair of piers, wharves, fenders, dolphins, whales, pier aprons, and minor coring of pier decks, up to 100,000 square feet per year and approximately 500,000 square feet total. The majority of these structures are above, not within, waters of the State.
14. This Order authorizes the replacement of fencing, up to 100 square feet per year and 500 square feet total.
15. This Order authorizes the repair of bulkheads and breakwaters, up to 300 square feet per year and 1,500 square feet total.
16. This Order authorizes the replacement or reconfiguration of existing docking facilities, including docks, piers, and gangways, up to 150,000 square feet per year and approximately 750,000 square feet total. The majority of these structures are above, not within, waters of the State.
17. This Order authorizes the replacement of bollards, cranes, pier canopies, and other small appendages, including ladders, fenders, and camels, up to 50 small appendages per year and 100 total. The majority of these structures are above, not within, waters of the State.
18. This Oder authorizes the removal of existing piles and associated structures such as decks, piers, stringers, beams, and girders, up to 54,000 square feet per year and approximately 270,000 square feet total.
19. The following activities are not proposed in the Port Maintenance Program and are therefore not authorized by this Order: projects that would enlarge the net footprint of over-water structures by more than 20% of existing area over water; maintenance or restoration projects outside of the Port Maintenance Area, or for which maintenance and monitoring is performed under project-specific approvals (e.g., wetlands located at Pier 94 and Heron's Head Park); work in areas that are

identified by local, State, or federal agencies as impacted by hazardous waste, subject to voluntary cleanup agreement or regulatory order or regulated as solid waste disposal sites (Attachment C); and emergency activities and procedures. A situation is considered an “emergency” if it is “a sudden, unexpected occurrence, involving a clear and imminent danger demanding immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services.” (Pub. Res. Code §21060.3). Emergencies include events such as fire, flood, earthquake, or other soil or geologic movements, as well as riot, accident, or sabotage. (Id.)

20. The Maintenance Manual reflects an approach to repair, restoration, replacement, and removal projects intended to minimize detrimental impacts to water quality and beneficial uses. The projects covered under the Port Maintenance Program are expected to result in long-term improvement and enhancement of beneficial uses because the projects will improve navigation along the San Francisco waterfront, reduce fill in San Francisco Bay, reduce potential hazards from dilapidated structures, and replace structures with new structures made of inert material. When considered collectively, the beneficial effects achieved through implementation of the Port Maintenance Program will result in a net environmental benefit, contributing to more naturally functional tidal and subtidal habitats.
21. The Maintenance Manual describes the process for identifying and prioritizing maintenance projects.
22. Although the Regional Water Board agrees with the Port’s determination that no significant adverse environmental effects will result from implementation of the Port Maintenance Program, the less-than significant impacts on beneficial uses and water quality from Port Maintenance Program activities that cannot be entirely avoided through pre-maintenance planning will be mitigated through implementation of the avoidance measures and BMPs described in the Maintenance Manual.
23. This Order requires submittal of a Notice of Proposed Work (NPW) acceptable to the Executive Officer by June 1 of each year. The NPW will describe Port maintenance activities to be conducted during the upcoming year.
24. This Order requires submittal of an Annual Report acceptable to the Executive Officer by January 31 of each year. The Annual Report will describe the maintenance activities conducted during the year ending the previous December 31, include photo documentation of the maintenance projects before, during, and after project construction, the acreage and linear distance of impacts to waters of the State, and a description of the BMPs implemented for each project. The first Annual Report shall be due January 31, 2018.
25. This Order is effective only if the Port pays all fees required under California Code of Regulations, title 23, section 2200 et seq. The application fee for the Port Maintenance Program, \$13,500 for the five-year term of the Order, has been paid in full.

### ***Regulatory Framework***

26. The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes implementation plans to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law, and U.S. EPA, where required.

27. The Basin Plan lists the following existing and potential beneficial uses for surface waters along the shoreline and within the Port limits:
- a. Ocean, Commercial, and Sport Fishing (COMM)
  - b. Estuarine Habitat (EST)
  - c. Industrial Service Supply (IND)
  - d. Fish Migration (MIGR)
  - e. Navigation (NAV)
  - f. Industrial Process Supply (PROC)
  - g. Preservation of Rare and Endangered Species (RARE)
  - h. Water Contact Recreation (REC-1)
  - i. Non-water Contact Recreation (REC-2)
  - j. Shellfish Harvesting (SHELL)
  - k. Fish Spawning (SPWN)
  - l. Wildlife Habitat (WILD)

The Port Maintenance Program will govern routine maintenance activities along the 7.5 mile shoreline within Port limits. Maintenance activities may temporarily impact the beneficial uses identified above.

28. The goals of the California Wetlands Conservation Policy (Governor's Executive Order W-59-93, signed August 23, 1993) include ensuring no "overall loss" and achieving a "long-term net gain in the quantity, quality, and permanence of wetlands acreage and values..." The proposed activities, as allowed by this Order, will result in no net loss and likely in a small gain in the area and quality of wetlands or waters of the State.
29. The California Environmental Quality Act (CEQA) requires all discretionary projects approved by public agencies to be in full compliance with CEQA. The City and County of San Francisco Planning Department, as lead agency, determined that the proposed maintenance activities were categorically exempt from CEQA. (Cal. Code Regs., tit. 14, §15301 [covering, *inter alia*, repairs, maintenance, and minor alterations at existing facilities].) The Port submitted a Categorical Exemption Determination to the Regional Water Board dated March 18, 2016.
30. The Regional Water Board, as a responsible agency under CEQA, has considered the Categorical Exemption Determination. The Regional Water Board concurs with the Port's determination that the proposed activities will not result in significant environmental effects. To the extent any activities may have less-than-significant effects on water quality, the Regional Water Board finds that these effects will be minimized by implementing the BMPs described in the Maintenance Manual and by excluding the areas listed in Appendix C from the Port Maintenance Area. In adopting this Order, the Regional Water Board has determined that these minimization measures will eliminate or substantially lessen the less-than-significant effects on water quality, and therefore approves the project. Overall, the Regional Water Board finds that the Port Maintenance Program will protect or enhance beneficial uses and will have an overall positive effect on water quality and the environment.
31. The Port's maintenance activities are consistent with activities administered and permitted by the Corps, which covers bank stabilization or pile removal projects in the Southern Waterfront. Accordingly, adoption of these WDRs will ensure a unified approach to routine maintenance of Port facilities, whether they are located in State or federal waters.

The following State and federally-listed species and designated critical habitat are present within the Port Maintenance Area:

- a. Longfin smelt (*Spirinchus thaleichthys*);
- b. Green sturgeon (*Acipenser medirostris*);
- c. Steelhead, central California coast evolutionary significant unit (*Oncorhynchus mykiss*); and
- d. Chinook salmon, Central Valley (Sacramento) spring-run (*Oncorhynchus tshawytscha*).

32. The Magnuson-Stevens Fishery Conservation and Management Act required that the National Marine Fisheries Service (NMFS) facilitate the development, review, and implementation of fishery management plans (FMPs). The following FMPs are applicable within the Port Maintenance Area: the *Pacific Groundfish FMP*, the *Coastal Pelagic FMP*, and the *Pacific Coast Salmon FMP*.
33. On October 11, 2011, NMFS issued a Programmatic Essential Fish Habitat Consultation (Consultation) for the construction and maintenance of overwater structures in San Francisco Bay. The Consultation analyzes the potential adverse effects to federally-listed species from construction and maintenance of overwater structures in the San Francisco Bay area authorized by the Corps' Regulatory Program. The Maintenance Manual incorporates the recommendations made by NMFS in the Consultation for the maintenance activities covered by the Port Maintenance Program.
34. In October 2014, NMFS issued the California Eelgrass Mitigation Policy and Implementation Guidelines (Eelgrass Guidelines). The purpose of the Eelgrass Guidelines is to achieve no net loss of eelgrass habitat function in California.
35. On February 3, 2016, NMFS issued a Letter of Concurrence entitled *Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Port of San Francisco's Regional General Permit for Waterfront Maintenance and Repair Activities* (NMFS 2016 Letter of Concurrence) (Corps File No. 2015-00016S). The NMFS 2016 Letter of Concurrence states that NMFS concurs with the Corps that the Port Maintenance Program outlined in these WDRs is not likely to adversely effect the subject listed species and designated critical habitats.
36. On May 26, 2016, the Port adopted the San Francisco Stormwater Management Requirements and Design Guidelines (Stormwater Management Requirements), designed to reduce pollution in stormwater runoff in areas of new development and redevelopment. The Port Maintenance Program incorporates and adheres to the Stormwater Management Requirements.
37. Pursuant to California Water Code (Water Code) section 13263 and California Code of Regulations, title 23, sections 3857 and 3859, the Regional Water Board is issuing WDRs and Certification for the activities proposed in the Maintenance Manual.
38. The Regional Water Board has notified the Port and interested parties of its intent to issue WDRs and Certification for the activities proposed in the Maintenance Manual.
39. The Regional Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

IT IS HEREBY ORDERED that, the Regional Water Board certifies that the Port Maintenance Program described herein shall comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act and with applicable provisions of State law, provided that the Port complies with the following terms and conditions:

**A. Discharge Prohibitions**

1. The direct or indirect discharge of wastes, as defined in section 13050(d) of the Water Code, within or outside of the active project site, to surface waters, or to surface water drainage courses is prohibited, except as authorized in this Order.
2. The discharge shall not cause degradation of any water supply.
3. Excavated sediment shall remain within designated staging and disposal areas at all times. This includes: a) any offsite, authorized temporary or permanent location maintained in compliance with federal and State regulations, b) any onsite, authorized temporary or permanent location, provided that the material is isolated and contained to prevent impacts to waters of the State and their beneficial uses, or c) a landfill authorized to accept the sediment.
4. The discharge of sediment and runoff or decant water from excavated materials disposed of at any temporary or permanent disposal site to waters of the State is prohibited.
5. Maintenance activities subject to these requirements shall not cause a condition of pollution or nuisance as defined in Water Code section 13050, subdivisions (l) and (m), respectively.
6. Water quality or beneficial uses shall not be degraded as a result of the Port Maintenance Program.
7. No debris, soil, silt, sand, cement, concrete, or washings thereof, or other construction-related materials or wastes, petroleum products, or other organic or earthen material shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be washed by rainfall or runoff into waters of the State.
8. Use of creosote-treated replacement piles or other wooden structures treated with creosote is prohibited.

**B. Discharge Specifications**

1. Effective erosion and sediment control measures shall be implemented and maintained to prevent the discharge of sediment to waters of the State.
2. Excavated material shall be fully contained to prevent the discharge of sediment by wind or stormwater runoff into waters of the State.
3. In accordance with Water Code section 13260, the Port shall file with the Regional Water Board a report of any material change in the character, location, or quantity of this waste discharge that is beyond the scope of this Order. Any proposed material change in the discharge requires approval by the Regional Water Board after a hearing under Water Code section 13263.

### **C. Receiving Water Limitations**

1. Port Maintenance Program activities shall not cause the following conditions to exist in waters of the State at any location:
  - a. Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect water quality or beneficial uses.
  - b. Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect water quality or beneficial uses.
  - c. Waters shall not contain biostimulatory substances in concentrations that promote aquatic growth to the extent that such growth cause nuisance or adversely affect water quality or beneficial uses.
  - d. Waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life.
  - e. There shall be no alteration of temperature of waters of the State beyond ambient conditions.
2. Port Maintenance Program activities shall not cause the following limits to be exceeded in waters of the State at any location:
  - a. *Dissolved Oxygen:*  
5.0 mg/l minimum. When natural factors cause lesser concentrations, then this discharge shall not cause further reduction in the concentration of dissolved oxygen.
  - b. *pH:*  
The pH shall not be depressed below 6.5 nor raised above 8.5. Controllable water quality factors shall not cause changes greater than 0.5 units in normal ambient pH levels.
  - c. *Turbidity:*  
Waters shall be free of changes in turbidity that cause nuisance or adversely affect water quality or beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU.
3. Port Maintenance Program activities shall not cause a violation of any particular water quality standard for receiving waters adopted by the Regional Water Board or the State Water Board as required by the Clean Water Act and regulations adopted there under. If more stringent applicable water quality standards are promulgated or approved pursuant to Clean Water Act section 303, or amendments thereto, the Regional Water Board will revise and modify this Order in accordance with more stringent standards.

### **D. Provisions**

#### ***Repair Activities***

1. The Port shall follow the repair activities guidelines described in the Maintenance Manual.
2. Repair of under-pier utilities shall be conducted in accordance with the Port's lock-out/tag-out program, outlined in the Maintenance Manual. This shall ensure that all pipelines are turned off at the source to ensure that water or wastewater will not be discharged into waters of the State.



3. Repair and stabilization of banks shall be at low tide to the greatest extent possible to minimize temporary impacts to water quality. The discharge of any hazardous, designated, or non-hazardous waste as defined in California Code of Regulations, title 27, sections 20164, 20210, and 20220, or hazardous substance as defined in Water Code section 13050, shall be conducted in accordance with applicable State and federal regulations.
4. Repair activities shall be prioritized for structures posing the greatest threat to water quality and navigational concerns.

***Restoration Activities***

5. The Port shall follow the restoration activities guidelines described in the Maintenance Manual.
6. Restoration of navigational aids and markers shall be implemented in accordance with U.S. Coast Guard requirements to ensure navigational safety.
7. Navigational aids and markers shall be composed of materials resistant to deterioration due to solar radiation exposure.
8. The Port shall cleanup, remove, and relocate any wastes that are discharged in violation of this Order.

***Replacement Activities***

9. The Port shall follow the replacement activities guidelines described in the Maintenance Manual.
10. Existing piles and other wooden structures requiring replacement may not be replaced with creosote-treated material. Replacement wood piles treated with preservative (AZCA) shall be wrapped with polyvinyl chloride (PVC) material in accordance with the specifications of the NMFS 2016 Letter of Concurrence. The Port shall consider and implement feasible alternatives to treated-wood piles for large projects (>100 piles) or where significant contiguous areas of pile-supported structures are located.

***Removal Activities***

11. The Port shall follow the removal activities guidelines described in the Maintenance Manual.
12. Existing sediment quality data in areas planned for pile removal or sediment excavation shall be reviewed prior to conducting work to assess risks of mobilizing or exposing contaminated sediments and reported in the annual NPW, along with proposed measures to avoid, minimize, and otherwise address potential water quality impacts from the contaminated sediment.
13. Existing piles in areas with known elevated contaminant levels shall be cut instead of pulled; cut piles shall be capped as warranted.

***Best Management Practices***

14. The Port shall implement BMPs as outlined in the Maintenance Manual to prevent pollutants from discharging into waters of the State during Port Maintenance Program activities.
15. The Port shall implement the requirements of the Stormwater Management Requirements to minimize pollutant discharging into waters of the State post development and redevelopment activities of the Port Maintenance Program. This includes, but is not limited to, providing low impact development stormwater treatment controls for runoff from redeveloped areas of

impervious surface of 5,000 square feet or greater and providing full trash capture, or the equivalent, for Port areas discharging to the storm drain.

16. The Port shall halt work activities if fish, amphibians, or other aquatic organisms are exhibiting stress or are found dead within 1,000 feet of a work activity or discharge. The Port shall immediately: a) assign a qualified biologist to investigate the cause of the problem, b) determine if the cause is related to Port Maintenance Program activities, and c) if determined to be related to a Port Maintenance activity, develop and implement corrective action measures to resolve the problem. The Port shall immediately report all incidents involving dead or stressed aquatic organisms to the Regional Water Board, the California Department of Fish and Wildlife (CDFW), and NFMS staff in accordance with Provision D.22 of this Order.

### ***Monitoring and Reporting***

17. Any requirement for a report made as a provision to this Order is a formal requirement pursuant to Water Code section 13267, and failure to submit, late or inadequate submittal, or falsification of such technical report(s) is also subject to civil liability pursuant to Water Code section 13268. All mitigation monitoring reports shall be submitted annually to the Regional Water Board as part of the Annual Reports in accordance with Provision D.21 of this Order.
18. The Port shall submit the NPW that includes information on the projects that will be conducted in the upcoming year. The Port shall include the following information in each NPW:
  - a. List of proposed activities, within the Port Maintenance Program, that have potential to create significant underwater noise (e.g., pile-driving with impact hammer) or create turbidity or disturb the Bay floor or shoreline for more than three days (e.g., bank stabilization and bulkhead repair). The list shall include the latitude/longitude of each proposed activity, the type of proposed activity (e.g., repair, restoration, replacement, or removal), acreage and linear distance of impacts, Sediment Quality/Turbidity BMPs that would be specific for this activity (e.g., use of silt screens), and any potential impacts of known or reasonably suspected contaminated sediment resulting from proposed maintenance activities;
  - b. Photo-documentation for all proposed activities that have potential to create significant underwater noise or create turbidity or disturb the seabed for more than three days. These photos shall document pre-construction conditions of structures, as well as the site conditions during each day of these activities; and
  - c. Monitoring activities.
19. The NPW shall be submitted acceptable to the Executive Officer by June 1 of each year. The NPW shall describe the Port's maintenance activities proposed for the upcoming maintenance season.
20. The Port shall include an updated Maintenance Manual with the Year 2 NPW submittal acceptable to the Executive Officer. The Maintenance Manual shall be updated to include more-detailed descriptions of maintenance practices, BMPs and their implementation, responsible parties at the Port, reporting, and all other information, as appropriate. The update shall be informed by the experiences gained implementing the first two years of maintenance activity work under this Order.
21. The Annual Report shall be submitted by January 31 of the year following the annual NPW submittal, acceptable to the Executive Officer. Annual Reports shall be submitted by uploading

them to California EcoAtlas website at <http://ecoatlas.org/regions/ecoregion/bay-delta/projects> and via mail to the Regional Water Board. The Port shall include the following information in each Annual Report:

- a. List of activities that occurred within the Port Maintenance Program the previous year. Include the type of activity (e.g., repair, restoration, replacement, or removal), and acreage and linear distance of impacts;
  - b. Records of implementation of BMPs and avoidance and minimization measures, including photo-documentation for all activities that had potential to create significant underwater noise, create turbidity, or disturb the seabed for more than three days. Photos should document progress of the project as well as post-construction conditions of structures; and
  - c. Monitoring Reports.
22. The Port shall immediately, and no later than within 24 hours of occurrence, notify the Regional Water Board staff by telephone or e-mail whenever an adverse condition occurs as a result of a maintenance activity or related discharge. An adverse condition includes, but is not limited to, a violation or threatened violation of the conditions of this Order, spill of petroleum products or toxic chemicals, damage to control facilities that could affect compliance, or inadvertent discovery of an area with elevated levels of contamination. A written notification of the adverse condition shall be submitted to the Regional Water Board within five days of occurrence. The written notification shall be acceptable to the Executive Officer and characterize the adverse condition, describe any remedial actions taken to abate the condition, and propose any additional or followup actions necessary to remedy the condition, including a corresponding implementation time schedule.

### ***Fees***

23. The fee amount for the WDRs portion shall be in accordance with the current fee schedule, per California Code of Regulations, title 23, section 2200, subdivision (a), based on the quantity of waters of the State impacted by discharges authorized by this Order. The fee amount for the five-year term of the Order is calculated to be \$13,500, which has been paid in full. An annual discharge fee of \$600 shall also be paid to the Water Board in each year in which impacts to waters of the State that are authorized by this Order are implemented. After the five-year term of this Order, an Annual Post Discharge Monitoring Fee of \$300 shall be paid to the Water Board until the monitoring reports have all been submitted to the Water Board. After the initial year, the Annual Active Discharge portion of the fee shall be billed annually to the Port. After the five-year term of this Order, the Annual Post-Discharge Monitoring Fee shall be billed annually to the Port until all mitigation sites and mitigation projects required as mitigation for impacts to waters of the State have met their success criteria and the attainment of success criteria has been documented in a final monitoring report. Fee payments shall indicate the Order number, WDID number, and the applicable year.

### ***Records Provisions***

24. The Executive Officer may request that data be provided to the Regional Water Board at times outside of the reporting requirements specified in this Order.
25. The Port shall retain records of all monitoring information and maintenance records, copies of all reports required by this Order, and records of all data used to complete the application for this Order, for a period of at least five years from the date of the report or application. The Executive Officer may extend the period of records retention beyond five years, as necessary.

26. The Port shall submit electronic versions all required reports or documents.

***General Provisions***

27. All Provisions in this Order apply to all waters located within the extent of the Port Maintenance Program, including the Northern and Southern waterfronts.
28. The Port shall comply with all the Discharge Prohibitions, Discharge Specifications, Receiving Water Limitations, and Provisions of this Order immediately upon adoption of the Order or as provided in the Order.
29. The Port shall comply with all necessary approvals or permits for the Port Maintenance Program from applicable government agencies, including, but not limited to, the Regional Water Board, CDFW, the Corps, the U.S. Fish and Wildlife Service (USFWS), NMFS, and local agencies. The Port shall submit copies of such approvals or permits to the Executive Officer prior to Port Maintenance Program implementation.
30. This Order does not allow for the take, or incidental take, of any special status species. The Port shall use the appropriate protocols, as approved by NMFS, CDFW, and USFWS, to ensure that maintenance activities do not impact the RARE beneficial use.
31. The Port shall implement the Port Maintenance Program in accordance with the implementation methods described in the Maintenance Manual and the requirements herein and shall comply with all applicable water quality standards.
32. Activities that have potential to create significant underwater noise (e.g., pile-driving with impact hammer) or create turbidity or disturb the seabed for more than three days (e.g., bank stabilization and bulkhead repair) shall only be conducted during the designated work windows from June 1 - November 30.
33. If any in-water work is performed during the Pacific herring spawning or hatching season (December 1 – February 28), a CDFW-approved biologist shall monitor the project site daily and at any time when in-water construction activity is taking place. In the event that the onsite monitor detects herring spawning at, or within 200 meters of in-water construction activity, the in-water construction activity shall be shut down until the biologist determines that the hatch has been completed and larval herring have left the site. The in-water or other construction activity may resume thereafter.
34. If any work poses potential to disturb nesting birds protected by the Migratory Bird Treaty Act during nesting season (generally April through August), appropriately-trained Port staff or a qualified biologist shall inspect the work area for nesting activity, and work shall be scheduled to avoid potential to impact active nests.
35. If repair activities affect the waters of the State, the work area shall be effectively isolated using appropriate and effective BMPs and restored to pre-project conditions after maintenance is complete.
36. Pile removal shall be conducted in accordance with the 2011 NMFS Consultation, the 2016 NMFS Letter of Concurrence, the Maintenance Manual, and the San Francisco Bay Subtidal Goals Project.
37. If, at any time, an unauthorized discharge to surface water (including wetlands) occurs, or any water quality problem arises, the associated Port Maintenance Program activities shall cease immediately until corrective actions have been implemented, including ensuring that adequate

BMPs are implemented to eliminate the discharge and cleanup and remediate any recoverable pollutants. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.

38. Issuance of WDRs and Certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code sections 13320 and 13330 and California Code of Regulations, title 23, section 3867.
39. The Regional Water Board may add to or modify conditions of this Order, as appropriate, to implement any new or revised total maximum daily load requirements.
40. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Water Code or the Clean Water Act.
41. The Port shall maintain a copy of this Order and all relevant plans and Maintenance Manual at Port Maintenance Program work sites, so as to be available at all times to site operating personnel.
42. The Port shall correct any and all problems that arise from any Port Maintenance Program activity, including a failure to meet the conditions of this Order that results in an unauthorized release of pollutants or adverse impacts to Essential Fish Habitat.
43. The Port shall permit Regional Water Board staff or its authorized representative, upon presentation of credentials:
  - a. Entry on to the premises on which maintenance activities are planned or underway, wastes are located, or in which records are kept;
  - b. Access to copy any records required to be kept under the terms and conditions of this Order;
  - c. Access to inspect any treatment equipment, monitoring equipment, or monitoring method required by this Order; and
  - d. Access to sample any discharge or surface water covered by this Order.
44. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable State or federal law. The Port shall implement all BMPs and minimization measures identified in the Maintenance Manual relating to aquatic species, water quality, and hazardous materials. In addition, the Port shall submit Annual Reports of work completed in compliance with this Order and the Maintenance Manual.
45. This Order is not transferable.
46. After five years of Port Maintenance Program implementation, and every five years thereafter, as appropriate, the Port and Regional Water Board, along with other regulatory agencies, shall review the Port Maintenance Program to evaluate its overall effectiveness. The Regional Water Board will consider extending the WDRs for an additional five years to allow continuation of Port Maintenance Program implementation. The review shall include an assessment of maintenance activities conducted to date, including an assessment of the effectiveness of BMPs, identification of BMPs that could be improved, overall adequacy of the Port Maintenance Program, data management, adaptive management updates and any other necessary revisions to the Maintenance Manual, and overall program coordination and

communication between the Port and the regulatory agencies. The Maintenance Manual may be revised or updated based on this review.

47. The Port shall complete all updates to the Maintenance Manual requested by the Executive Officer and submit a revised Manual, acceptable to the Executive Officer, within 90 days of the request or otherwise by the deadline specified by the Executive Officer.
48. The initial authorization of this Order for Port Maintenance Program activities expires on September 13, 2021. However, following the review required above, the Order may be extended in up to five-year increments by letter from the Executive Officer or by the Regional Water Board. Mitigation and monitoring requirements that extend beyond the term of this Order are not subject to the expiration date(s) outlined above, remain in full effect, and are enforceable.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on DATE.

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Bruce H. Wolfe  
Executive Officer

Attachment A: *Port of San Francisco, Port-Wide Maintenance Manual*  
Attachment B: *Table of Maximum Authorized Discharges*  
Attachment C: *Regulated Sites*

# Attachments

Available at:

[http://www.waterboards.ca.gov/sanfranciscobay/board\\_info/agenda.shtml](http://www.waterboards.ca.gov/sanfranciscobay/board_info/agenda.shtml)