

RICHARDSON'S BAY REGIONAL AGENCY

Thursday, February 7, 2008, 2007
5:30 P.M. to 6:30 P.M.

Sausalito City Council Chambers 420 Litho Street Sausalito, CA

PUBLIC COMMENT IS INVITED CONCERNING EACH AGENDIZED ITEM PURSUANT TO THE BROWN ACT. PLEASE LIMIT YOUR COMMENTS TO THREE (3) MINUTES.

AGENDA

5:30 P.M. CALL TO ORDER - ROLL CALL.

1. Minutes of December 20, 2007 Meeting
2. Review report of Harbor Administrator
3. Nuisance Abatement Hearings for 85' Fishing vessel "Emerald Sea"; Owner – Al Abono Jr.
4. Discussion of the recent storm of January 4, 2008
5. Approval of prior expenditures for December and January, 2007, and midyear budget review
6. Mooring Plan status
7. TMDL status
8. Public comments invited concerning items NOT on this Agenda (3-minute limit)
9. Staff comments
10. Board member matters

Adjourn. **NEXT MEETING:** Tentatively planned for April 17, 2008. Please review your calendars and advise Staff on your availability.

A COMPLETE AGENDA PACKET IS AVAILABLE FOR VIEWING AT THE SAUSALITO CITY LIBRARY. TO RECEIVE AN ELECTRONIC MEETING NOTICE, PLEASE EMAIL REQUEST TO DON ALLEE AT dallee@co.marin.ca.us

RICHARDSON'S BAY REGIONAL AGENCY

MEMORANDUM

February 1, 2008

TO: RBRA Board
FROM: Ben Berto, RBRA Clerk
SUBJECT: February meeting

Staff regrets that there aren't too many positives to report on this agenda. The biggest bad news is of course the untimely death of Tod Estrella, due to medical complications arising about of his having ended up in the waters of Richardson's Bay after securing a large vessel that was drifting towards the Belvedere shore (see news report in Board packet). Tod was working for Dave's Diving, and had successfully performed a vessel interception. Tod's spirit and dedication to duty will be sorely missed by all who knew him and have benefited from his efforts.

Abandoned vessel issues

A follow-up to that is the contract between Dave's Diving and the RBRA has expired. Furthermore, Dave has stated he is not interested in renewing this contract, due to recent events. RBRA has been contracting with Parker Dive Service, based out of San Rafael, on an ad hoc basis to perform limited vessel recovery in the interim. The agenda this meeting includes a vessel nuisance abatement, and updates on mooring and the TMDL plan. Some background documents presented to the RBRA Board on the rapid response program have been included for our newer Board members.

Expenses for vessel recovery have risen alarmingly. This is largely due to the costs of wrecking one vessel, the 58' wooden motorboat "Isabel". Dealing with a vessel of this size is beyond the in-house capabilities of the RBRA. The costs to date of intercepting, recovering, and drydocking the "Isabel" are approximately \$25,000. Costs are expected to at least double in order to wreck the vessel, which will require the services of a heavy demolition salvage contractor. The total expense will leave the RBRA with less than \$10,000 in funding for vessel demolition to finish out this fiscal year, a serious program impact.

Large vessels are increasingly mooring in Richardson's Bay, and causing major problems. Such vessels are becoming more common because of a glaring loophole in NOAA's buyback of commercial fishing licenses, wherein they pay fishermen to retire the license but give the now virtually useless vessel back to the fisherman. These filter rapidly down the vessel-possession ladder to end up with individuals who often can not

maintain, insure, or even adequately anchor or moor those vessels. This problem is expected to get worse with the collapse of the salmon fishing industry (see attached article).

Staff is proposing a nuisance abatement against an 85 foot fishing vessel, and will return to the Board in April with options for addressing the oversize vessel problem. Given recent events, it may also be appropriate to discuss for the next fiscal year substantially increasing our local agency budget contributions for vessel wrecking.

Staff is (still) struggling with the accounting SAP software program but should have a detailed breakdown available for the midyear budget review at Thursday's meeting. The Harbormaster got his minutes meeting date cross-threaded, but will email you an unvarnished version tomorrow.

RICHARDSON'S BAY REGIONAL AGENCY

HARBOR ADMINISTRATOR'S REPORT

January 30, 2008

WORKING RELATIONSHIPS

- **Dept. of Boating and Waterways** – Submitted the first reimbursement request from the new grant for \$35,000 on Dec. 21. 2) Working to secure supplemental funding for the new grant due to extraordinary expenses in salvaging one vessel after the storm of 1/4/08.
- **2) US Coast Guard** – Met with Chief Perkins and staff after storm of 1/4/08 to debrief and focus on more cooperative efforts. Monthly meetings will be conducted at Station Golden Gate with USCG staff, Marin Sheriff and Sausalito Police.
- **Marin Sheriff** – Continuous effort to focus on derelict vessels and criminal activity on the anchorage.
- **Sausalito Police Department** – SPD is working with the Corps of Engineers to secure their facilities. Also developing a budget that will cover ½ of our vessel maintenance on the patrol vessel.

DEBRIS REMOVAL

- Disposed of 12 vessels as well as 7 skiffs. Two boats are currently impounded. Three vessels were taken off the anchorage in negotiated actions.
- Continued work on the Governor's Abandoned Vessel Abatement Committee (AVAC) to create a "turn-in" program to provide boaters with a reasonable alternative for disposing of their unwanted boats. Also involved with a committee within the California Harbormasters and Port Captains working on a legal definition of "seaworthy" that will potentially be codified into state law and assist in the removal of derelicts before they sink.

RAPID RESPONSE

- Two boats were rescued before hitting the shoreline. All owners are being charged for the rescue expenses. To date the Rapid response program has cost \$12,660. The RBRA has billed back \$5522 either directly to boat owners or through reimbursement through AWAFF. Annual budget for this program is \$7,000, and the contract with Dave's Diving has expired.

WATER QUALITY

- Conducted a tour of the Bay with Naomi Feger and Farhad Ghodrati from the Regional Water Quality Control Board. We visited water test sites, and they also assisted me in extricating and towing the roof of a houseboat from Pelican Marina.

OTHER

- **CA Association of Harbormasters and Port Captains** – Meeting with the Board in Ventura to discuss issues affecting harbors statewide.

**DESCRIPTION OF STRUCTURE TO BE CONSIDERED FOR RBRA
NUISANCE ABATEMENT HEARING ON FEBRUARY 7, 2008**

**VESSEL: DOCUMENTATION # 505311, @ 85' STEEL FISHING VESSEL
"EMERALD SEA"**

LOCATION: located near #4 daymarker out from Sausalito Yacht Harbor, Sausalito

DESCRIPTION: approx. 85' steel fishing vessel "Emerald Sea"

OWNER / CARETAKER: Al Abono Jr.

NOTIFICATION: Mailed all notices registered mail, return receipt requested. Spoke with Mr. Abono directly on the phone on 1/30/08 and Mr. Abono was informed that the hearing was scheduled for 2/7/08 and that he should either correct the situation or attend the hearing to argue his case before the Board.

REASON FOR ACTION: The "Emerald Sea" is an approximately 85 foot steel fishing vessel of 147 gross tons (hereinafter "Vessel") owned by Mr. Al Abono Jr. Over the past six months, Mr. Abono has anchored his Vessel at the mouth of Richardson's Bay and, except for sporadic brief periods of time, has left his Vessel unmanned.

The area where Mr. Abono's Vessel is anchored in the mouth of Richardson's Bay in an open roadstead which is exposed to wind and waves from winter storms from both North and South wind directions. The anchor and anchor gear currently on board the Vessel are inadequate to secure the Vessel in place. The inadequacy of the Vessel's anchor has been demonstrated on three prior occasions. On August 29, 2007, P.O. Harris of the US Coast Guard reported that the Vessel was dragging. The Vessel was also reported as dragging on September 11, 2007. During the storm on January 4, 2008, the Vessel had to be manned in order to prevent the anchor from dragging. Thus, the Vessel's anchor and anchor gear are currently inadequate to securely anchor the Vessel at the mouth of Richardson's Bay.

Additionally, because the Vessel is a deep-draft vessel, she cannot safely be moved from the mouth of Richardson's Bay to inside Richardson's Bay. Moreover, given Richardson's Bay's year-long windy conditions, the documented occasions indicate that the Vessel's anchor and anchor gear would not be adequate to securely anchor the Vessel anywhere in Richardson's Bay.

Moreover, the concerns raised by the inadequacy of the Vessel's anchor and anchor gear are exacerbated by (1) the fact that the Vessel is unmanned, (2) the Vessel's large size and heavy weight and (3) the fact that the Vessel is carrying hundreds of gallons of diesel fuel.

First, with respect to the occasions in August and September, 2007, Mr. Abono was contacted and attempted to cure the problem. However, because the Vessel is unmanned, there is no possible way to guarantee that should the Vessel drag anchor or break away during the windy conditions experienced in Richardson's Bay that someone would be able to contact Mr. Abono

or that Mr. Abono would be able arrive and secure the Vessel before it hits another vessel or homes on the shoreline, or runs aground.

Second, due to the Vessel's large size and heavy weight (an approximately 85 foot steel fishing vessel of 147 gross tons), there is no public agency capable of providing a rescue to a vessel of this size, including the US Coast Guard. Additionally, if the Vessel were to hit the shore the damage it would wreak on houses would be catastrophic, and the costs of removing and disposing of the wreckage would be unsupportable for local public agencies.

Third, the Vessel also carries hundreds of gallons of diesel fuel, which represents an environmental hazard in the event of a catastrophic grounding.

For the foregoing reasons, the Vessel is currently in violation of Richardson Bay Regional Agency's Nuisance Code, Section 6.04.020 b. ("[a]ny dangerous condition which is detrimental to the health, safety, or welfare of the public") and Section 6.04.020 g. ("[a]ny other condition located on, or use of, a vessel, barge, or object which constitutes a threat to the public.")

The owner has been advised that the Vessel must be relocated out of Richardson's Bay in order to drop this action.

RICHARDSON'S BAY REGIONAL AGENCY

RESOLUTION OF FINDINGS FEBRUARY 7, 2008

Whereas, an @85' steel motor vessel "Emerald Sea", USCG Doc. # 505311 an unmanned ship as shown in "Attachment A" and made part of the Resolution of Findings, has been left abandoned in Richardson Bay for an extended period of time with no maintenance on the vessel or mooring, and

Whereas, this vessel now create a hazard to life, limb and property, to navigation and the environment, and to the enjoyment of the Richardson's Bay by the Public due to the nature of this vessel, and the prior activities of its alleged owner, and

Whereas, ownership of these vessels was ascertained, the owner of this vessel has been personally contacted and given notice through the mail, with notice also being posted on the vessel. Said notices informed the public and owner of this vessel that a public hearing was to be held to consider the declaration of a public nuisance, stating the time and place of the hearing; and

Whereas, a hearing has been held on this date in order for evidence to be presented and to provide the vessel owner an opportunity to be heard, and evidence of the public nuisance has been submitted by the Harbor Administrator, including photographs and field observations.

Now therefore be it resolved, that an @85' steel motor vessel "Emerald Sea", USCG Doc. # 505311 and the items stored on this vessel as shown in "Attachment A" constitute a public nuisance as described by Ordinance 87-1 & 91-2 and the Harbor Administrator is hereby ordered to cause this public nuisance to be abated by removal to a storage and disposal facility if abatement is not completed within _____ **Days** by the owner of this vessel. The Harbor Administrator is further ordered to keep an accounting of the cost of abatement of these vessels and the items stored aboard these vessels, and that the recovery of costs be instituted pursuant to Government Code 25845. Any request for judicial review of the Board's decision must be filed within the time limits specified in Section 1094.6 of the Code of Civil Procedure.

PASSED AND ADOPTED at a meeting of the Richardson Bay Regional Agency on the 7th day of February, 2008, by the following vote:

AYES:

NOES:

ABSENT:

JERRY BUTLER - CHAIR
RICHARDSON'S BAY REGIONAL AGENCY

Attest:

Ben Berto, Clerk of the Richardson's Bay Regional Agency

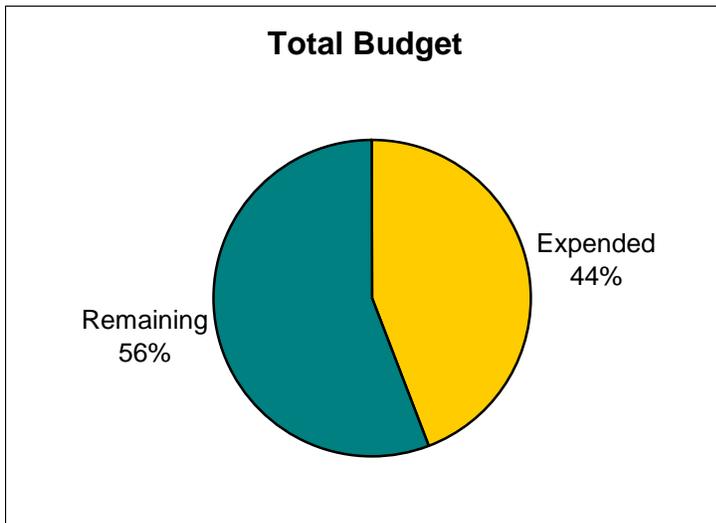
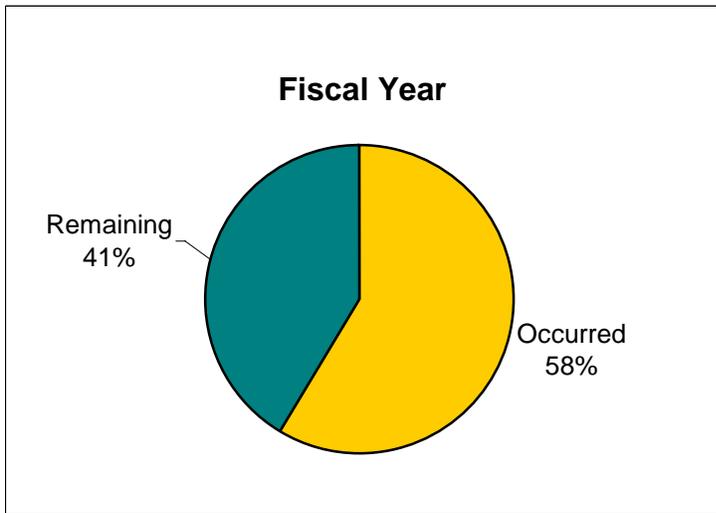
DECEMBER 2007 BALANCE SHEET

| CATEGORY | ACCOUNT NAME | EXPEND. | REVENUE |
|------------------------|---|------------------|----------------|
| Rent - Equip Rental | HERTZ EQUIPMENT RENTAL CORPORATION | 36.19 | |
| Prof Svcs - Other | DAVE'S DIVING SERVICE - sunken boat salvage | 650.00 | |
| Prof Svcs - Other | FLESHMAN, TIMOTHY - day labor | 50.00 | |
| Professional Svcs | MAHER ACCOUNTANCY - State filing | 750.00 | |
| Rent - Equip Rental | HERTZ EQUIPMENT RENTAL CORPORATION | 500.23 | |
| Rent - Off Space | SCHOONMAKER POINT MARINA | 275.00 | |
| Rent - Off Space | SCHOONMAKER POINT MARINA | 147.50 | |
| Rent - Off Space | LIBERTY SHIP WAY | 240.00 | |
| Rent - Equip Rental | HERTZ EQUIPMENT RENTAL CORPORATION | 500.23 | |
| Prof Svcs - Other | DAVE'S DIVING SERVICE - Rapid Response | 250.00 | |
| HazMat Clean Up | BAY CITIES REFUSE SERVICE INC | 403.00 | |
| HazMat Clean Up | BAY CITIES REFUSE SERVICE INC | 540.00 | |
| HazMat Clean Up | BAY CITIES REFUSE SERVICE INC | 460.00 | |
| HazMat Clean Up | BAY CITIES REFUSE SERVICE INC | 397.50 | |
| HazMat Clean Up | BAY CITIES REFUSE SERVICE INC | 425.00 | |
| Com Srvc - Pagers | COOK PAGING | 10.00 | |
| Rent - Off Space | SAUSALITO SHIPYARD & MARINA LLC | | -190.00 |
| Rent - Off Space | SAUSALITO SHIPYARD & MARINA LLC | 190.00 | |
| Prof Svcs - Other | DAVE'S DIVING SERVICE - Rapid Response | 175.00 | |
| Prof Svcs - Other | FLESHMAN, TIMOTHY - day labor | 150.00 | |
| Prof Svcs - Other | DAVE'S DIVING SERVICE | 680.00 | |
| Com Srvc - Cell Phon | AT&T MOBILITY | 110.19 | |
| Rent - Equip Rental | HERTZ EQUIPMENT RENTAL CORPORATION | 621.09 | |
| Com Srvc - Broadband | AT&T internet | 35.40 | |
| Com Srvc - Broadband | Earthlink line | 5.90 | |
| Postage | US POST OFFICE | 5.38 | |
| Oth Maintenance | Goodman's Building Supply - gloves and dust masks | 33.32 | |
| Oth Maintenance | Goodman's Building Supply - tools | 74.41 | |
| Maint & Rep Su - Oth | CI Agent - oil absorbant material | 247.95 | |
| Prof Svcs - Other | WEDLOCK - SURVEY | 185.00 | |
| Rent - Off Space | SCHOONMAKER POINT MARINA | 275.00 | |
| Rent - Off Space | LIBERTY SHIP WAY | 240.00 | |
| Rent - Off Space | SCHOONMAKER POINT MARINA | 147.50 | |
| Rent - Equip Rental | HERTZ EQUIPMENT RENTAL CORPORATION | 485.54 | |
| Publicat & Legal Not | MARIN INDEPENDENT JOURNAL | 552.16 | |
| Com Srvc - Pagers | COOK PAGING | 10.00 | |
| Rent - Off Space | ICB Office rent | 420.00 | |
| Prof Svcs - Legal | Goods Receipt/Invoice Receipt Clearing | 25.00 | |
| Prof Svcs - Other | FLESHMAN, TIMOTHY - day labor | 200.00 | |
| Trav - Mileage | Mileage for 2006 - 2007 | 1,887.62 | |
| Maint & Rep - Equip | PRICE, WILLIAM G | 250.00 | |
| Oth Maintenance | MOLLIE STONE'S - ICE AND WATER FOR CREW | 6.99 | |
| HazMat Clean Up | BAY CITIES REFUSE SERVICE INC | 388.00 | |
| Prof Svcs - Other | FLESHMAN, TIMOTHY - day labor | 300.00 | |
| Prof Svcs - Other | BUTLER, MATT - demo large boat | 4,500.00 | |
| Rent - Equip Rental | HERTZ EQUIPMENT RENTAL CORPORATION | 545.76 | |
| Prof Svcs - Other | BUTLER, MATT - demo large boat | 3,500.00 | |
| Rent - Off Space | LIBERTY SHIP WAY | 240.00 | |
| December totals | | 22,121.86 | -190.00 |

JANUARY 2008 BALANCE SHEET

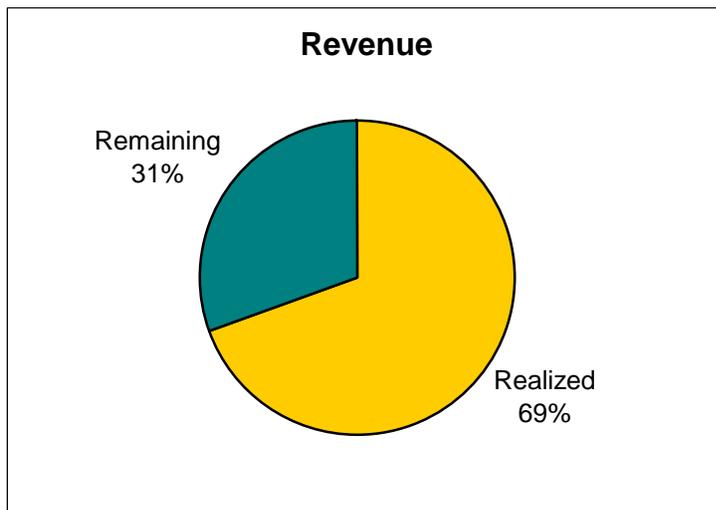
| CATEGORY | ACCOUNT NAME | EXPEND. | REVENUE |
|-----------------------|---|------------------|------------------|
| Sales and Services | Port Supply - reimburse account | | -64.59 |
| Bldgs & Grounds Rent | Mooring rent - Bordelon | | -300.00 |
| Prof Svcs - Other | US BANK GOVERNMENT SERVICES -EFT | 80.18 | |
| Com Srvc - Broadband | AT&T internet | 71.61 | |
| Com Srvc - Broadband | Earthlink line | 5.90 | |
| M & R Svc - Other | US BANK GOVERNMENT SERVICES -EFT | 179.59 | |
| Trav-Meals | Lunch Mtg- Environmental Health & Lab | 42.05 | |
| Office Supplies | Office Depot - file folders and mileage log | 19.98 | |
| Office Supplies | Office Depot - printer ink | 32.45 | |
| Postage | Kinko's - Rapid Response laminate card | 82.41 | |
| Postage | US POST OFFICE | 5.41 | |
| Postage | Fed Ex | 10.09 | |
| Oth Maintenance | US BANK GOVERNMENT SERVICES -EFT | 36.60 | |
| Sales and Services | Cresswell - fees | | -700.00 |
| Rent - Off Space | ICB ASSOCIATES LLC | 420.00 | |
| Bldgs & Grounds Rent | Mooring rent - Borquin | | -300.00 |
| Prof Svcs - Legal | Goods Receipt/Invoice Receipt Clearing | 275.00 | |
| Bldgs & Grounds Rent | Mooring rent - Kelley | | -150.00 |
| ProfServ-CntySalRe | Other - Chrgs for Cur Svcs - Miscellaneous | 9,263.11 | |
| January totals | | 10,524.38 | -1,514.59 |

Percent of Budget and Percent of Year as of January 30, 2008



Expenditures vs. Budgeted Expenditures

| | |
|----------------|-----------|
| Expenditures | \$128,410 |
| Adopted Budget | \$291,179 |



Realized Revenue vs. Budgeted Revenue

| | |
|------------------|-----------|
| Realized Revenue | \$198,262 |
| Budgeted Revenue | \$285,627 |

SFGate.com

Salmon arriving in record low numbers

Jane Kay, Chronicle Environment Writer

Wednesday, January 30, 2008



The Central Valley fall run of chinook salmon apparently has collapsed, portending sharp fishing restrictions and rising prices for consumers while providing further evidence that the state's water demands are causing widespread ecological damage.

The bad news for commercial and sport fishermen and the salmon-consuming public surfaced Tuesday when a fisheries-management group warned that the numbers of the bay's biggest wild salmon run had plummeted to near record lows.

In April, the Pacific Fishery Management Council will set restrictions on the salmon season, which typically starts in May. A shortage could drive up the price of West Coast wild salmon. The council's leaders said the news is troubling because normally healthy runs of Central Valley chinook salmon are heavily relied upon by fishermen. Runs on the other river systems historically have been smaller.

"The low returns are particularly distressing since this stock has consistently been the healthy 'workhorse' for salmon fisheries off California and most of Oregon," the council's executive director, Donald McIsaac, said in a statement Tuesday.

At its peak, the fall run has numbered hundreds of thousands of fish, exceeding 800,000 in some years. But this year the preliminary count has put the number at 90,000 adults returning to spawn in the Sacramento and San Joaquin rivers and their tributaries. During the past decade, the number of returning fish has never fallen below 250,000.

Through the years, the chinook, or king, salmon that pass through San Francisco Bay have suffered from diversions of freshwater to cities and farms, the operation of the water-export pumps that send delta water to other regions, exposure to pollutants and warming ocean conditions.

"We've known that the numbers were going to come in low, but we didn't know they would be this low," said Zeke Grader, executive director of the Pacific Coast Federation of Fishermen's Associations, which represents commercial fishermen.

"This could end up closing us," Grader said. "Part of what we're trying to do is put a fish on the table that people can afford."

A few more than 1,000 commercial fishermen who catch the Central Valley salmon in the ocean from Santa Barbara to southeast Alaska received \$40 million in federal relief funds two months ago. The fishermen were given the funds for losses they incurred due to fishing restrictions in 2006 initiated to protect the Klamath and

Trinity river runs that were suffering from a lack of fresh river water. In addition, related businesses received \$20 million in aid.

Grader, along with representatives of most sport and environmental groups, attribute the salmon decline primarily to Central Valley dams that flood or block spawning grounds and the delta water pumps that move water around the state.

"Twenty years ago, we identified the amount of additional freshwater we needed for healthy fish," he said. A federal law was passed in 1988 to reserve water to help fish, but the water only makes it as far as the delta - not out to the bay, where it would help migrating fish like salmon, he said.

Pollution that drains off farms also hurts the fish, Grader said.

Heidi Rooks, an environmental program manager in the Department of Water Resources, said the salmon's woes probably are linked to the Pacific Ocean.

"Although there are environmental challenges in the Central Valley and the delta, I'm concerned that ocean conditions, including currents and food sources, are influencing our salmon populations as well," she said. "We're working on habitat restoration, but it's not going to address ocean conditions."

Jeff McCracken, a spokesman for the U.S. Bureau of Reclamation, which runs the federal part of California's water system, said he couldn't comment on the preliminary salmon numbers. He said the federal system is operated based on input from fisheries biologists.

The economic impacts from the loss of salmon also would affect businesses associated with sport fishing, including the boating, hotel and manufacturing industries.

"The last two years have been the worst salmon fishing years in all of California history," said Dick Pool, president and owner of Pro-Troll Fishing Products in Concord, a company that makes salmon-fishing equipment.

"The main reason has been the collapse of the delta. The tiny little smolts aren't making it the 100 miles from the rivers to the bay. As the water exports have increased over the last five years, the food chain has been significantly affected," he said.

According to the American Sportfishing Association, there are 2.4 million recreational anglers in California. The economic value of recreational fishing and related activities reached \$4 billion in 2001, according to the association.

The popular chinook salmon is the most recent of the fish that feed in the rivers, delta and the bay to suffer a loss in numbers, said Tina Swanson, senior scientist at the Bay Institute, an environmental group.

Delta smelt, threadfin shad, longfin smelt and striped bass have declined in numbers starting in the early 2000s, she said. "That's the same time that the salmon that returned this year to spawn were going through the delta," she said.

The five highest water-export years have all occurred since 2000, she said.

Today's adult fish were migrating out to the ocean in 2005, the year the delta exports hit a record high, Swanson said.

Salmon are hatched in the rivers and feed in the delta and bay. At three to four months, they move to the ocean, where they feed near shore before they head for the open ocean.

"Dams along the Sacramento and San Joaquin rivers are holding back water, and the flows are usually less than what the salmon need," Swanson said. The low flows of freshwater to the bay can also raise overall water temperatures beyond what is healthy for juvenile salmon, she said. In the delta, the water pumps suck up salmon and other fish. The pumping system moves the juvenile salmon into large, open areas of the delta, where they are prey for bigger fish.

Scientists studying the decline in fish populations also consider the effect of the ocean environment, although they agree that it is still too early to measure the effects of global warming. They look at the timing of migrations and food availability, said William Sydeman, a biologist with the Farallon Institutes for Advanced Ecosystem Research.

He found that in 2005, 2006 and, to a lesser extent, in 2007, the breeding failures of the Cassin's auklet on the Farallones could be linked to the demise of krill in the marine environment at the time when the birds needed it. Salmon, too, feed on krill, anchovies and other small aquatic creatures, which are affected in abundance by ocean conditions.

When salmon come through the bay to the ocean, they spend time in the Gulf of the Farallones, the same as the Cassin's auklets, where they need to find sufficient zooplankton and other food.

"The ocean environment has a strong influence on how many survive the initial period at sea and how many come back to spawn three to four years later in the Sacramento River," Sydeman said.

E-mail Jane Kay at jkay@sfchronicle.com.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/01/30/MNRIUOE8C.DTL>

This article appeared on page **A - 1** of the San Francisco Chronicle

RICHARDSON'S BAY REGIONAL AGENCY

MEMORANDUM

December 12, 2006

TO: RBRA Board

FROM: Ben Berto, RBRA Clerk

SUBJECT: Rapid Response program

Background:

The winter of 2005-2006 produced a series of winter storms that resulted in one incident where a drifting boat became wedged under a resident's deck in Belvedere. RBRA Board and staff have for the last several months investigated a "Rapid Response" program to intercept drifting boats and debris. Boats largely originate from vessels anchored in Richardson's Bay. Staff reported to the Board at previous RBRA meetings, discussing possible program parameters and liability concerns. Staff and RBRA Counsel reported at previous meetings that while RBRA may increase whatever liability exposure exists if we are involved in a rapid response program, the RBRA is currently fully insured against that possibility, and there are steps available to minimize any potential exposure.

The Board at their October meeting also directed staff to investigate how a rapid response program fits in with RBRA's Joint Powers Authority agreement and the Richardson Bay Special Area Plan, and to follow up on program specifics.

Analysis:

There does not appear to be any policy or other language directly on point about a rapid response program in either the Joint Powers Authority Agreement (JPA) or the Richardson Bay Special Area Plan [SAP]. The most closely related language staff could find in those documents is as follows:

The Joint Powers Authority Agreement states in paragraph 6:

The governing body [of the RBRA] shall maintain and implement those provisions of the Special Area Plan (which consists of a diagram or diagrams and text containing a description of the needs and goals of the region and statement of the policies and goals for the Richardson Bay area) relative to:

...

- b. Public services and facilities which by the nature of their function, size, extent and other characteristic are necessary or appropriate for inclusion in the Special Area Plan. Such

facilities and services may include, but are not limited to, water based police and fire protection, sewage pump-out facilities for vessels, enforcement of a vessel sewage no discharge area when given authority by the Environmental Protection Agency, and public docks or moorings.

The Richardson Bay Special Area Plan states in the Policies section under Residential Vessels and Floating Structures:

1. Vessels and floating structures used for residential purposes (i.e., houseboats and live-aboards) should be allowed only in recreational or houseboat marina berths when consistent with and in compliance with local codes. All anchor-outs should be removed from Richardson's Bay.

A comprehensive approach to dealing with eventual removal of anchor-outs from Richardson's Bay and the intermittent problems arising from their drifting off anchorage will almost certainly require a mooring field. It could be argued that since neither the Bay Conservation Development Commission (BCDC) nor the RBRA and its member jurisdictions have been successful with a purely enforcement approach to removing anchor-outs from Richardson's Bay, intercepting and impounding drifting vessels is the next best option in the interim. As noted above, neither the JPA nor the SAP are directly on point with respect to a rapid response program, the Board must make the determination within the somewhat generalized nature of the Special Area Plan, its purposes can be interpreted to allow for a rapid response program.

Liability and program goals Liability must still be dealt with in considering the program. A West Shore Road resident continues to threaten legal action if any boats impact his property (see attached copy of email), despite a letter from our acting RBRA counsel clearly stating that the RBRA has no liability from third party acts. In an earlier communication, that same neighbor asserted that regardless of the outcome of a legal action over a drifting/stuck boat, the mere nuisance factor of having to deal with expense of legal actions may make our insurance policy holders leery. A rapid response program appears to raise the "no good deed goes unpunished" problem.

Staff is reluctant to recommend furthering the appearance of being browbeaten into a futile attempt to make a small number of over-water residences immune from acts of nature. For this reason, the Board must make it clear what is or is not in play with this program. First, no duty or any other "special relationship" is being established to any private party with such a program. Second, the only goal associated with the program is to respond to a citizen's report complaints within 24 hours, and even that is only a goal which may or may not be achieved. Third, the only action may be to recommend (as staff currently does under certain circumstances) that the affected resident privately engage a marine salvage operator. Fourth, there is an extremely limited amount of RBRA funds (\$7,000 in FY 2006-2007) devoted to the rapid response program, and that once the funds are depleted, the RBRA will no longer underwrite the costs of boat/debris interception and recovery operations and the program will no longer be operational.

Only with this modest goal and program parameters should the RBRA Board proceed, if it decides to, with the rapid response program.

Program function If in the Board's opinion the rapid response program is appropriate to pursue and undertake, program details must be considered. The Board has considered such a program in enough detail previously to have a good understanding of program specifics. One salvage operator, Dave's Diving, is available to contract with the RBRA as a rapid response service provider. Staff would send out a flyer to Belvedere residents and otherwise do public outreach, so that concerned parties can know about the program and contact the RBRA and Dave's Diving in the event of a potential drifting vessel. If Dave's Diving does respond to an incident, the RBRA would reimburse Dave's expenses up to the maximum amount (\$7,000) allocated for rapid response this fiscal year.

Staff has also been communicating with the Tiburon Fire Protection District to determine what their potential role. As some RBRA Board members know, Tiburon (and Belvedere) Fire just purchased a fine new boat with tow capability. The Fire District recently responded to staff's inquiries (see attached copy of email), indicating that while they are interested in responding to drifting boat calls, they are uncertain at this time whether they have sufficient experience to jump into the middle of a salvage or recovery operation. Tiburon Fire's representative also indicated that he would be available to show the Board the Fire District's new boat, and discuss possible cooperative response efforts. Staff has included Tiburon Fire Protection District in the flyer as a contact agency for Belvedere residents and other interested parties.

If the Board elects to proceed with a rapid response program utilizing Dave's Diving, the usual procedural issues would need to be resolved before the program can actually start. As staff has realized in setting up a contract a consultant on the mooring program, there are a myriad of details that need to be resolved (for example, liability insurance, etc.) before the program can become operational. To facilitate this process, staff recommends that the Board adopt the attached resolution authorizing staff to act as the contract manager and signatory. Staff will report back to the Board at the next meeting whether the program has been successfully initiated or if some reason (e.g., lack of appropriate insurance) has prevented staff from doing so.

Recommendation:

RBRA has funds and insurance coverage to initiate a rapid response program. Several Board members have expressed an interest in proceeding with a program, and staff has responded to that. If a majority of the Board votes at this meeting to adopt the Resolution authorizing staff to proceed with rapid response program implementation, staff will do so as expeditiously as possible.

Attachments:

1. Resolution approving Rapid Response Program and authorizing staff to execute contract
2. Copy of RBRA flyer

3. Copy of email from Tiburon Fire Protection District
4. Copy of letter from RBRA Counsel to James Robertson
5. Copies of emails from James Robertson

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December 5, 2006

Mr. James S. Robertson
27 West Shore Road
Belvedere, CA 94920

Re: Your November 20, 2006 Letter to
Supervisor McGlashan

Dear Mr. Robertson:

Thank you for the above referenced correspondence. I have been asked to respond to your threat to "take legal action against the County and communities who are aware of and responsible for keeping such incidents [break away boats] from occurring." You state that you incurred damages last year when a private vessel "slammed" into your home.

While the County sympathizes with your situation, it has neither the legal duty nor practical ability to prevent "such incidents from occurring" and consequently incurs no liability for damage caused by private vessels. In recognition of the fact that governmental entities (e.g., County, City, RBRA) are not the insurers for third party conduct/negligence, the State has adopted legislation outlining public entity liability. Generally, except as otherwise provided by statute, governmental entities are not liable for the acts of third parties. An exception to immunity occurs where the governmental entity fails to perform a mandatory duty. There is no statutory duty mandated upon any public entity to protect private property from damage caused by private "break away" vessels.

In a similar vein, a fire agency is not liable for failure to prevent a fire set by an arsonist, a police agency is not liable for failure to prevent a burglary and the Highway Patrol is not liable for damage caused by a reckless/negligent driver. Although all those agencies (as well as the County, City, and RBRA) can develop programs to address third party conduct such programs cannot guarantee that prohibited conduct resulting in injury to third parties will not occur.

Notwithstanding the lack of a legal duty to establish such, the RBRA, in response to community concern, is working to develop both a rapid response program in cooperation with Belvedere and, on a longer term effort, to develop a mooring field in the Bay. However, development of these discretionary programs, or any similar program, does not insure that

Mr. James S. Robertson
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private vessels will not "break away." The legal responsibility to prevent a "break away" falls upon the owner of the private vessel and the failure to meet that responsibility could result in a judgment against that owner. In your situation the law provides a remedy against Mr. Turkel if he is proven negligent.

Thank you again for your letter. The RBRA staff looks forward to your participation during development of the rapid response and mooring programs.

Very truly yours,


James G. Flageollet
Chief Deputy County Counsel

cc: Charles McGlashan
Susan Adams
Harold Brown
Steve Kinsey
Cynthia Murray
Ron Albert
Anne Solem
Paul Smith
John Telischak
✓ Ben Berto