



December 14, 2022

**PETITION FOR RULEMAKING**

NOTICE OF PETITION FOR UPDATES TO 33 C.F.R. § 110.126a TO AMEND ANCHORAGE BOUNDARIES  
WITHIN THE RICHARDSON BAY SPECIAL ANCHORAGE AREA

Office of Regulations and Administrative Law  
(CG-LRA)  
U.S. Coast Guard Stop 7213  
2703 Martin Luther King Jr. Avenue SE.  
Washington, DC 20593-7213

Captain Taylor Lam  
Sector Commander  
United States Coast Guard, Sector San Francisco  
1 Yerba Buena Island  
San Francisco, CA 94130

Rear Admiral Brian K. Penoyer  
District Commander  
United States Coast Guard, District Eleven  
Coast Guard Island  
Alameda, CA 94501

Lieutenant Commander Alex Miller  
Waterways Management Division Chief  
United States Coast Guard, Sector San Francisco  
1 Yerba Buena Island  
San Francisco, CA 94130

Contact: Stephen McGrath  
Interim Executive Director, Richardson Bay Regional Agency  
c/o Marin County Community Development Agency  
3501 Civic Center Drive, Room 308  
San Rafael, CA 94903-4157

Dear Rear Admiral Penoyer, Captain Lam, and Lieutenant Commander Miller:

The Richardson Bay Regional Agency (RBRA) respectfully submits this petition for rulemaking pursuant to the Right to Petition Government Clause in the First Amendment to the United States Constitution<sup>1</sup>, the Administrative Procedure Act (“APA”)<sup>2</sup>, and 33 C.F.R. § 1.05-20. RBRA hereby petitions the United States Coast Guard to update 33 C.F.R. § 110.126a to reflect efforts aimed at protecting eelgrass (*Zostera marina*) and to further clarify jurisdictional authority of RBRA over the timing and location of anchoring and mooring in Richardson Bay.

Rulemaking is necessary due to recent ordinance updates adopted by RBRA, made to support habitat focused provisions of the Clean Water Act, the Magnuson–Stevens Fishery Conservation and Management Act, and the National Marine Fisheries Service’s California Eelgrass Mitigation Policy, as well as the State of California’s McAteer-Petris Act, the San Francisco Bay Plan, and other state law. Together, these rules and policies protect eelgrass (*Zostera Marina*) in California and recommend no net loss of eelgrass habitat function throughout its range.

To protect eelgrass from the well-established damage associated with anchoring and mooring, and to be consistent with aforementioned rules and policies, RBRA recently updated its ordinances to establish an “Eelgrass Protection Zone” (EPZ) and amend the anchoring area within Richardson Bay to include only those portions of the anchorage that do not overlap with the EPZ. Based on the above, we request that the United States Coast Guard to amend 33 C.F.R. § 110.126a as follows:

Existing text:

[§ 110.126a San Francisco Bay, Calif.](#)

*Richardson Bay Anchorage.* That portion of Richardson Bay, north of a line bearing 257° from Peninsula Point to the shore at Sausalito, except for federally-maintained channels, and all channels approved for private use therein.

Note: Mariners anchoring in the special anchorage area should consult applicable ordinances of the Richardson Bay Regional Agency and the County of Marin. These ordinances establish requirements on matters including the anchoring of vessels, placement of moorings, and use of anchored and moored vessels within the special anchorage area. Information on these local agency requirements may be obtained from the Richardson Bay Harbor Administrator.

---

<sup>1</sup> Congress shall make no law . . . abridging . . . the right of the people . . . to petition Government for a redress of grievances.” U.S. Const., amend. I. The right to petition for redress of grievances is among the most precious of the liberties safeguarded by the Bill of Rights. United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass’n, 389 U.S. 217, 222 (1967). It shares the “preferred place” accorded in our system of government to the First Amendment freedoms, and has “a sanctity and a sanction not permitting dubious intrusions.” Thomas v. Collins, 323 U.S. 516, 530 (1945). “Any attempt to restrict those First Amendment liberties must be justified by clear public interest, threatened not doubtful or remotely, but by clear and present danger.” Id. The Supreme Court has recognized that the right to petition is logically implicit in, and fundamental to, the very idea of a republican form of government. United States v. Cruikshank, 92 U.S. (2 Otto) 542, 552 (1875).

<sup>2</sup> The APA provides that “each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” 5 U.S.C. § 553(e).

Recommended updated text<sup>3</sup>:

**§ 110.126a San Francisco Bay, Calif.**

That portion of Richardson Bay, north of a line bearing 257° from Peninsula Point to the shore at Sausalito, except for federally-maintained channels, and all channels approved for private use therein, with the exception that no anchoring will be allowed within the Richardson Bay Eelgrass Protection Zone, the Richardson Bay Audubon Sanctuary, or other areas as may be defined by ordinances of the Richardson Bay Regional Agency (RBRA).

Note: The anchoring of vessels and the placing of moorings will be under state and local jurisdiction, exercised through the RBRA and/or bordering jurisdictions. Anchoring and mooring will be allowed conforming to applicable RBRA ordinances and regulations regarding place and time adopted pursuant thereto. Information on local agency requirements may be obtained from the Richardson Bay Harbormaster.

The recommended change is urgently needed to ensure the protection of eelgrass in Richardson Bay under local ordinances and ensure that those ordinances harmonize with federal regulations. This petition documents the environmental setting in Richardson Bay, the importance of eelgrass to communities and the environment, existing state and federal laws that protect eelgrass from damage, the impacts to eelgrass from anchoring in Richardson Bay, and the process undertaken by RBRA to codify eelgrass protection in the bay.

An appropriate response to this petition would be to propose, accept 30 days of public comment, and make effective upon final publication in the Federal Register pursuant to 5 U.S.C. § 553(d)(3) the changes to 33 C.F.R. § 110.126a as described above. If you have any questions about this request, please do not hesitate to contact me at (650) 587-7300 x18 or [smcgrath@rgs.ca.gov](mailto:smcgrath@rgs.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen M. McGrath", with a long horizontal flourish extending to the right.

Stephen McGrath

Interim Executive Director, Richardson Bay Regional Agency

---

<sup>3</sup> The language for this note, recognizing local authority, is consistent with language already included in several other notes to mariners included within 33 C.F.R. § 110, including for example, 33 C.F.R. § 110.4, 33 C.F.R. § 110.26, 33 C.F.R. § 110.78, and 33 C.F.R. § 110.125

## Background

### I. Eelgrass is an important habitat protected by a suite of state and federal regulations

Eelgrass (*Zostera marina*) is critically important for the health of coastal estuaries and is a key tool in supporting climate resilience for coastal communities<sup>4</sup>. Eelgrass beds reduce erosion by attenuating wave energy in nearshore environments<sup>5</sup>, sequester carbon in their tissues and in benthic sediments<sup>6</sup>, reduce ocean acidification<sup>7</sup>, and provide nursery habitat for commercially, recreationally, and ecologically important marine life (e.g., Pacific herring and Dungeness crab)<sup>8</sup>. Eelgrass is also important for improving water quality through oxygen production, filtering polluted runoff, and absorbing excess nutrients<sup>9</sup>.

From the National Marine Fisheries Service's California Eelgrass Mitigation Policy:

Eelgrass is a highly productive species and is considered to be a "foundation" or habitat forming species. Eelgrass contributes to ecosystem functions at multiple levels as a primary and secondary producer, as a habitat structuring element, as a substrate for epiphytes and epifauna, and as sediment stabilizer and nutrient cycling facilitator. Eelgrass provides important foraging areas and shelter to young fish and invertebrates, food for migratory waterfowl and sea turtles, and spawning surfaces for invertebrates and fish such as the Pacific herring.

In recognition of the importance of eelgrass to the environment and the economy, several federal regulations and key federal policies include robust protection for this crucial habitat, including:

- Clean Water Act: Vegetated shallows that support eelgrass are considered special aquatic sites and are protected under the 404(b)(1) guidelines of the Clean Water Act (40 C.F.R. § 230.43).
- Magnuson–Stevens Fishery Conservation and Management Act (MSA): Pursuant to the MSA, eelgrass is designated as an essential fish habitat (EFH) habitat area of particular concern (HAPC) for various federally-managed fish species. A HAPC is a subset of EFH that is rare, particularly susceptible to human-induced degradation, especially ecologically important,

---

<sup>4</sup> <https://www.fisheries.noaa.gov/feature-story/importance-eelgrass>

<sup>5</sup> Walter, R. K., O'Leary, J. K., Vitousek, S., Taherkhani, M., Geraghty, C., & Kitajima, A. (2020). Large-scale erosion driven by intertidal eelgrass loss in an estuarine environment. *Estuarine, Coastal and Shelf Science*, 243, 106910.

<sup>6</sup> Poppe, K. L., & Rybczyk, J. M. (2018). Carbon sequestration in a Pacific northwest eelgrass (*Zostera marina*) meadow. *Northwest Science*, 92(2), 80-91.

<sup>7</sup> Nielsen, K. J., Stachowicz, J. J., Carter, H., Boyer, K., Bracken, M., Chan, F., ... & Wheeler, S. (2018). Emerging understanding of seagrass and kelp as an ocean acidification management tool in California.

<sup>8</sup> Orth, Robert J., et al. (2006) "A global crisis for seagrass ecosystems." *Bioscience* 56.12: 987-996.

<sup>9</sup> Moore, K. A. (2004). Influence of seagrasses on water quality in shallow regions of the lower Chesapeake Bay. *Journal of Coastal Research*, (10045), 162-178.

and/or located in an environmentally stressed area. HAPC designations are used to provide additional focus for conservation efforts.<sup>10</sup>

- National Marine Fisheries Service’s (NMFS) California Eelgrass Mitigation Policy: “It is NMFS’ policy to recommend no net loss of eelgrass habitat function in California.”<sup>11</sup>

Additionally, several state laws and regulations also provide for the protection of eelgrass habitat:

- McAteer-Petris Act, as amended, which created the San Francisco Bay Conservation and Development Commission (BCDC) in 1965 and which gives BCDC’s San Francisco Bay Plan (Bay Plan) and Richardson Bay Special Area Plan force of law.
- The Bay Plan, which includes the following policies regarding eelgrass: Subtidal Areas, Policy 2 (p. 29): Subtidal areas that are scarce in the Bay or have an abundance and diversity of fish, other aquatic organisms and wildlife (e.g., eelgrass beds, sandy deep water or underwater pinnacles) should be conserved. Richardson Bay Special Area Plan, Aquatic and Wildlife Resources, Policy 1 (p. 8): The open water, marshes, and mud flats of Richardson Bay are particularly valuable wildlife habitat and should be afforded maximum protection. Eelgrass beds, important to herring spawning and for production of detritus, should also receive maximum protection.<sup>12</sup>
- Title 14 of the California Code of Regulations: “No eel grass (*Zostera*), surf grass (*Phyllospadix*) or sea palm (*Postelsia*) may be cut or disturbed.” Cal. Code Regs. tit. 14 § 30.10

## **II. Richardson Bay supports the second largest eelgrass bed in the San Francisco Bay Area, which is key to the region’s environmental and economic health**

The bays and estuaries of California are a critical stronghold for eelgrass, even as the species experiences significant declines along the Pacific Coast and abroad (at global decline rates of up to 30,000 acres per year<sup>13</sup>). Just five bays support over 80% of the state’s remaining eelgrass<sup>14</sup>, with a full

---

<sup>10</sup> National Fisheries, West Coast Region, National Oceanic and Atmospheric Administration, 2014. California Eelgrass Mitigation Policy and Implementing Guidelines.

<sup>11</sup> *Id.*

<sup>12</sup> The Bay Plan and the Special Area Plan also restrict long-term anchoring in Richardson Bay. Bay Plan, Recreation, Policy 3(c) (p. 62); Richardson Bay Special Area Plan, Residential Vessels and Floating Structures, Policy 1 (p. 26).

<sup>13</sup> Waycott, M., Duarte, C.M., Carruthers, T.J., Orth, R.J., Dennison, W.C., Olyarnik, S., Calladine, A., Fourqurean, J.W., Heck, K.L., and Hughes, A.R. (2009). Accelerating loss of seagrasses across the globe threatens coastal ecosystems. *Proc. Natl. Acad. Sci.* 106, 12377–12381.

<sup>14</sup> National Fisheries, West Coast Region, National Oceanic and Atmospheric Administration, 2014. California Eelgrass Mitigation Policy and Implementing Guidelines.

third found in San Francisco Bay alone<sup>15</sup>, and the Richardson Bay eelgrass bed is the second largest in the San Francisco Bay estuary, fluctuating between approximately 300 and 700 acres<sup>16</sup>.

Beyond areal extent, the Richardson Bay bed is disproportionately important in supporting commercial and recreational fisheries – in the 2019/2020 Pacific herring season, for example, 90% of San Francisco Bay’s herring spawning biomass occurred in Richardson Bay<sup>17</sup>. Protecting eelgrass here is crucial for supporting the local maritime economy through fisheries support.

In addition to Pacific herring, the biological productivity supported in Richardson Bay by the presence of eelgrass also supports marine mammals (including NOAA trust resources like harbor seals, bottlenose dolphins, and harbor porpoises) and hundreds of thousands of migrating waterbirds. Over 300,000 migrating waterbirds have been documented in Richardson Bay in a single season, foraging among the bay’s eelgrass and mudflats as the birds rest during their migration along the Pacific Flyway. This includes overwintering Surf Scoter, whose SF Bay population has shrunk from nearly 30,000 in the 1980s to less than 3,000 today<sup>18</sup>.

These biological resources draw thousands of people each year to engage in maritime-oriented recreation on the bay and along its shores. This recreation includes on-the-water activities like sailing, kayaking, and stand up paddleboarding, as well as shore-based activities like fishing, hiking, exploring the area’s maritime history in Sausalito, or visiting the Richardson Bay Audubon Center and Sanctuary in Tiburon, which has been open to the public for over sixty-five years. None of this would be possible without the flourishing ecological community that the Richardson Bay eelgrass bed supports. In addition to its biological importance, eelgrass also provides economically valuable ecosystem services to the region by reducing coastal erosion, sequestering carbon, and locally reducing ocean acidification. The value of these services is directly related to the area of healthy, dense eelgrass bed.

### **III. Damage from anchors, chains, and other ground tackle has significantly damaged the eelgrass bed in Richardson Bay**

Richardson Bay is a relatively shallow embayment in the north-western part of the San Francisco Bay Area, located just inside and north of the Golden Gate. The communities of Sausalito, Tiburon, Belvedere, Mill Valley, and unincorporated Marin County ring the 3,100-acre bay, whose anchorage has long provided safe harbor for ships traveling along the California coast.

---

<sup>15</sup> Merkel & Associates (2009). San Francisco Bay Eelgrass Inventory: October - November 2009 (San Diego, CA). Report Submitted to National Marine Fisheries Service

<sup>16</sup> Merkel & Associates (2015) San Francisco Bay Eelgrass Inventory: October 2014. (San Diego, CA). Report Submitted to National Marine Fisheries Service

<sup>17</sup> California Department of Fish and Wildlife report to the Director’s Herring Advisory Committee Meeting (October 13, 2020)

<sup>18</sup> O’Connor, M.C., and Langston, E. “Charismatic Sea Ducks Seem to be Disappearing, But It’s Hard to Say Why”. Bay Nature. March 30, 2018

When the number of boats using the Richardson Bay anchorage was relatively low and boats in the anchorage were well maintained, their effect on the eelgrass habitat was likely modest. However, through the twentieth and into the twenty-first century, the number of boats using Richardson Bay rose considerably and their impact on the bay's eelgrass grew proportionately. A quantitative assessment conducted in 2017 documented the extent of eelgrass removed by anchor scour in Richardson Bay. This study found that damage from anchors, chains, and other ground tackle has destroyed 80+ acres of eelgrass over the past several decades<sup>19</sup>. To provide context, that is an acreage of eelgrass nearly four times the size of Alcatraz Island directly removed by anchoring vessels.



*Figure: An aerial view of Richardson Bay taken during August 2022, with the shoreline of Sausalito visible at the bottom of the image. The darker portions of the water are eelgrass beds, with anchor scour (known locally as “crop circles”) appearing as lighter circles within the eelgrass bed. Anchor scour has directly removed 80+ acres of eelgrass from this bed over the past several decades. (Photo: 111<sup>th</sup> Air Squadron Photography)*

While anchoring freely throughout Richardson Bay was once the norm, it is clear from the well documented scope and scale of the impact that anchoring in eelgrass is contradictory to state and federal policies aimed at ensuring no net loss of this important habitat in California. For this reason, RBRA has limited the area available for anchoring within the USCG-designated special anchorage area. To protect eelgrass from damage, we respectfully request that the USCG update the note to C.F.R. §

---

<sup>19</sup> Kelly, J. J., Orr, D., & Takekawa, J. Y. (2019). Quantification of damage to eelgrass (*Zostera marina*) beds and evidence-based management strategies for boats anchoring in San Francisco Bay. *Environmental management*, 64(1), 20-26.

110.126a, to make sure that mariners are aware that RBRA's rules and its boundaries for allowable anchoring apply within the special anchorage area in Richardson Bay.

#### **IV. RBRA updated its ordinances in 2022 to allow anchoring only in portions of the Special Anchorage Area within Marin County waters not covered by the Eelgrass Protection Zone**

RBRA is a joint powers authority composed of the City of Belvedere, City of Mill Valley, Town of Tiburon, and the County of Marin and is dedicated to maintaining and improving the navigational waterways, open waters, and shoreline of Richardson Bay, and to administering the Richardson Bay Special Area Plan, a portion of the Bay Plan. In recognition of the environmental impacts of anchoring in Richardson Bay and the requirements of the Bay Plan, the RBRA developed a "Transition Plan" for the anchorage in 2020. This plan aimed to better protect the environment and public health while providing recreational boating opportunities for the public. The Transition Plan<sup>20</sup> was approved by the RBRA board on June 11, 2020, and in addition to ongoing vessel enforcement and marine debris management, the plan included a policy directive for staff to develop an Eelgrass Protection and Management Plan (EPMP)<sup>21</sup>. RBRA worked with community partners (including conservation, science, and law enforcement groups) to develop the EPMP in a way that would resolve a decades-old resource use conflict using a spatial planning approach to designate allowable use zones within the bay.

A key outcome of the EPMP, adopted by the RBRA board in August 2021, was the establishment of an Eelgrass Protection Zone (EPZ) in Richardson Bay where vessels are no longer allowed to anchor due to the impacts of anchoring on eelgrass. The establishment of the EPZ necessitated a corresponding reduction in the size of the designated anchorage area of Richardson Bay. The updated boundaries of the anchorage area were codified into RBRA ordinances in September 2022 when the RBRA board of directors updated their agency's ordinances<sup>22</sup>. By no longer allowing vessels to anchor in the bay's eelgrass, the updated ordinances support local, state, and federal policies ensuring no net loss of eelgrass habitat in California. Under these new ordinances, anchoring is allowed in a portion of the federally designated special anchorage area; conversely, vessels anchoring in the other parts of the special anchorage area would violate RBRA's ordinance and be subject to citation under state and local law.

The language proposed in this petition seeks to clarify RBRA's authority to enforce its ordinances within the special anchorage area. Further, the updated language as proposed clarifies RBRA's authority to periodically amend the boundaries of the EPZ, as may be necessary in response to changing

---

<sup>20</sup> <http://rbra.ca.gov/about-rbra/transition-plan/>

<sup>21</sup> <http://rbra.ca.gov/eelgrass-protection-and-management-plan-adopted-august-12-2021/>

<sup>22</sup> <http://rbra.ca.gov/about-rbra/ordinances/>



environmental conditions. This flexibility is consistent with the EPMP’s guidance for a review of EPZ boundaries every five years to ensure adequate protection of the bay’s eelgrass bed.

### **Argument**

#### **I. Updating the note to 33 C.F.R. § 110.126a clarifies the authority of the Richardson Bay Regional Agency**

The current text of 33 C.F.R. § 110.126a includes a note that directs mariners to “consult applicable ordinances of the Richardson Bay Regional Agency, [which] establish requirements on matters including the anchoring of vessels, placement of moorings, and use of anchored and moored vessels within the special anchorage area.” This note acknowledges RBRA authority over managing where and how vessels anchor and moor in Richardson Bay. The proposed additional language further clarifies that any state or local requirements apply, so long as they are consistent with the Coast Guard’s regulations applicable to the special anchorage area. This clarification is important because the RBRA’s ordinances implementing the Eelgrass Protection Zone bar anchoring in parts of the special anchorage area, consistent with the aforementioned federal laws protecting eelgrass habitat from damage. Without the proposed language, mariners may be unsure of the effect and authority of those ordinances, as well as other state and local regulations touching on the special anchorage area.

This approach is legally confirmed by the Ninth Circuit’s decision in *Barber v. Hawai’i*, 42 F.3d 1185 (9th Cir. 1994), in which the court held that the Coast Guard’s regulations observed that requirements regarding navigation lights in the special anchorage area did not conflict with the state’s decision to restrict anchoring and mooring there. *See also Beveridge v. Lewis*, 939 F.2d 859 (9th Cir. 1991). (Special anchorage regulations concerned only whether navigation lights were required and thus left in place local ordinance concerning anchoring and mooring). It is also consistent with the fact that the USCG neither regularly patrols the Richardson Bay special anchorage area, nor issues citations regarding federal regulations governing the use of aquatic resources. (Though RBRA respectfully thanks the USCG for their assistance in search and rescue cases and other instances where the USCG has and will continue to take an active role in Richardson Bay.)

In the letter, spirit, and application of 33 C.F.R. § 110.126 and in the legal structure concerning the relationship among federal, state, and local anchorage regulations, RBRA is the authority for managing Richardson Bay. We therefore propose new language for the note that would more clearly identify the local authority as having jurisdiction over their relevant special anchorage area. Updating the note to mariners included in 33 C.F.R. § 110.126a as described above provides clearer identification of the RBRA’s authority.

### **Conclusion**

For the foregoing reasons, RBRA respectfully requests that the USCG update 33 C.F.R. § 110.126a to better protect eelgrass and reflect RBRA’s authority over anchoring in the bay.