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Title: ORDINANCE AMENDING DISTRICT CODE 4.09 OF THE SAN DIEGO UNIFIED PORT DISTRICT CODE - REGULATION OF VESSELS - G STREET MOLE MOORING TO IMPLEMENT COMMERCIAL FISHING INDUSTRY BEST PRACTICES INCLUDING: VERIFICATION OF FISH LANDING RECEIPTS; MARINE INSURANCE LIABILITY REQUIREMENTS FOR NEW PERMITEES AND INTRANSIT COMMERCIAL FISHERMEN; U.S. COAST GUARD SAFETY VESSEL INSPECTIONS; APPLICANT CREDIT CHECKS; REGULATION OF OVERNIGHT COMMERCIAL FISHING ACTIVITIES OR PREPARATIONS, AND UPDATE/CLARIFICATION OF EXISTING CODE LANGUAGE

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Attachments: 1. 1. 2017-0651 Attachment A, 2. 1. 2017-0651 Attachment B, 3. 1. 2017-0651 Attachment C, 4. 1. 2017-0651 Attachment D, 5. 1. 2017-0651 Attachment E, 6. 1. 2018-0651 Attachment F, 7. 1. 2017-0651 Draft Ordinance

Date	Ver.	Action By	Action	Result
12/11/2018	1	Board of Port Commissioners	adopted	

DATE: December 11, 2018

SUBJECT:

ORDINANCE AMENDING DISTRICT CODE 4.09 OF THE SAN DIEGO UNIFIED PORT DISTRICT CODE - REGULATION OF VESSELS - G STREET MOLE MOORING TO IMPLEMENT COMMERCIAL FISHING INDUSTRY BEST PRACTICES INCLUDING: VERIFICATION OF FISH LANDING RECEIPTS; MARINE INSURANCE LIABILITY REQUIREMENTS FOR NEW PERMITEES AND INTRANSIT COMMERCIAL FISHERMEN; U.S. COAST GUARD SAFETY VESSEL INSPECTIONS; APPLICANT CREDIT CHECKS; REGULATION OF OVERNIGHT COMMERCIAL FISHING ACTIVITIES OR PREPARATIONS, AND UPDATE/CLARIFICATION OF EXISTING CODE LANGUAGE

EXECUTIVE SUMMARY:

The District operates and maintains vessel slips at Tuna Harbor Basin Mooring Facility, also known as G Street Mole, for commercial fishing vessels which home-port in San Diego Bay. Use of slips is regulated by District Code Section 4.09 and primarily limited to active commercial fishing vessels licensed or documented by the California Department of Fish & Wildlife (CDF&W) and the United States Coast Guard (USCG). Permits for mooring are issued by the District's Maritime Department for a period of time not to exceed 12 months. The District completed a benchmark study in 2017 and identified best practices in the operation of commercial fishing facilities along the U.S. West Coast. Additionally, a series of incidents involving fishing vessels at several West Coast facilities, including

the Port of San Diego, indicates the need to implement administrative requirements regarding liability, safety, and accountability. Staff is recommending implementation of certain best practices to improve administrative and operational practices in the management of G Street facilities.

RECOMMENDATION:

Adopt an Ordinance amending District Code, Section 4.09 (Section 4.09) as shown in Attachment “A” attached, to include the following requirements:

- 1) Verification of fish landing receipts by CDF&W.
- 2) Marine insurance coverage for “in-transit” vessels and all new mooring permittees.
- 3) Regular vessel safety inspections for all vessels by the USCG.
- 4) Credit checks for prospective permittees.
- 5) Regulation of overnight accommodations.
- 6) Update and clarification of current Section 4.09 language.

FISCAL IMPACT:

This agenda item has no fiscal impact.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A thriving and modern maritime seaport.
- A Port with a healthy and sustainable bay and its environment.
- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

The G Street Mole Pier, Fish Harbor Pier and G Street floating docks, collectively known as the Tuna Harbor Basin, were originally built in 1977 and expanded in both 1983 and 1991 to service the needs of the commercial fishing fleet in San Diego. The concrete piers were designed for use by in-transit fishing vessels (vessels that are not permanently home-ported in San Diego Bay) or other vessels in excess of 90 feet in length. The G Street floating dock system consists of 103 useable slips on three separate fingers that can accommodate home-ported vessels ranging from 30 to 80 feet in length. The average sized vessel is about 40 feet long. A photo of Tuna Harbor Basin is attached (Attachment B).

The area includes 5.4 acres of land and 13.1 acres of water (as designated in the current Port Master Plan), permit parking places, a restroom facility, electrical and potable water services, offloading facilities and solid waste receptacles. Occupancy at the slips varies from year to year ranging from a high of 67% in 1988 to a low of 36% in 2008. The current occupancy rate is 62%.

The most recent statistics from CDF&W show that during 2016, 2,401,383 pounds of seafood were landed in the San Diego region (from Oceanside to Imperial Beach) with a value of \$10,262,141 (table 21sdPUB - Poundage and Value of Landings by Port, San Diego Area During 2016). Principal

fisheries included bigeye tuna, opah, sea urchin, lobster, swordfish, and spot prawns. Depending upon the species, the fleet can fish anywhere, from the San Diego Region to the Canadian border or into the Western Pacific.

Mooring at the slips is regulated by Section 4.09 - REGULATION OF VESSELS - G STREET MOLE MOORING (Attachment C). Owners of the fishing vessels must show they are documented or licensed by the USCG and the CDF&W as commercial fishing vessels. Additionally, each year owners must submit CDF&W landing receipts that document the vessel was used to catch fish with a value of \$5,000, if the vessel is less than 30 feet, or \$10,000 if greater than 30 feet.

In July 2017, a staff-commissioned “West Coast Commercial Fishing Facilities Benchmark Study” (Study) was completed (Attachment D). The purpose of the Study was to identify best practices in the operation of commercial fishing facilities on the U.S. West Coast and implement improvements in the management of District’s commercial fishing facility. The Study analyzed sixteen (16) facilities and compared a variety of aspects including facility infrastructure, amenities, tariff fees, dock and slip availability, fish landings/values, and specific administrative requirements including liability insurance requirements.

The Study found that the most successful facilities had similar characteristics: Primary focus on commercial fishing; well-maintained infrastructures; substantial and beneficial amenities, high occupancy rates, active fishermen’s organizations, strong community support, and prolific fisheries. Some of the best practices identified include marine insurance requirements, amenity fees used to recover the costs of electrical and water use, “Clean Marina” programs, effective pre-rental screening procedures, periodic vessel safety inspections, regulation of overnight activities, and confirmation of fish landing receipts by the CDF&W.

Based on the Study and a series of recent incidents involving commercial vessels at West Coast facilities, staff re-evaluated Code Section 4.09 and the need for additional safeguards.

The Study’s insurance comparison survey identified seven West Coast facilities that require insurance when these programs were implemented, types of coverages, limit amounts, how programs are managed and issues/problems associated with implementation of the requirements. Additionally, the study identified three more of the 16 facilities studied are actively discussing policy updates to include a vessel liability insurance requirement in the near future. Almost all recreational marinas in the State of California now require liability insurance. A new ordinance at Santa Cruz Harbor that applies to both recreational and commercial vessels requires all slip tenants to provide proof of insurance by January 1, 2019.

Surveys were performed to identify slip holders that currently are insured and the type of coverages and limits. Survey results to date are:

- 71 boats with 62 owners currently permitted at G Street
- Commenced distributing surveys on January 16, 2018
- Have received 42 responses with information about 45 vessels
- 4 vessels meet all recommended requirements (coverages & limits)
- 11 vessels have no coverage at all
- 27 vessels have varying coverages and limits but unsure if they meet all recommended coverages or limits

- 3 survey responses are considered non-responsive

An analysis was completed of multiple insurance coverage options, costs, risks, and requirements for condition and valuation surveys.

A review of additional options included the following: grace periods to obtain insurance, coverage limits, uninsurable boats and other related issues that will impact existing and prospective tenants.

Staff also worked with US Coast Guard's Commercial Fishing Vessel Safety Department to review the District's current procedures and practices. The Coast Guard is supportive of staff's efforts in pursuing potential operational and safety improvements. Sector San Diego looks forward to a mutual effort in monitoring and enforcing applicable standards and regulations. Maritime has performed surveys to determine whether all G Street tenants are complying with USCG safety regulations. Current survey results have determined that:

- 6 vessels in process of getting certificates
- 7 vessels do not have a certificate or did not respond to question
- 3 vessels stated that safety certificates were not required
- 1 vessel is unsure if they have one
- 28 vessels have valid safety certificates

Many options were explored on how to regulate overnight commercial fishing activities without negative impacts to slip holders.

Staff reviewed existing language of Section 4.09 to update and provide clarification where needed.

Finally, for the last nine months, staff has been holding regular monthly focus group meetings with the "San Diego Fishermen's Working Group" (SDFWG is a representative group of fishermen whose goal is to protect local commercial fishing interests and opportunities). To date, the meetings have been positive and looked at not only the proposed rule changes but a variety of issues that impact the fishermen. Through ongoing collaborative efforts, SDFWG is now supportive of the proposed amendments to Section 4.09.

As a result of staff's research, SDFWG's participation, and well-informed input the following proposed revisions to District Code Section 4.09 have been crafted (current language to be deleted is struck through and new language is underlined in Attachment A):

Verification of Fish Landing receipts by CDF&W:

A "Fish Ticket" or receipt, issued by a seafood buyer or wholesaler and copied to all concerned parties, is required by the CDF&W whenever a commercial fishing vessel lands a catch for sale. It contains pertinent information regarding the vessel and its catch. The date, weight of the catch and sales amount information is used by West Coast ports and harbors to determine if a bona fide commercial fishing operation exists and is eligible for dockage discounts that are commonly given to commercial vessels.

Commercial Fishing Facilities have had problems in the past with operators falsifying fish tickets to

meet the yearly or bi-yearly requirements when the vessel is not actively engaged in commercial fishing. This issue was resolved by the City of Santa Barbara Waterfront Division working with CDF&W to establish a process to verify fish tickets by using "Landing Request Forms". These forms are submitted to CDF&W, with written authorization from the vessel owner, for verification of the catch to the port or harbor.

Staff recommends that Section 4.09.02 (Item No. 6, Page 3) be amended to require that, if requested, vessel owners/operators authorize, in writing, that the Port of San Diego can obtain proof of earnings from the California Department of Fish and Wildlife using the "Information Request Form for Commercial Landing/CPFV Logbook Information" (Attachment "E").

SDWFG is supportive of this requirement as written.

Marine Insurance Coverage for G Street commercial fishing vessels:

As shown in the Study, seven of the 16 facilities currently require some type of general liability insurance. Both of the private leaseholds (Driscoll's Wharf - San Diego and Village Marina - Ventura) require general liability insurance in the amounts of \$300,000 and \$1 million, respectively. Driscoll's also requires pollution and wreck removal coverage which Village Marina is considering. Oceanside and Astoria require \$300,000 and \$500,000, respectively, in general liability. Both Crescent City and Monterey require \$1 million in general liability. Finally, in the State of Washington, vessel owners who permanently moor at private or public mooring facilities are mandated by law to secure and maintain marine insurance coverage for their vessels. At least \$300,000 in marine insurance coverage encompassing general, legal, and pollution liability protection is required by Grays Harbor.

The District's insurance broker, Alliant Insurance Services, Inc. (Alliant), has recommended that the G Street vessels have Protection and Indemnity (P&I) insurance that will provide all of the basic coverages that the Port would need: Bodily injury including death and medical expenses, property damage, removal of wreck (fire-fighting expenses are accounted for here), pollution (all expenses and costs to dispose of and remove contaminants connected with the vessel), coverage of any resulting fines or penalties and the Port being named as an additional insured.

Costs to the vessel owners, for the above coverages, are variable and based on a variety of factors depending upon the vessel's age, physical condition, hull dimensions, hull construction (wood, steel or fiberglass), vessel's weight (tonnages), engine types, safety systems, areas being fished, operator's years of experience, etc. Also, whether or not some type of vessel "Condition and Valuation" survey has been performed. Some insurers may require this type of survey, performed by an accredited marine surveyor, especially if the vessel is not already insured. These surveys can occur while the vessel is in the water; however, some carriers may require the vessel be removed from the water (haul-out). Currently, "Condition and Valuation" Surveys are about \$18 to \$22 per foot of length with costs for a G Street 40-foot boat ranging between \$720 and \$880. The average haul-out costs for a survey on a 40-foot boat in San Diego are about \$8 per lineal foot (\$344). Some yards will allow this amount to be deducted from future work at the yard, such as bottom painting.

Depending upon the results of the survey, the insurance carrier may require that any discrepancies be repaired before insurance can be issued. Some older, less well-maintained vessels may not be able to get insurance and if they do qualify it may be extremely expensive. The Port's broker has suggested that a likely range of insurance, for a qualified vessel, could be anywhere from \$2,500 to \$5,000 per year depending upon all of the above variables. A local Shelter Island marine insurance

broker has estimated lower costs between \$800 and \$1,500 per year for the same coverages and limits that Alliant is quoting. Total costs for the owner of a 40-foot boat (including haul-out, survey and first-year premium) could range between \$3,600 and \$6,200. Using the lower estimates, annual total costs could range between \$1,900 and \$2,700.

Staff recommends that the following requirements for new permittees and in-transit commercial fishing vessels, based on the results of the benchmark study, stakeholder input, and Port insurance broker recommendations, be added to Section 4.09.02 (Item No. 8, Page 5) and Section 4.09.04 (Item No. 1(d), Page 7)

- All “in-transit” vessels (defined as a commercial fishing vessel which is not permanently home-ported in San Diego Bay) and all persons requesting a mooring permit for the first time or for a newly acquired vessel are required to provide proof of marine insurance.
- Protection and Indemnity (P&I), wreck removal and pollution coverages with limits of \$300,000.
- Port of San Diego to be named as an additional insured.
- Vessels that are unable to obtain insurance will not be permitted to moor at District facilities.
- SDWFG, who has worked closely with staff on this issue, has requested that before implementing comprehensive insurance requirements, which will include all existing G Street tenants, the impacts on “in-transit”, first time and newly acquired vessels be evaluated over the next year to identify and resolve any issues or concerns. Staff concurs with this request as many facilities have had significant grace periods before requiring marine insurance for the first time. The existing permit holders will have up to one year after the above measures are enacted to acquire the same policy coverage.

SDWFG supports this measure as written. Discussions regarding insurance coverage requirements for current permit holders will continue with the SDWFG, to address the challenge of the high cost of coverage, while maintaining a financially viable operation.

Regular vessel safety inspections, of all vessels, by USCG:

Commercial fishing vessels (CFVs) are regulated by the “Commercial Fishing Industry Vessel Safety Act of 1988”, passed by Congress requiring the USCG to issue regulations for safety equipment standards and operating procedures on fishing, fish tender, and fish processing vessels. This law is promulgated through 46 Code of Federal Regulations (CFR) Part 28. 46 CFR was recently amended to require that after October 2015, CFVs are required to have a mandatory dockside safety examination at least once every two years if operating beyond three nautical miles of the coastline of the United States. Any affected CFV found not in compliance with the safety exam requirements could be subject to a civil penalty action or operational controls (not being allowed to sail or being escorted back to a dock). The exams are free and conducted by USCG or third party organizations such as the American Bureau of Shipping or the Society of Marine Surveyors. The exams are comprehensive and look at an extensive list, including lifesaving equipment, communications equipment, deck safety and survival equipment, fire safety equipment and practices, machinery and electrical safety, material conditions, periodic testing of equipment and systems, etc. Upon

successful completion of an exam, the vessel will be issued a “Commercial Fishing Safety Decal” that is valid for two years. Any discrepancies need to be addressed before a decal can be issued.

None of the facilities surveyed require that a CFV maintain a “Commercial Fishing Safety Decal”. A third of the facilities (Morro Bay, Moss Landing, Monterey, Port of San Francisco and Pillar Point Harbor) require that vessels requesting and maintaining a mooring permit be “Operable & Seaworthy” (capable of maneuvering under the vessel’s own power and being structurally sound). These facilities require that if there is any question about the integrity or condition of a vessel, an inspection by harbormasters, harbor police or marine surveyors be performed.

In keeping with “best practices”, staff recommends amending Section 4.09.02 (Item No. 9, Page 5) by requiring that all G Street vessels maintain a valid “Commercial Fishing Safety Decal” even if not required to do so by 46 CFR regulations (vessels are now currently exempt if fishing only within three miles of the coastline) to insure the operability, seaworthiness, and safety of the vessels.

SDWFG supports this measure.

Credit checks for prospective tenants:

Another “best practice” found at several of the facilities is the requirement for credit checks in the permitting of slip or berth rentals. At Moss Landing, applicants must authorize the Harbor District to check their credit history. If the report is negative, a berthing permit may not be issued. At Pillar Point, the Harbor District conducts credit/reference checks at a cost of no more than \$52.00 per person. A negative report may nullify any agreement. Crescent City mandates that a credit check and a non-refundable application processing fee may be required in advance from all individuals who request to lease Harbor space.

Maritime has had previous G Street tenants who are slow or late payers. As credit checks are a normal part of rental or lease transactions, staff is recommending the following language Section 4.09.02 (Item No.10, Page 5) to identify prospective tenant’s credit records while not impacting current tenants in good standing:

- A review of the prospective applicant’s financial responsibility may be required.
- A “prospective applicant” mooring permittee is defined as an owner/operator who has not occupied a slip at the G Street at any time during the past 12 month period.
- In-transit fishing vessels are excluded from this requirement (vessels must pay dockage in advance).

SDWFG is supportive of this policy regarding prospective tenants.

Regulation of overnight commercial fishing activities; prohibition of live-aboards:

While commercial fishing activities, especially preparation for fishing, often involves crew staying aboard the vessel overnight, this is different than live aboards. The most common definition of live-aboards is a person or persons using a vessel as a primary or secondary residence. It is normally further defined as any vessel being used for overnight accommodations in excess of a specific number of nights out of a seven or 30-day period. Some of the problems associated with

unregulated live-aboards are:

- The G Street facility was designed as a berth for commercial fishing vessels and not as a residence facility. The facility lacks the required infrastructure (24-hour restrooms, showers, laundry facilities, etc.) to properly support live-aboards.
- Significant environmental issues exist if the vessel does not have holding tanks for grey water, adequate sanitation facilities for black water and is unable to use shore-side pump-out stations.
- Vessels treated as a residence are often not as well maintained as a revenue producing fishing vessel.
- Vessels used as a residence can become an attractive nuisance if not used by bona fide fishermen.

Of the facilities compared, only four strictly prohibit slip tenants from living aboard their vessels. Driscoll's prohibits commercial fishermen as live-aboards. Six harbors allow live-aboards, but cap the amount of vessels that can be used in this manner. For example, Oceanside allows a maximum of 86 out of 888 slips to be used while Monterey allows 15 out of 413. All six have strict requirements about living aboard, including routine inspections to determine operability of the vessel and prevention of any illegal discharges into the bay or harbor. There are also additional fee requirements beyond the normal monthly dockage rates. Moss Landing, San Francisco and Bodega Bay all have requirements that allow fishermen to live-aboard but only during an established fishing season and only for specific periods of time at no additional cost.

Currently, there are no explicit regulations that prohibit live-aboards at G Street. Maritime is recommending the following language Section 4.09.06 (Items No. 1 - 3, Page 9) that will not impact bona fide commercial fishing activities and preparations while addressing environmental and security issues:

- No vessels berthed at G Street shall be used as a place of residence.
- Owner/operators and crew members, who are actively engaged in commercial fishing activities or preparations, may stay overnight on the vessel if authorized by the District, but not to exceed 7 nights in any 10-day period. This limit can be extended if a bona fide need is established.
- No persons other than the owner/operator or vessel crew members are allowed overnight stays.
- If authorized by the District, owner/operators of in-transit commercial fishing vessels may stay overnight while the vessel remains designated as in-transit.
- All vessels are required to have adequate sanitation facilities on board.
- No person shall discharge, or allow to be discharged any oil, sewage, grey water, or other materials into the waters or upon the lands of the District and shall obey and comply with all applicable civil environmental laws, rules and regulations adopted by federal, state, District or

other local government bodies.

SDFWG is supportive of the policy to regulate live-aboards.

Update/Clarification of existing Code language:

The last amendment of Section 4.09 was in 1995. Upon review of the current language, staff determined that updates and clarification are needed. Working in conjunction with SDWFG, the following changes are proposed:

- SDWFG recommends that the title of Section 4.09 be changed from “REGULATION OF VESSELS - G STREET MOLE MOORING” to “REGULATION OF VESSELS - TUNA HARBOR BASIN”. Staff concurs with this recommendation as the regulations apply to not just the concrete Mole pier along the outer edge of the harbor but to the mooring slips and the Fish Harbor Pier that helps create the basin along its southern boundary. This change clarifies that the regulations apply to vessels at all of the piers and slips within the facility.
- The definition of a “Permit Holder” be added to clearly define the issuance of a mooring permit to either the vessel’s named owner or operator. Each vessel must have a separate permit and owners/operators of multiple vessels are required to have a permit for each vessel Section 4.09.10, (Page 11).
- In order to clearly define the difference between “in-transit” vessels and permanent home-ported vessels, a temporary permit is no longer being used to obtain a berth. In-transit vessels must now submit a “berth reservation” form when requesting a berth. This form is the same form used by all commercial non-home ported vessels, including passenger and cargo, which call at the Port of San Diego Section 4.09.04 (Item (a), Page 7).
- The time limitation for the mooring of an “in-transit” vessel may be extended by the Executive Director “upon the showing of a bona fide need”. Prolonged mechanical or weather issues can impact the departure of a vessel Section 4.09.04 (Page 6).
- Owner/operators of “in-transit” vessels must submit a “berth reservation” form when requesting a temporary berth Section 4.09.04 (Item No. 1 (a), Page 7). (See above item regarding “in-transit” and home-ported vessels.
- Establishes that the Port “may institute legal actions in any court of competent jurisdiction against any person who violates any provisions of Tariff 1-G” and Section 4.09. Language regarding “misdemeanors” has been removed. Clarifies that the Executive Director has the authority to remove any vessel from the “assigned mooring” area which is in violation of Section 4.09 to the nearest impound area or other location “within the Port of San Diego”. “Approved berth reservations” are issued in lieu of mooring permits Section 4.09.09 (Page 10).
- “Mooring assignments” are issued rather than “permits” for temporary requests Section 4.09.03, (Page 6).
- To establish a vessel’s “proof of ownership”, documentation in the form of either a “California Department of Motor Vehicles vessel certificate number (CF)” or a “USCG certificate of

documentation” is now required Section 4.09.02 (Item No. 2, Page 2).

- A “Commercial Boat Registration” from CDF&W is required for any resident owner or operator for any vessel operated in public waters in connection with fishing operations for profit in the State of California. The registration must be renewed annually Section 4.09.02 (Item No. 3, Page 2). The term “certificate of registration” was ambiguous.
- Clarifies that each “owner/operator” of a vessel, not the vessel itself, must have a valid commercial fishing license that is renewed annually Section 4.09.02 (Item No. 4, Page 3).
- Expands the written documentation of the tax assessment of a commercial fishing vessel from some county within the State of California to counties within the United States of America to be able to include vessels relocating from other states Section 4.09.02 (Item No. 5, Page 3).
- Allows the “Manager of Maritime Operations” the ability to grant a waiver to a vessel that cannot meet “proof of fishing activity” requirements due to the configuration of the vessel. If a waiver is denied, it can be “reconsidered with a review of all original and any additional evidence by the Executive Director whose final decision will be binding” Section 4.09.02 (Item (i), Page 3).
- Establishes that “Tuna Harbor Basin” may be used as a “harbor of safe refuge” (allows a vessel to take shelter at no cost due to extreme conditions of weather or distress subject to specific requirements Section 4.09.05 (Page 8). This language is also found in Port of San Diego Tariff No. 1-G, Item No. 0390 (c) and was requested to be replicated in Section 4.09 by SDFWG.

In conclusion, staff recommends that the Board adopt an Ordinance amending District Code, Section 4.09 (Section 4.09) as shown in Attachment A, attached, to include the following requirements:

- 1) Verification of fish landing receipts by CDF&W.
- 2) Marine insurance coverage for “in-transit” vessels and all new mooring permittees.
- 3) Regular vessel safety inspections, for all vessels, by the USCG.
- 4) Credit checks for prospective tenants.
- 5) Rules for overnight commercial fishing activities or preparations.
- 6) Update and clarify of Section 4.09 language.

General Counsel’s Comments:

The Office of the General Counsel has reviewed and approved the proposed ordinance as to form and legality.

Environmental Review:

The Board action, including without limitation, an ordinance amending District Code 4.09 of the San Diego Unified Port District Code, does not constitute an “approval” or a “project” under the definitions set forth in California Environmental Quality Act (CEQA) Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of Board’s action or direction that requires the District or the Board’s discretionary approval

resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District, in its sole and absolute discretion, requiring implementation of mitigation measures, adopting an alternative, including without limitation, a “no project alternative” or adopting a Statement of Overriding Consideration, if required. The current Board direction in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

In addition, this Board item complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operations of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient, for the promotion and accommodation of commerce and navigation. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board action does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District’s CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District’s certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The Board’s direction or action in no way limits the exercise of the District’s discretion under the District’s CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

Daniel Valentine
Manager, Maritime Operations

Attachment(s):

Attachment A:	Proposed Revisions-“Regulation of Vessels-Tuna Harbor Basin
Attachment B:	Tuna Harbor Basin - Photo
Attachment C:	Port Code Section 4.09
Attachment D:	West Coast Commercial Fishing Facilities Benchmark Study
Attachment E:	CDF&W Information Request Form
Attachment F:	Commercial Fisherman Letter of Support