



Legislation Text

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SUBJECT:

SHELTER ISLAND YACHT BASIN (SIYB) DISSOLVED COPPER TOTAL MAXIMUM DAILY LOAD:
A. INFORMATIONAL UPDATE ON A PROPOSED PAUSE OF IN-WATER HULL CLEANING OF VESSELS WITH COPPER-BASED ANTIFOULING PAINT IN SIYB FOR AN EIGHT-WEEK PERIOD STARTING APPROXIMATELY MID-DECEMBER 2021 AND CONTINUING THROUGH MID-FEBRUARY 2022; AND
B. DIRECTION TO STAFF ON A DRAFT AMENDMENT TO SECTION 4.14 OF THE DISTRICT CODE, REGULATION OF IN-WATER HULL CLEANING, TO IMPLEMENT THE TEMPORARY PAUSE

EXECUTIVE SUMMARY:

This is an informational presentation and update on an In-Water Hull Cleaning Pause (Hull Cleaning Pause) and request for direction on an accompanying draft amendment to District Code Section 4.14, Regulation of In-Water Hull Cleaning, (Draft Ordinance Amendment) that would temporarily pause in-water hull cleaning of vessels with copper-based paint in the Shelter Island Yacht Basin (SIYB) for an eight-week period. The purpose of the Hull Cleaning Pause is to improve water quality in SIYB and further assess improvements resulting from this mitigation measure. This item serves as a follow up to direction from the Board of Port Commissioners (Board) received during the June 2021 public Board meeting. A draft of the Board presentation is included as Attachment A.

In 2005, the San Diego Regional Water Quality Control Board (Regional Board) set a Dissolved Copper Total Maximum Daily Load (TMDL) for the SIYB based on dissolved copper levels in SIYB exceeding water quality objectives. The Regional Board attributed copper loading to copper-based antifouling paints applied to the hulls of recreational boats. The TMDL provides for a 76 percent reduction in copper loading by December 1, 2022. The Regional Board identified the District, SIYB marina owners and operators, in-water hull cleaners, and boat owners as the dischargers responsible for meeting the TMDL requirements.

While efforts to reduce copper loading into the basin have had some success, annual water quality testing shows that dissolved copper concentrations remain elevated above the 3.1 µg/L water quality objective in SIYB. In-water hull cleaning has been identified as a likely source of the elevated levels of dissolved copper in SIYB.

District staff presented a concept to the Board of Port Commissioners at the June 2021 meeting that would temporarily pause in-water hull cleaning activities in SIYB for vessels with copper-based antifouling paint over an eight-week period. The purpose of the concept was to reduce copper inputs into the basin and thereby improve water quality, and to assess the relationship between in-water hull

cleaning activities and water quality conditions in SIYB resulting from the temporary pause. The Board directed staff to move forward with the concept and to develop a mechanism for implementation that does not rely on voluntary compliance.

Stakeholder engagement has occurred through various efforts and has helped to shape the Hull Cleaning Pause. Efforts included meetings with SIYB marina tenants, in-water hull cleaners, boatyard operators, and regulatory agencies. In-water hull cleaning surveys provided insight into local hull cleaning behaviors. Emails and posts to the District's website disseminated information to the boating community. In addition, the Regional Board closely collaborated with the District on this Hull Cleaning Pause and will be supporting District staff on the presentation. Staff has incorporated feedback from these engagements into the Hull Cleaning Pause and will discuss these efforts as well as remaining stakeholder concerns during the Board meeting.

A Sampling and Analysis Plan & Quality Assurance Project Plan for water quality testing has been developed for the Hull Cleaning Pause (Attachment B). It includes weekly water quality testing that will evaluate dissolved copper in SIYB before, during, and after the temporary pause.

A Draft Ordinance Amendment is being presented to the Board for discussion and direction (Attachment C). The Draft Ordinance Amendment would prohibit the in-water hull cleaning of vessels with copper-based antifouling paint in SIYB from December 19, 2021 through February 12, 2022.

To ensure compliance with the Draft Ordinance Amendment, District staff would conduct frequent inspections in SIYB during the pause period and issue citations as appropriate.

Staff is providing this update to further discuss the Hull Cleaning Pause and seek Board direction on the Draft Ordinance Amendment. If directed by the Board, staff would bring back the Draft Ordinance Amendment to the Board for adoption at a future public meeting, potentially as soon as October 2021.

RECOMMENDATION:

Receive presentation from staff regarding the status of a proposed pause of In-Water Hull Cleaning of vessels with copper-based antifouling paint in Shelter Island Yacht Basin for an eight-week period and provide direction to staff on a draft amendment to Section 4.14 of the District Code.

FISCAL IMPACT:

This item is for presentation purposes only and has no fiscal impact.

COMPASS STRATEGIC GOALS:

This agenda item supports the District's strategic goals by seeking copper reductions throughout San Diego Bay and working to improve water quality, with an emphasis on SIYB.

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

- A Port that the public understands and trusts.

- A Port with a healthy and sustainable bay and its environment.

DISCUSSION:

Background

In 2005, the Regional Board set a Dissolved Copper TMDL for the SIYB. In establishing the SIYB TMDL, the Regional Board found that dissolved copper levels in SIYB exceeded water quality objectives and thereby threaten and impair the designated beneficial uses of marine habitat and wildlife habitat in this area. The Regional Board attributed approximately 98 percent of all copper loading to SIYB to copper-based antifouling paints applied to the hulls of recreational boats. The Regional Board found that a 76 percent overall reduction of residual copper loading to SIYB is required to meet the SIYB TMDL by December 1, 2022, and named the District, SIYB marina owners and operators, underwater hull cleaners, and boat owners as dischargers responsible for meeting copper reductions set forth in the TMDL.

Since the initiation of the TMDL monitoring program, multiple copper load reduction strategies have been developed and implemented. While these strategies have resulted in a copper load reduction that has met TMDL interim compliance targets, annual water quality monitoring has not shown a corresponding decrease in dissolved copper levels. Annual water quality monitoring and reporting conducted by the District has documented that dissolved copper concentrations remain elevated above the 3.1 µg/L water quality objective in SIYB. Additionally, a recent study conducted by the California Department of Pesticide Regulation found that higher concentrations of dissolved copper in the water is likely linked to in-water hull cleaning.

At the June 2021 Board Meeting, staff gave an update on the status of the TMDL and presented this concept to the Board for direction. The implementation of a pause is expected to improve water quality by addressing an identified source of copper and provide additional data from which to determine next steps in load reduction and water quality improvements. At the June 2021 meeting, the Board directed staff to move forward with the proposed concept and to develop a mechanism for implementation that does not rely on voluntary compliance for the Board's consideration. This agenda sheet provides an update on the Hull Cleaning Pause and shares a Draft Ordinance Amendment for discussion. A draft of the accompanying presentation is included as Attachment A.

In-Water Hull Cleaning Temporary Pause

The purpose of the Hull Cleaning Pause is to improve water quality in SIYB. Data would be gathered during the Hull Cleaning Pause to assess the relationship between in-water hull cleaning activities and water quality. The Hull Cleaning Pause would temporarily pause in-water hull cleaning activities for vessels with copper-based paint in SIYB for an eight-week period. During the pause, the District would conduct weekly water quality monitoring for dissolved copper. Water quality sampling would also occur weekly during the four-week periods before and after the pause to provide comparisons to the data collected during the pause. There would be an additional sample collection if a storm occurs during the pause period to assess potential contributions from stormwater runoff.

The Hull Cleaning Pause details were finalized over the past several months, utilizing feedback from stakeholders as discussed later in this agenda sheet. The Hull Cleaning Pause eight-week timeline

was determined based upon input from multiple hull cleaners. The pause is proposed to start December 19, 2021 and end February 12, 2022. The four-week pre- and post-pause water quality testing would occur immediately before and after the pause dates, with the full-time frame for the water quality testing component running from November 21, 2021 through March 12, 2022.

Over the past several months, the District also worked closely with the Regional Board to finalize the water quality testing study component. The proposed concept includes 18 sampling locations spaced within marinas and yacht clubs throughout SIYB as well as a reference site from which to compare findings. Additional considerations related to tides, consistency in sampling methodology, and storm events were incorporated into the Hull Cleaning Pause design, as well. The Hull Cleaning Pause Sampling and Analysis Plan & Quality Assurance Project Plan was distributed to stakeholders on August 27, 2021 and is included here as Attachment B.

Draft Amendment to Ordinance 2681 District Code Section 4.14

Depending on direction from the Board, the pause would be implemented through an amendment to District Code Section 4.14, Regulation of In-Water Hull Cleaning, that would be presented to the Board for adoption at a future public Board meeting. The Draft Ordinance Amendment is set forth in Attachment C. It was distributed to stakeholders on August 27, 2021. The Draft Ordinance Amendment would add subsection (e) as follows:

Eight-Week Pause of In-Water Hull Cleaning of Copper-Based Antifouling Paint or Coating Within the Shelter Island Yacht Basin

The following provisions apply exclusively to the In-Water Hull Cleaning of vessels within Shelter Island Yacht Basin during an eight-week pause beginning on December 19, 2021, and extending through February 12, 2022, and to no other area within the District's jurisdiction.

1. No Person shall perform In-Water Hull Cleaning of any vessel having a Copper-Based Antifouling Paint or Coating within the Shelter Island Yacht Basin.
2. No Person shall contract for, authorize, or allow entry to a Facility for a Person to perform In-Water Hull Cleaning of any vessel having a Copper-Based Antifouling Paint or Coating within the Shelter Island Yacht Basin.
3. No Facility shall contract for, authorize, or allow entry to a Facility for a Person to perform In-Water Hull Cleaning of any vessel having a Copper-Based Antifouling Paint or Coating within the Shelter Island Yacht Basin.
4. Sunset. Sub-sections 4.14(e)(1)-(3) of this Section shall automatically expire on February 13, 2022.

The Draft Ordinance Amendment also includes definitions for the terms *Copper-Based Antifouling Paint or Coating* and *Shelter Island Yacht Basin*, clarifies that any person subject to enforcement for violation of the District's In-Water Hull Cleaning Ordinance may appeal the violation in accordance with the provisions of Section 0.11(i) of the District's Code, and provides limited clarifications of existing provisions.

A critical element for the Hull Cleaning Pause success will be adherence to the pause. If the Board adopts the Draft Ordinance Amendment at a future meeting, District staff would conduct frequent inspections during the pause to ensure that the in-water cleaning of vessels with copper-based antifouling paints does not occur in SIYB. District staff would issue citations for violations as appropriate.

Stakeholder Engagement

Stakeholder engagement occurred in various forms over the past several months. In-water hull cleaners, marina and yacht club managers, San Diego Port Tenants Association, and boatyard representatives provided input on the various components of the Hull Cleaning Pause. Staff also had meetings with regulatory agencies including the Regional Board and the Department of Pesticide Regulation to solicit their input. As a result, the Hull Cleaning Pause incorporated a variety of perspectives and feedback, as presented herein.

Information regarding the Hull Cleaning Pause and related September Board item was posted on the District's Copper Reduction Program web pages and disseminated to broad email distribution lists for marinas, yacht clubs and in-water hull cleaning businesses, as follows. On August 9, 2021, information was sent notifying the boating community that there would be a Board presentation during the September 14, 2021 to further discuss the Hull Cleaning Pause and the Draft Ordinance Amendment and invited the public to attend that meeting. On August 27, 2021, the draft Hull Cleaning Pause Sampling and Analysis Plan and Draft Ordinance Amendment were distributed to large mailing lists of SIYB interested parties and posted on the web page. For both communications, marinas and yacht clubs were asked to share the information with their boaters, and in-water hull cleaning businesses were asked to share the information with their employees and respective boater clients.

Staff met regularly with the SIYB Marina Working Group and the Regional Board to discuss the Hull Cleaning Pause. A draft of the water quality testing approach was discussed and refined during these meetings, including the addition of pre and post-pause testing, use of reference stations, rain event sampling, and sampling locations that represent all marina areas within SIYB.

Staff also reached out to in-water hull cleaning businesses, boatyard representatives, and connected within the boating community. A survey of in-water hull cleaning practices was administered during the spring 2021 to refine the Hull Cleaning Pause concept. Over 400 in-water hull cleaners, marina representatives and boaters participated. Feedback was received related to business practices, scheduling, and boater expectations. In particular, the greatest concerns were related to the length of time of the pause and the potential economic impacts to in-water hull cleaning businesses and loss of income during the pause. Further details are highlighted briefly below and will be provided in the staff presentation during the Board meeting.

The Draft Ordinance Amendment was crafted to be specific to copper-based antifouling paints and in SIYB to address some of the stakeholders' stated concerns. In addition, the Draft Ordinance Amendment identifies a date when the pause will sunset, which was another concern raised by in-water hull cleaners.

The hull cleaners raised an overall concern about the potential for loss of income during the pause

period, especially given that it will be of an eight-week duration. In-water hull cleaning businesses suggested the least disruptive time frame to conduct this study would be from mid-December through mid-February, as business activities tend to slow down over the holiday season. Additionally, marine growth and fouling tend to be less on vessel hulls due to cooler water temperatures, which reduces cleaning frequencies from every three weeks to monthly. Boatyard representatives also agreed that this time frame was reasonable. Staff incorporated the input into the proposed pause timeline, by having the pause occur from December 19, 2021 through February 12, 2022.

Additionally, schedule adjustments during the pre- and post-pause periods were discussed to minimize the numbers of missed monthly cleanings. The timing of the pause, starting late December and ending in early February allows businesses to adjust cleanings for their SIYB customers within those months. In-water hull cleaning businesses and boaters can also conduct in-water hull cleaning on vessels with copper-based antifouling paint or coatings outside of SIYB, or haul out to a boatyard for land-based maintenance during the pause. Another point that was raised during meetings was a subsidy for hull cleaning businesses to account for their loss of business during the pause. This concept has not been incorporated into the Hull Cleaning Pause, however, staff can evaluate this concept if requested by the Board.

Notably, the Regional Board has been closely collaborating with the District on this Hull Cleaning Pause. Their Executive Officer and staff have attended working group meetings, reviewed the water quality testing component, and support the Hull Cleaning Pause because it is beneficial to the SIYB TMDL. Additionally, the Regional Board will be participating with District staff on the Board presentation.

Next Steps

Following the presentation, staff will hear public comment and receive direction from the Board on the Draft Ordinance Amendment that could be used to implement the temporary pause. Based upon the feedback, staff will bring back the Draft Ordinance Amendment for adoption as soon as the October 2021 Board meeting, in anticipation for launching the Hull Cleaning Pause later this year.

Staff would also conduct public engagement between October and December to disseminate information about the Hull Cleaning Pause to ensure that the SIYB boating community is aware of the project details. This would allow in-water hull cleaning businesses and boaters to adjust their cleaning schedules before, during, and after the pause period. Following completion of the Hull Cleaning Pause, staff would return to the Board later in 2022 to present the results and will post the Hull Cleaning Pause Report on the District website.

General Counsel's Comments:

The General Counsel's Office reviewed this agenda as presented to it as to form and legality.

Environmental Review:

The proposed Board action for an informational presentation and direction on a proposed amendment to District Code 4.14 to implement a temporary pause of in-water hull cleaning and conduct subsequent water quality sampling in the Shelter Island Yacht Basin is Categorically Exempt

pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301 (Existing Facilities), 15304 (Minor Alterations to Land), 15306 (Information Collection), and 15308 (Actions by Regulatory Agency for Protection of the Environment) because it would involve no expansion of use beyond that previously existing and would not result in a significant cumulative impact due to the continuation of the existing use, would result in no permanent effects on the environment, would not involve the removal of mature, scenic trees, is for the purpose of basic data collection/research/experimental management/resource evaluation activities which would not result in a serious or major disturbance to an environmental resource, and includes actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, or protection of the environment. The District has determined none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2). No further action under CEQA is required.

In addition, the proposed Board action complies with Section 87 of the Port Act, which allows for the establishment, improvement, and conduct of small boat harbors, marinas, aquatic playgrounds, and similar recreational facilities, and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses, including, but not limited to, snack bars, cafes, restaurants, motels, launching ramps, and hoists, storage shed, boat repair facilities with cranes and marine ways, administration buildings, public restrooms, bait and tackle shops, chandleries, boat sales establishments, service stations and fuel docks, yacht club buildings, parking areas, roadways, pedestrian ways, and landscaped areas. 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.

Finally, the proposed Board action is considered an “excluded development” pursuant to 8.a (Existing Facilities), 8.d (Minor Alterations to Land), and 8.e (Information Collection) of the District’s Coastal Development Permit (CDP) Regulations because it would involve negligible or no expansion of use beyond that previously existing, would not involve the removal of mature, scenic trees, and would not result in a serious or major significant disturbance to an environmental resource. Therefore, issuance of a CDP is not required.

Diversity, Equity, and Inclusion:

This agenda item has no direct DEI impact.

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Attachment(s):

Attachment A: Draft Presentation
Attachment B: Draft In- Water Hull Cleaning Pause Pilot Study Sampling and Analysis Plan
Attachment C: Red Lined Version of District Code Section 4.14, Regulation of In-Water Hull Cleaning