

RICHARDSON BAY REGIONAL AGENCY

BAY CONSERVATION & DEVELOPMENT COMMISSION

ENFORCEMENT COMMITTEE

DECEMBER 14, 2023



PARTNERS



MILESTONES



- Petition for any necessary federal action (60 days after final EPMP): 10/12/2021 (Done but Ongoing)
- Remove all unoccupied marine debris: 10/15/2021 (Done but Ongoing)
- Finalize Environmental Protection and Management Plan: 12/15/2021 (Done on 8/12/21)
- No new vessels in Eelgrass Protection Zone (EPZ): 12/15/2021 (Ongoing)
- Install 15 - 20 moorings in anchor zone: 12/15/2022 (On Hold)
- Initiate eelgrass restoration studies: 12/31/2022 (Done)
- Remove all post 8/19 vessels: 10/15/2023 Extension Requested and Approved to 10/15/2024
- Remove all floating homes off Waldo Point: 10/15/2023. Two removed by deadline, one moved on 12/11/23 to legal floating home berth. The final vessel went through a nuisance abatement process for removal, and RBRA has requested one last additional 90-days to allow owner to repair and relocate the vessel

MILESTONES, CONTINUED



- Complete admin actions, update ordinances: 12/15/2023 (Done and USCG response received 5/18/23. Supporting order received from Judge Orrick on 12/1/23)
- Begin implementation of 10-year adaptive management plan: 12/15/2023 (Notice to Proceed received 5/5/23. Plan will be submitted on 12/15/23)
- No vessels in EPZ: 10/15/2024 EPZ signage program has been initiated.
- Remove all occupied non-'Safe and Seaworthy': 10/15/2024. All vessels in this category have been provided a 12-month advance notice.
- Apply for mooring permit from BCDC - prior to the end date and if desired: 10/15/2026
- Remove all occupied 'Safe and Seaworthy': 10/15/2026
- Removing all vessels and occupants: 10/15/2026
- Only transient seaworthy vessels in anchor zone: 10/15/2026

VESSEL BUYBACK PROGRAM

PAST REPORTING PERIOD

- Approved by RBRA Board 6/23/22
9 vessels surrendered, \$51,600 distributed
- Program terminated 12/31/22
Will be brought back with housing support program
- Program reinstated on 4/13/23 and will remain active to 10/15/26
- Enough funding over the next three years to buyback most all the vessels in the anchorage
- 3 vessels purchased since 4/13/23

ACTIVITIES DURING THIS REPORTING PERIOD

- 5 Vessels purchased and properly disposed of during this reporting period
- One floating home purchased and disposed of during this reporting period.
- 8 total vessels purchased and properly disposed of since the reinstatement of the program since 4/13/23
- \$39,700 distributed since reinstatement of program
- \$81,700 distributed and 21 vessels properly disposed of since program inception in 2022

CODES AND ORDINANCES



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Past reporting period

- Code of Federal Regulations – petition for amendment submitted to USCG on December 14, 2022; receipt acknowledged February 1, 2023
- Response received from U.S. Coast Guard on 5/18/23
- CFR section 110.126a, the Coast Guard authority for operational management is delegated to the Richardson Bay Regional Authority and the County of Marin.
- This specifically allows the management of the Special Anchorage Area by local authorities to establish requirements on matters including the anchorage of vessels, placement of moorings, and use of anchored and moored vessels within the special anchorage area.

U.S. Department of
Homeland Security
United States
Coast Guard



Commandant
United States Coast Guard
Eleventh Coast Guard District

Coast Guard Island
Alameda, CA 94501-5100
Staff Symbol: Dp
Phone: (410) 437-2968

May 18, 2023

Mr. 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

RE: Petition for Rulemaking to Amend Anchorage Boundaries within the Richardson Bay Special Anchorage Area

Dear Mr. McGrath,

This is a follow up to my letter dated February 1, 2023 regarding Coast Guard District Eleven's response to your petition for rulemaking requesting amending the Richardson Bay Special Anchorage Area, 33 CFR § 110.126a.

A Navigation Safety Risk Assessment was conducted to determine whether there is a need to amend the Richardson Bay Special Anchorage. The results of this analysis suggest that there are no navigational or environmental factors that would necessitate changes to the anchorages from a federal perspective.

Per 33 CFR § 110.126a, the Coast Guard authority for operational management is delegated to the Richardson Bay Regional Authority and the County of Marin. This specifically allows management of the Special Anchorage Area by local authorities to establish requirements on matters including the anchorage of vessels, placement of moorings, and use of anchored and moored vessels within the special anchorage area.

We encourage the Richardson Bay Regional Agency to use its delegated authority in the management of this special anchorage. Should you have any questions about our determination, please contact Commander George at William.J.George@uscg.mil or (510) 289-6733.

Sincerely,

R. J. CAPUTO
Captain
U.S. Coast Guard

Copy: Sector San Francisco

LEGAL OPINION



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On December 1, 2023 Judge William H Orrick provided an order to dismiss without leave to amend, a claim against RBRA with language that supports RBRA's position and codes regarding Richardson Bay.

When CFR 33.110.126(a) was identified, the Judge opined the following

- *Defendants also contend that throughout the FAC [REDACTED] argues or implies that RBRA's anchorage ordinance is preempted by federal law. See, e.g., FAC ¶ 145 ("anchoring permit application violates the Supremacy Clause because it effectively bans all anchoring within the federally designated anchorage outlines in 33 C.F.R. 110.126(a)"). I agree that no regulation or federal authority identified by [REDACTED] preempts the authority of RBRA to control anchorages in Richardson's Bay. Instead, the federal regulations he identified establish Richardson's Bay as a "special anchorage area" and direct mariners to comply with the RBRA's Permit Scheme. Significantly, the Ninth Circuit has expressly rejected the argument that the special anchorage designations conflict with local ordinances requiring permits to stay beyond 72 hours.*

LEGAL OPINION, CONTINUED

Although this opinion is still subject to appeal, it mentions more than once, regarding anchoring and living aboard on Richardson Bay.

- *But I agree that to the extent [REDACTED] is alleging a stand-alone constitutional entitlement to anchor where he chooses, the United States' constitution does not confer a blanket right to anchor in Richardson's Bay. See Graf v. San Diego Unified Port Dist., 7 Cal. App. 4th 1224, 1232 (1992) ("Boaters do not have a constitutional right to unregulated long-term anchorage in public navigable waters.").*
- *Defendants argue that [REDACTED] lacks standing to bring a procedural due process claim because he has not applied for a Permit (Mot. at 8-9) and admits that he intends to live on his boat in Richardson's Bay, which is not allowed under RBRA Code §3.04.020 and means that he would be denied a Permit. See Mot. at 8-9; RBRA Code 3.04.020 ("Living aboard a houseboat or vessel anchored or moored in Richardson's Bay is prohibited).*



RBRA UPDATE: EELGRASS

- 1. EPA Restoration Grant**
- 2. 2023 Monitoring Update**





RBRA UPDATE: EELGRASS

EPA Restoration Grant

- Reminder: \$2.8 million from US EPA's SF Bay Water Quality Improvement Fund awarded to RBRA 5/5/23. Funds:
 - Restoration and Adaptive Management Plan (RAMP) – due to BCDC by 12/15/23
 - 15 acres of eelgrass restoration by 2027
 - Ongoing adaptive management
 - Significant partner engagement/stakeholder outreach
- Award for consultant services executed 9/14/23 with Coastal Policy Solutions and Merkel & Associates
 - Services include project management, stakeholder engagement, policy support, and eelgrass restoration
- In process: subawards to project partners SFSU Estuary & Ocean Science Center and Audubon California



RBRA UPDATE: EELGRASS

Restoration and Adaptive Management Plan (RAMP)

- On track for submittal to BCDC on 12/15/23
- Technical document:
 - Describes 10-year adaptive management plan for restoration of 75 acres of eelgrass in RB
 - Consistent with SF Bay Plan, RBRA Special Area Plan, California Eelgrass Mitigation Policy (CEMP)
 - Considers beneficial reuse of dredge sediment
 - Accounts for passive and active restoration of anchor scars
 - Builds on results of ongoing restoration studies described at 8/23/23 BCDC Enforcement Committee meeting
- May be periodically updated in accordance with adaptive management and monitoring results



RBRA UPDATE: EELGRASS

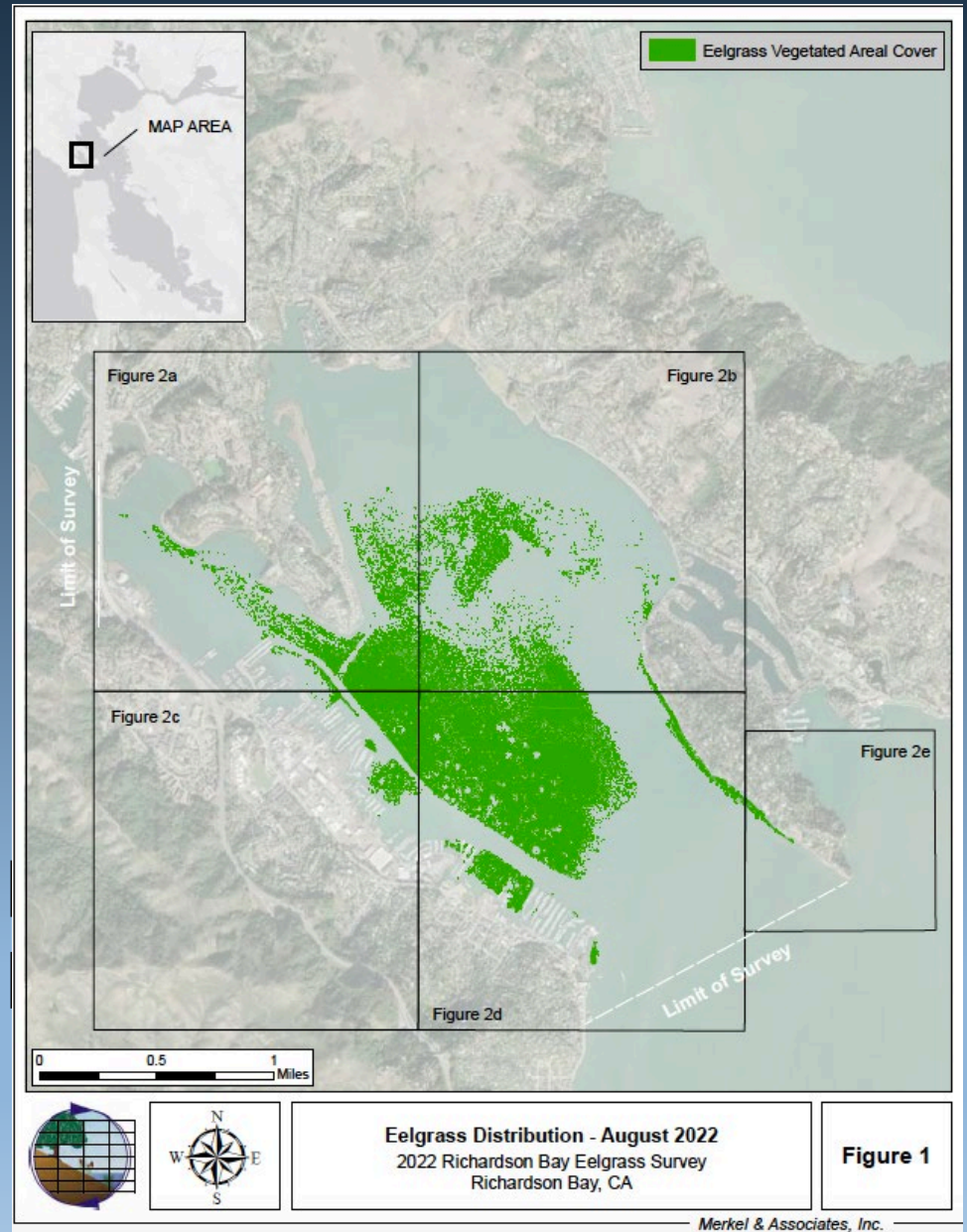
2023 MONITORING UPDATE

- Presented by Coastal Policy Solutions to public and RBRA Board of Directors on 11/16/23
- Includes:
 1. 2022 Sidescan Sonar Survey
 2. 2022 and 2023 Damage Surveys
 3. 2022/2023 Waterbird Monitoring
 4. Major Takeaways



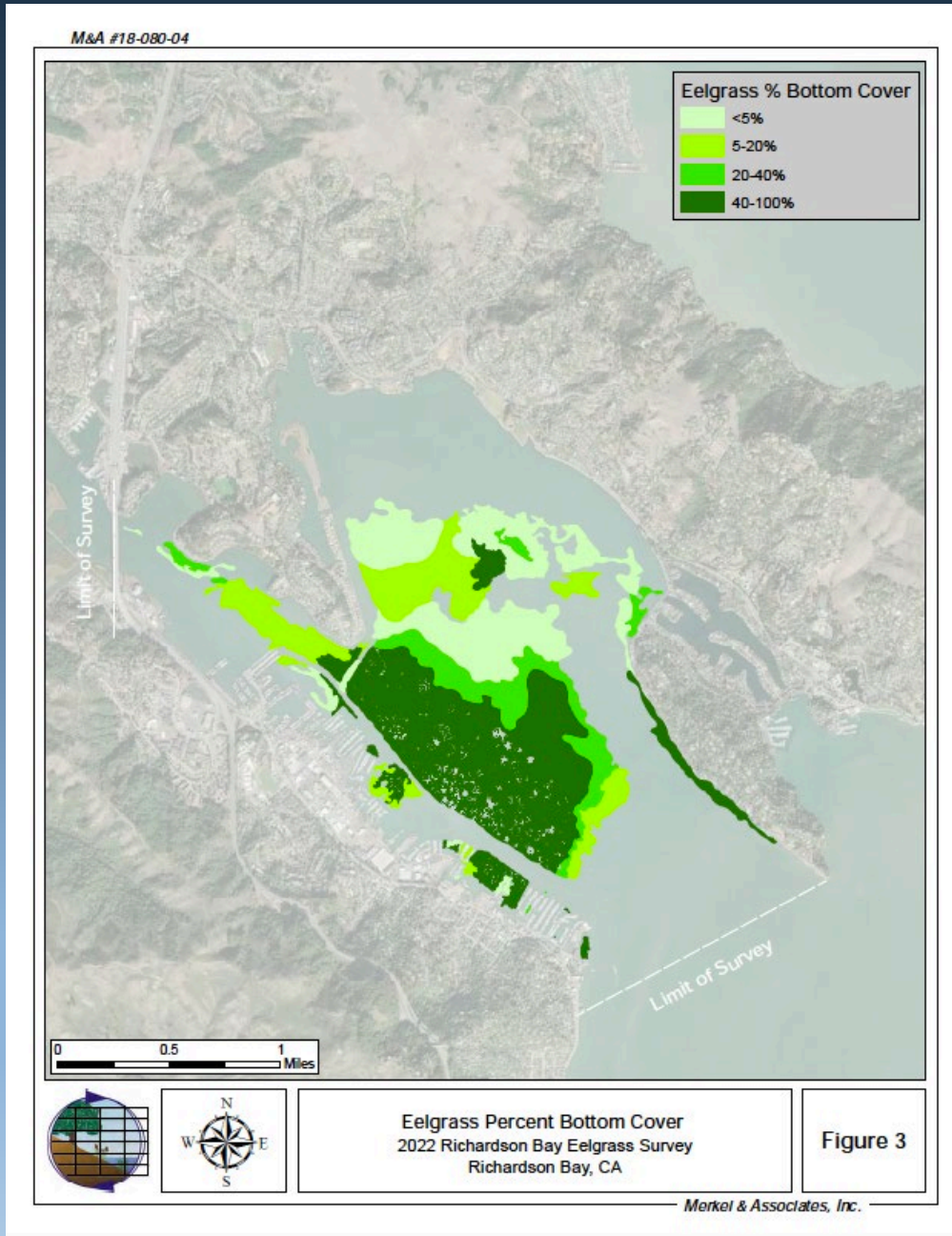
2023 MONITORING UPDATE: 1. SIDESCAN SONAR SURVEY

- Method: boat-based sonar
- Survey completed by Merkel and Associates
- Same general pattern of eelgrass cover in RB as previous years
 - Core of bed in central bay
 - Present but less dense in shallows (warmer), some evidence of wasting disease
 - Absent from deeper parts of the bay (approx. 5 feet MLLW), consistent with light limits



2023 MONITORING UPDATE: 1. SIDESCAN SONAR SURVEY

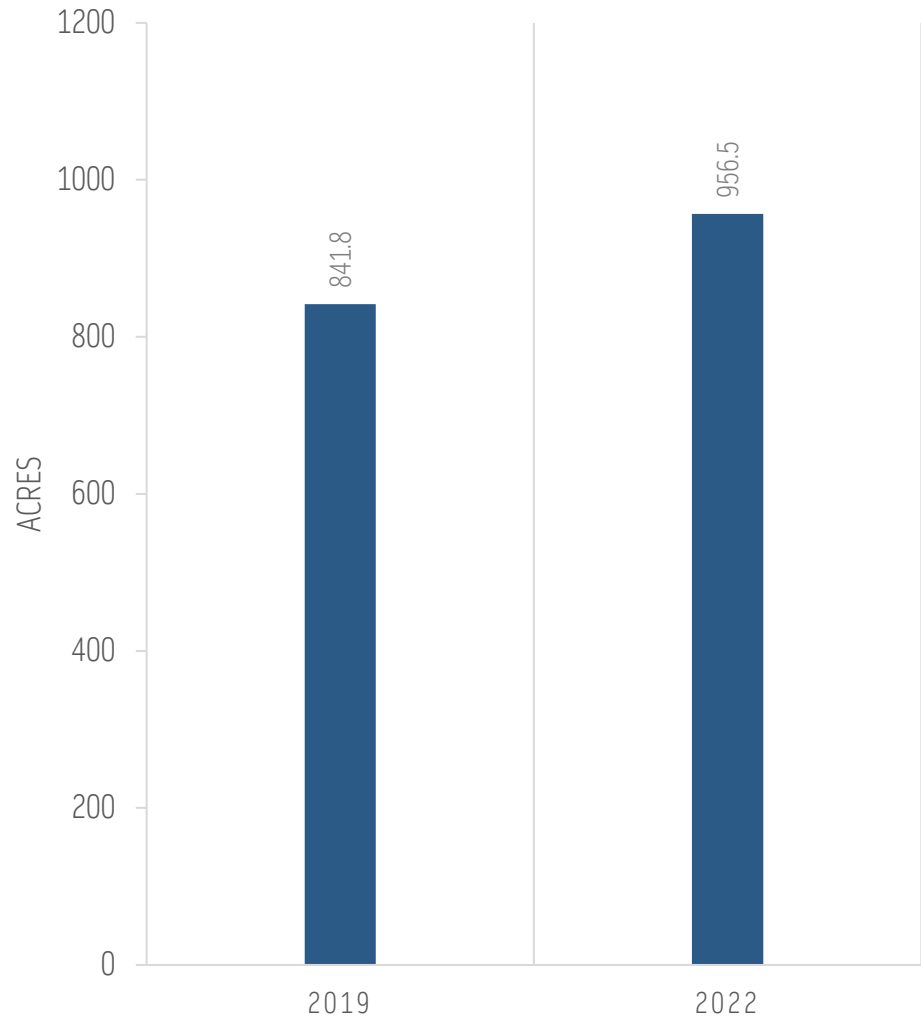
- Total acres: 956.5 acres
- Cover class: how dense the eelgrass bed is. Proxy for health.
- Less than half in 40-100% cover class, over 25% in the <5% cover class



2023 MONITORING UPDATE: 1. SIDESCAN SONAR SURVEY

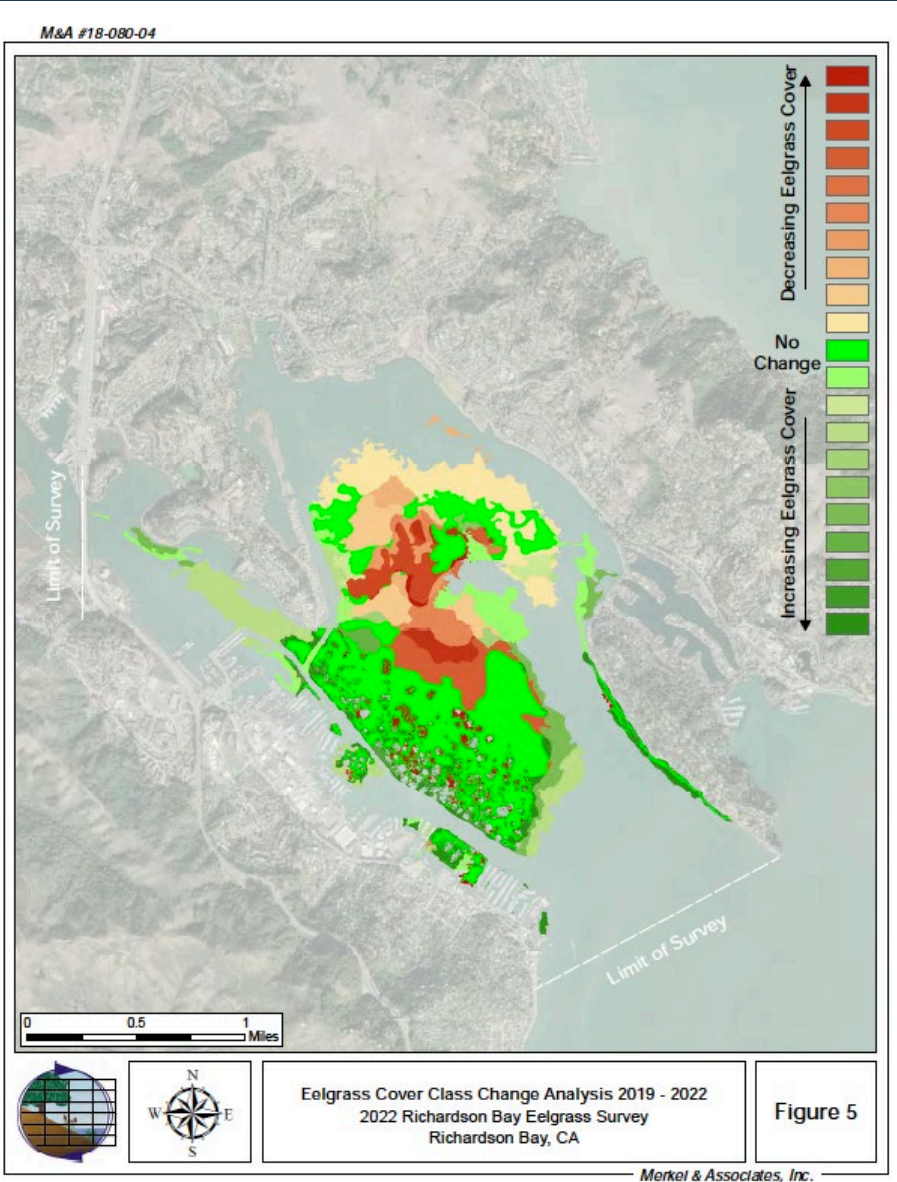
- Binary change 2019 vs 2022:
 - 13% increase
 - Within normal bed variability

TOTAL ACRES OF EELGRASS IN RICHARDSON BAY

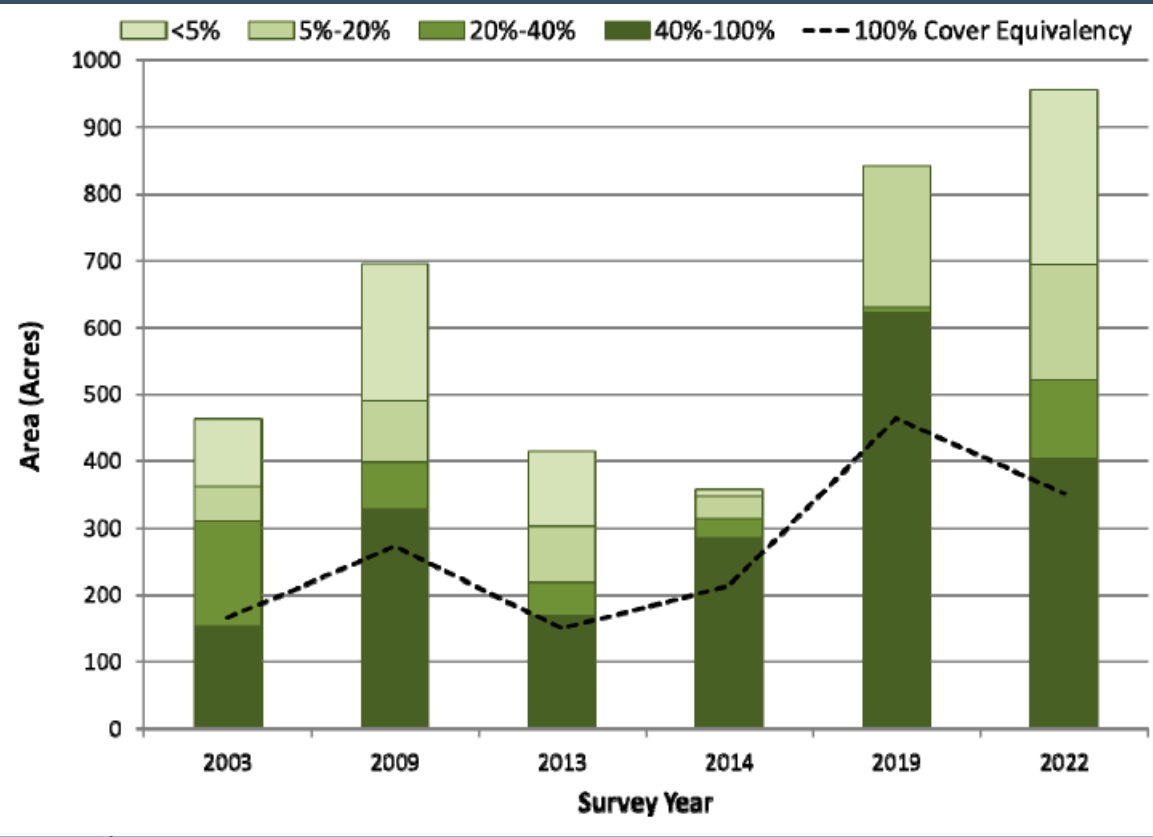


2023 MONITORING UPDATE: 1. SIDESCAN SONAR SURVEY

- Closer look 2019 vs 2022:
 - Some areas of expansion
 - Some areas of decline
- Likely causes of declines
 - Northern reaches: thermal stress
 - Loss in core: eelgrass wasting disease



2023 MONITORING UPDATE: 1. SIDESCAN SONAR SURVEY



- Biggest change: decline 2009 → 2013
- Absolute cover: variable but generally increasing over the past 20 years
 - 20 years is NOT very long in the context of an eelgrass bed
- 100% cover equivalency:
 - Definition: area that would be covered if all present eelgrass was at 100% cover
 - Less dramatic increase since 2003
 - Declined by 24.2% between 2019-2022
 - Better indicator of bed health
 - Beneficial when evaluating:
 - Eelgrass bed productivity
 - Biomass
 - Other metrics dependent on plant density, (e.g., carbon cycling and storage)

2023 MONITORING UPDATE: 2. DAMAGE ASSESSMENTS

- Method: aerial photography and GIS analysis
 - Photos by 111th Aerial Photography Group
 - Analysis and report by Audubon CA
- Goal: How much eelgrass is damaged by anchor scour? Does eelgrass recover within an anchor scar?
- Scour – damage from anchors, chains, other ground tackle
- Methods repeated from previous study (Kelly et al. 2019)
- Low and high damage estimates



Photo: 111th Group, courtesy Audubon CA

ENTATION

SUMMER 2022 Aerial View of Richardson Bay



ENTATION

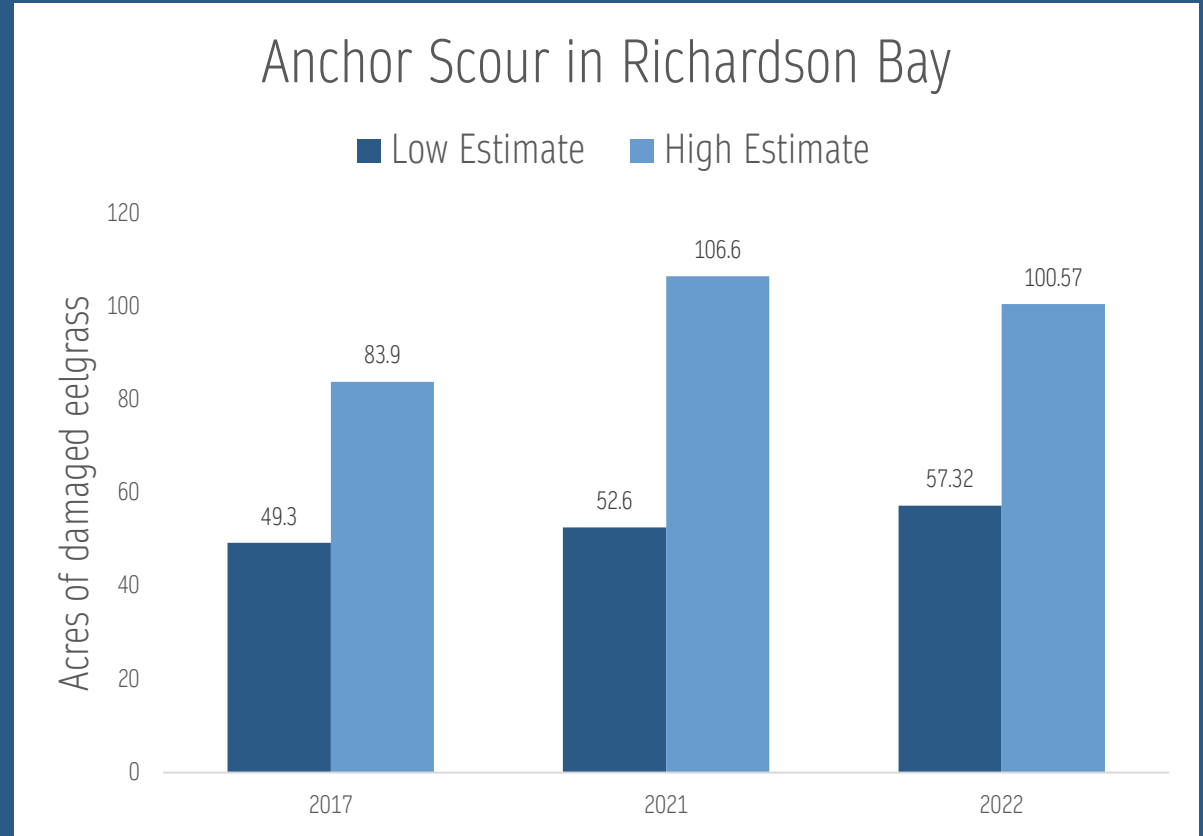
SUMMER 2022 Aerial View of Richardson Bay



2023 MONITORING UPDATE: 2. DAMAGE ASSESSMENTS



Photo: 111th Group, courtesy Audubon CA

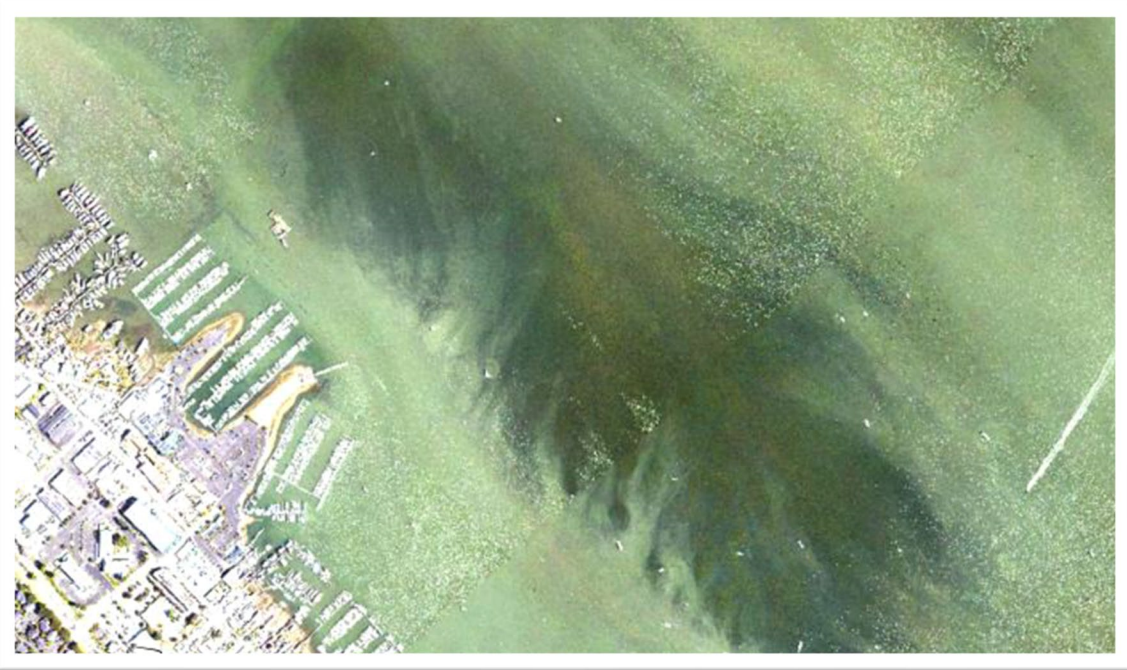


2023 MONITORING UPDATE: 2. DAMAGE ASSESSMENTS

- 2022 survey:
 - Assessment influenced by area of unknown damage, suspected harmful algal bloom



2023 MONITORING UPDATE: 2. DAMAGE ASSESSMENTS



- 2023 survey:
 - Assessment not possible due to macroalgal mat obscuring the eelgrass bed from view



2023 MONITORING UPDATE:

• 2. Damage assessments

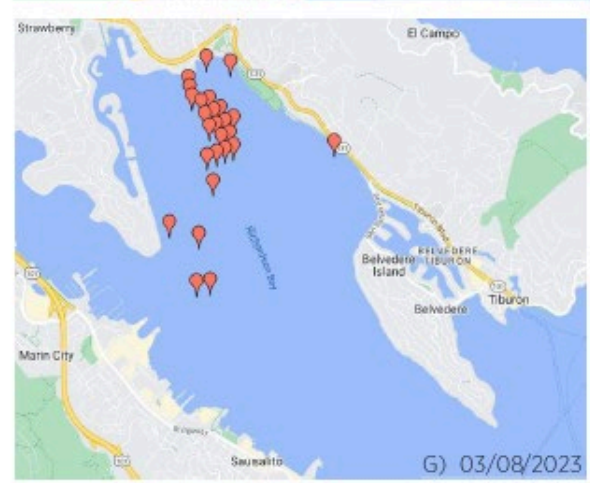
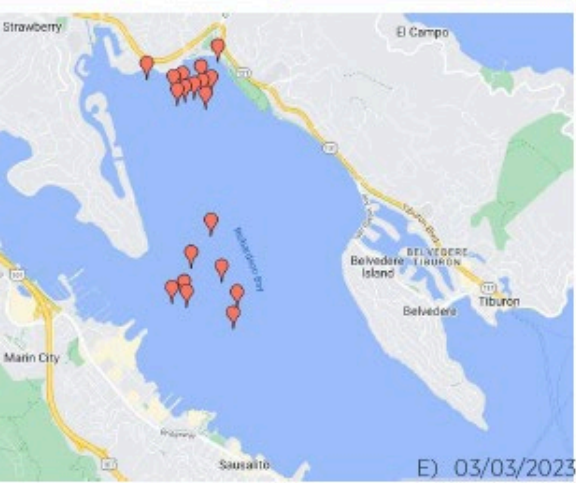
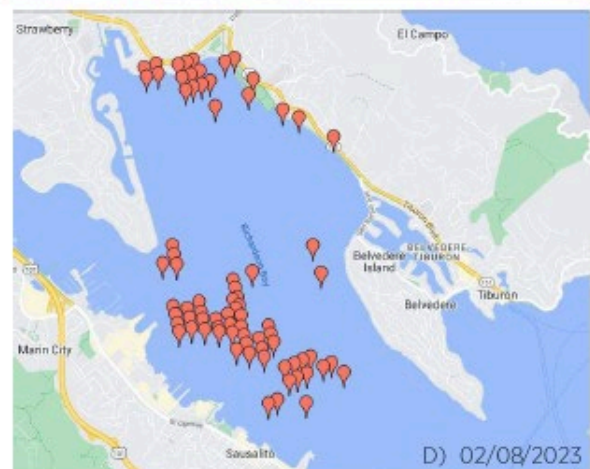
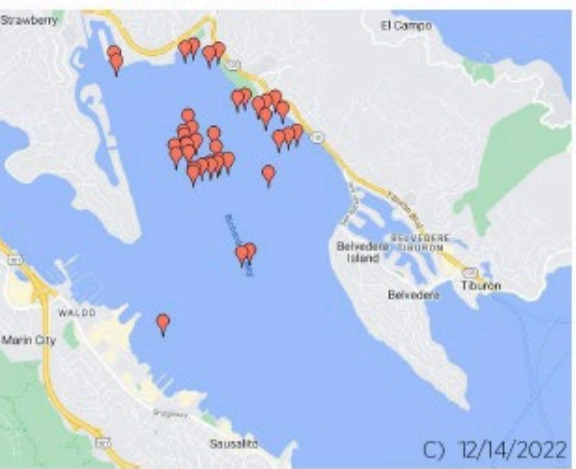
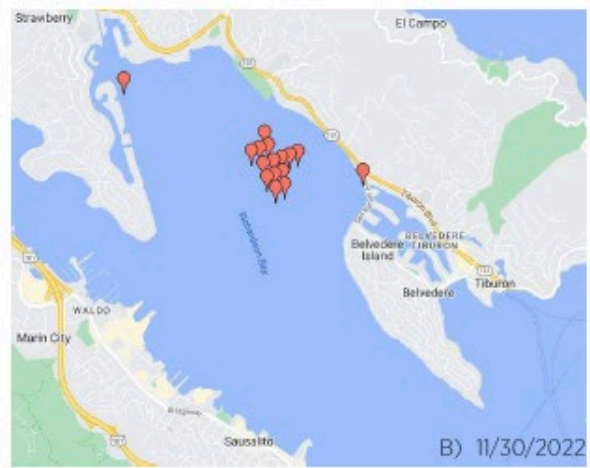
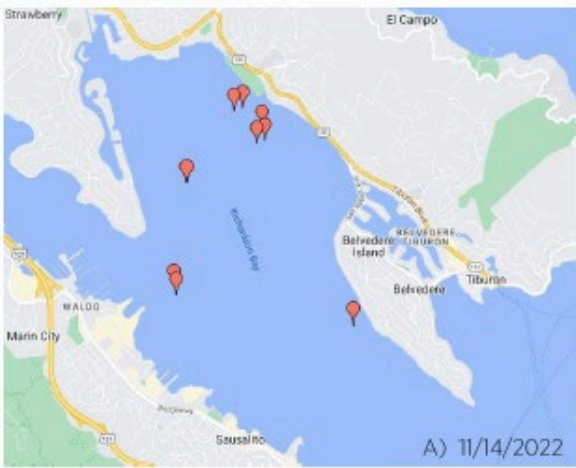
- Additional findings:
 - Some, but not all, anchor scars show signs of recovery
 - Suggests recovery takes more than one year



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2023 MONITORING UPDATE: 3. WATERBIRD MONITORING

- Results:
 - Continue to see rafts primarily along northern and eastern shorelines, same as previous years.





RBRA UPDATE: EELGRASS

2023 MONITORING UPDATE MAJOR TAKEAWAYS

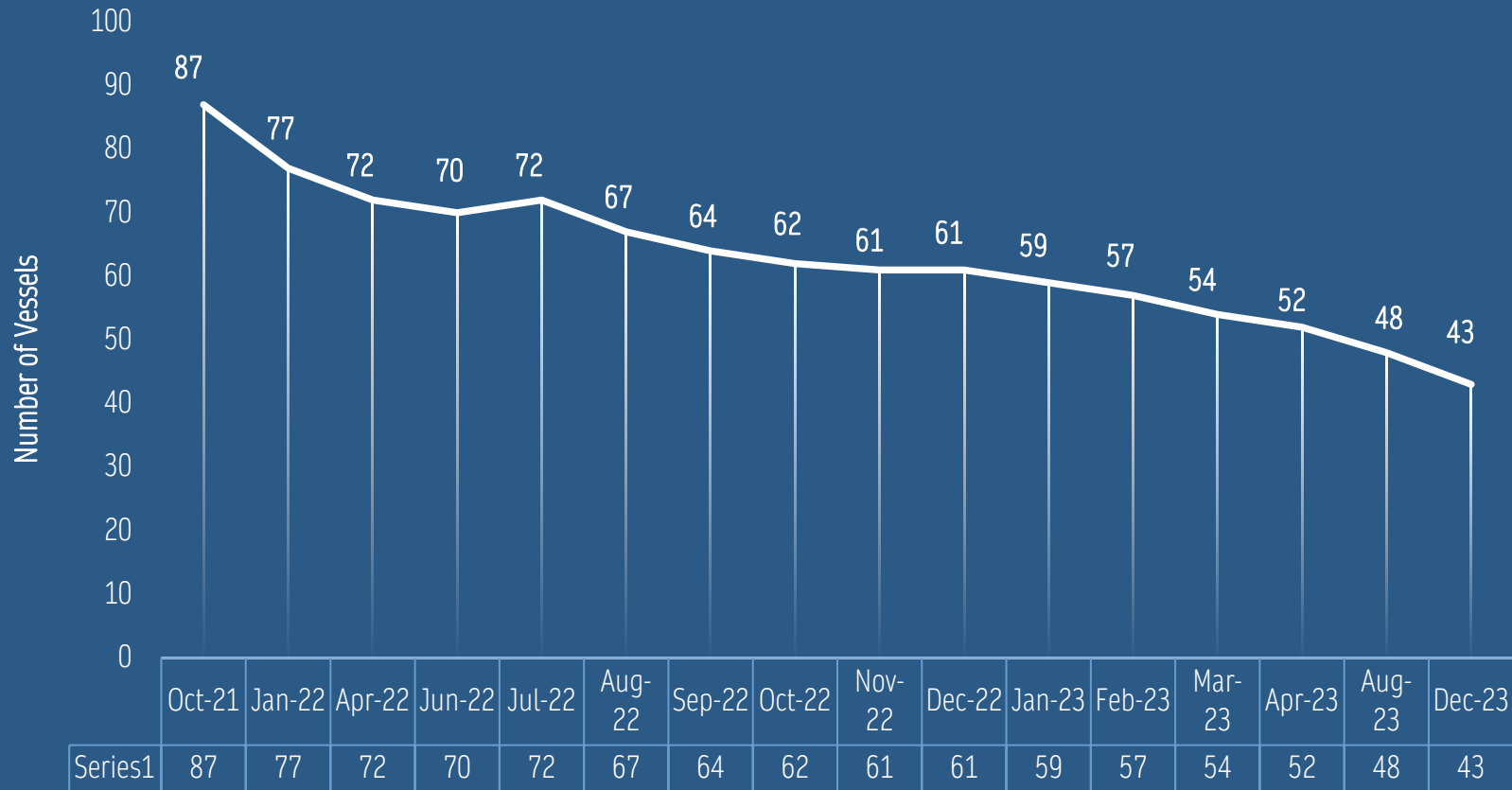
- The good:
 - Damage to eelgrass from anchor scour appears to have plateaued
 - Continue to see evidence of eelgrass recovery
- The not so good:
 - Overall health of the bed is questionable
 - Thermal stress, wasting disease, algal competition - all expected to increase with climate change
- Overall:
 - Protecting and restoring this bed is more crucial than ever

VESSEL CENSUS



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VESSELS + FLOATING HOMES IN RICHARDSON BAY



MILESTONES IN AGREEMENT

- 10/15/23: all post 2019 vessels
14 as of 8/10/23
 - 7 as of 12/4/23
- 10/15/23: all floating homes
2 as of 8/10/23
 - 1 as of 12/4/23
- 10/15/24: no vessels in EPZ
53 as of 7/1/22
42 as of 8/10/23
 - 35 as of 12/14/23

MILESTONES IN AGREEMENT

- 10/15/26: all occupied, safe and seaworthy
- 10 as of 6/1/22
- 7 as of 8/10/23
 - 7 as of 12/4/23

Vessels on the water

- 57 as of 7/1/22
- 48 as of 8/10/23
 - 43 as of 12/14/23
 - 5 – 30 day permits as of 12/14/23

ENFORCEMENT:



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- 6 citations issued during this reporting period. 3 initial, 2 second and one third notice
- Two nuisance abatement issued and in process during this reporting period.
- All vessels due to vacate the anchorage by 10/15/24 were issued a 12-month advance notice

12 MONTH ADVANCE NOTICE

RICHARDSON BAY REGIONAL AGENCY

The vessel this notice is attached to: _____ with
Known interested party or registered owner: _____ has
been identified by the RBRA as a vessel which is required to be removed from the Richardson Bay
Special Anchorage in accordance with the agreement reached between the RBRA and the Bay
Conservation and Development Commission (BCDC). This vessel can be voluntarily turned in to the
RBRA, sold to the RBRA through the RBRA Vessel Buy Back Program, or removed from the anchorage
of Richardson Bay by **October 15, 2024**. For additional information please contact the RBRA
Harbormaster.

The RBRA Harbormaster, Jim Malcolm can be reached at:

Telephone: 415-971-3919

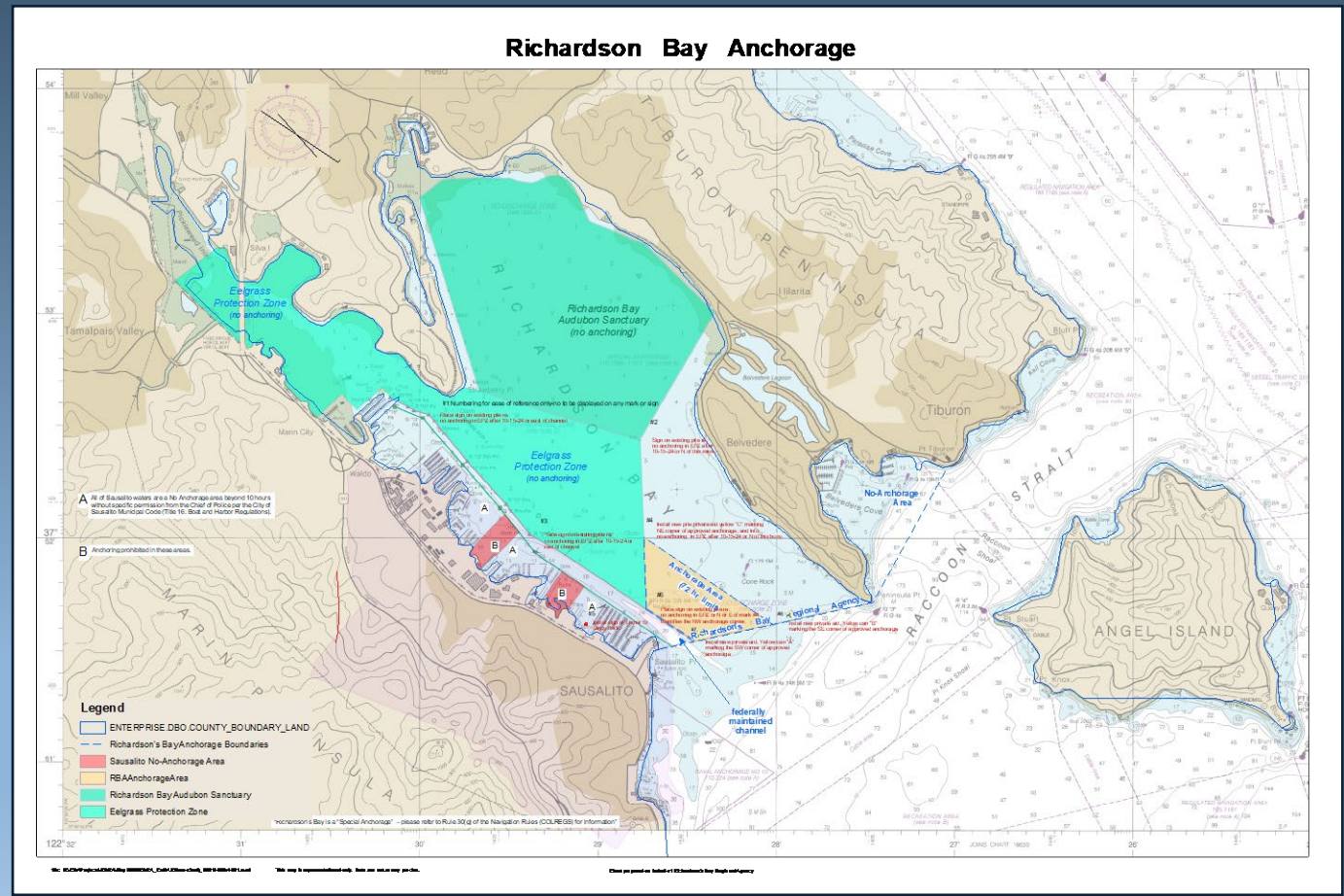
imalcolm@marincounty.org

This notice is to be posted to the vessel or property

Richardson Bay Regional Agency, 3501 Civic Center Dr. Room 308, San Rafael, CA 94903
(415) 971-3919

ENFORCEMENT: NEXT STEPS

- Planning underway for EPZ and Anchorage signage
- 5 Signs to be placed on existing piles
- Installation of one new pile and three floating buoys
- Plans are under review by BCDC staff
- Permits are not yet submitted
- Effective date 10/15/24
- All vessels in EPZ received a 12-month notice to vacate Richardson Bay



RBRA UPDATE: HOUSING



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COMPONENTS

- Funding
- Temporary housing support
- Case Management
- Marinas

FUNDING

- \$3 million FY 23 State budget
 - With thanks to Senator McGuire for his support
- Funding received 3/28/23
- Program began seeking applications on 5/1/23
- To date, \$182,326.00 has been expended

RBRA UPDATE: HOUSING



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TEMPORARY HOUSING SUPPORT

- RBRA/Marin Housing Authority contract approved by RBRA 11/10/22, by MHA 1/31/23
- MHA prefunded \$30,000
- Contract between RBRA and HHS approved 4/18/23, and prefunded \$86,170

HOUSING CONT'D...

- Contract between HHS and Episcopal Community Services for case management was approved 8/15/23
- ECS has established well received landside meeting dates in Sausalito and recently began their on the water outreach efforts.
- ECS full time case worker began on 10/2/23

MARINAS

- No formal commitments from Sausalito Marinas yet
- Two marinas have engaged, and discussions continue

ACTIVITIES DURING REPORTING PERIOD

- One marina is now committed
- One marina withdrew participation

TRACKING POST-2019 VESSELS



Name	CF or USCG	Vessel Type	Registration	In EPZ Y/N	Occupied Y/N	30-Day Permit	Housed	Note
CF 9	CF	power	2019	Y	N			Engaged
CF 4	CF	sail	none	Y	N		Y	Vessel Gone
CF 6	CF	sail	2017	Y	Y			
F	CF	sail	2017	Y	Y			Engaged
L	CF	sail	2021	Y	Y			
S1	DOC	sail	2019	Y	Y			Engaged
Z	CF	sail	2021	Y	Y			Engaged
I	CF	motor	2013	Y	Y		Y	Vessel Gone
S2	none	sail	none	Y	Y		Y	Vessel Gone
CF 3	CF	sail	2015	Y	Y			
NN	none	power	none	Y	Y		Y	Vessel Gone
G	CF	power	2023	Y	Y	x		Engaged
ND	CF	Sail	2023	Y	N	x		Engaged
J	CF	Sail	2023	Y	Y	x		Engaged
K	none	Sail	none	Y	Y			Engaged
	Housed	On path to Housing	Participating in Program	Slated for outreach	30-day permit	Pending Buyback	Housed	
Current rept period	2	10	10	3	3	3	2	
Previous rept period	2	3	9	6	3	2	2	
RBRA Program	3		Vouchers issued 6					
Other Program	1							
			Housed 4			Vessel Buyback 4		

PROGRAM SUCCESS



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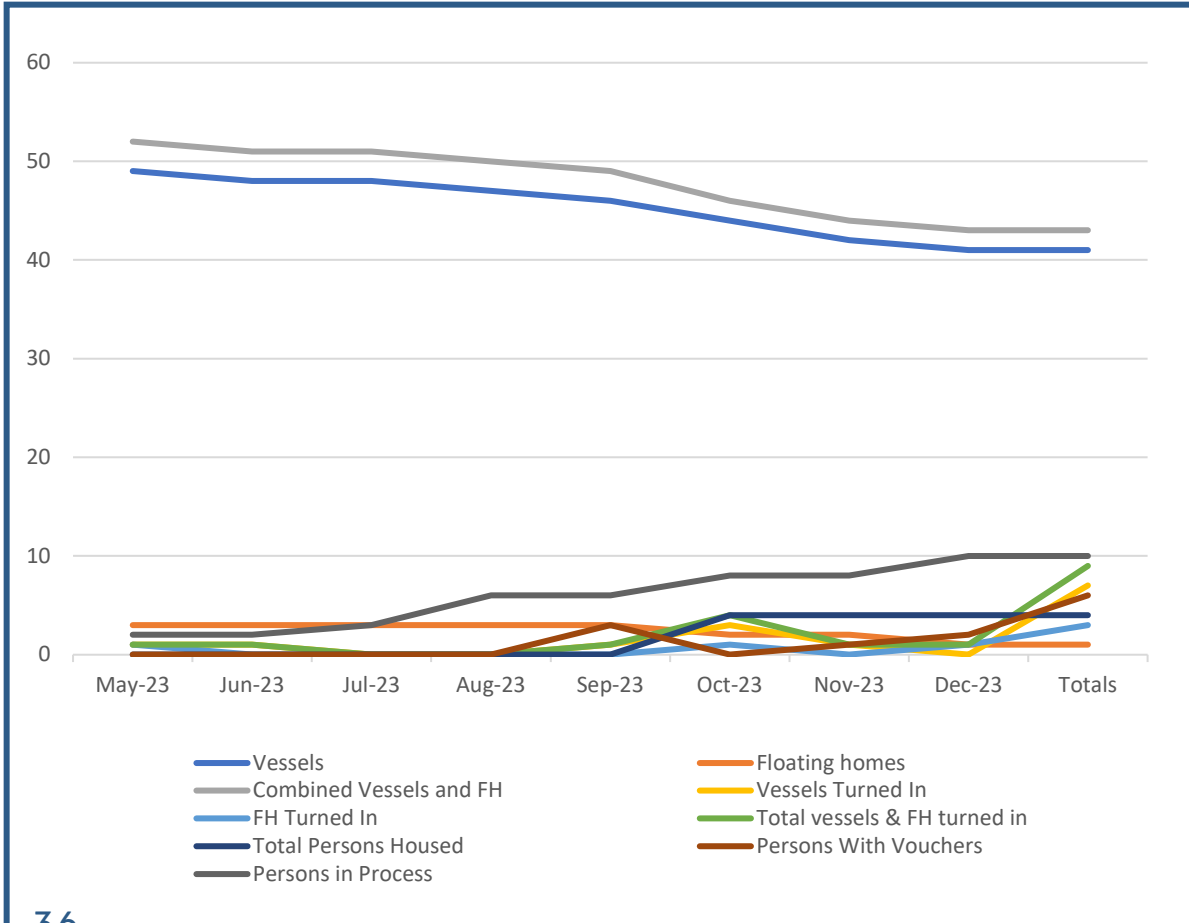
TEMPORARY HOUSING VOUCHER PROGRAM PAST ACTIVITIES

- 4 boaters are participating
- 11 boaters are in queue to participate
- 3 boaters have had vouchers issued (2 RBRA THV)
- 2 boaters have submitted rental applications
- 3 vessels have been purchased via the Vessel Buyback Program

TEMPORARY HOUSING VOUCHER PROGRAM

- 4 persons are housed
- 10 persons are participating
- 5 persons are in queue to participate
- 2 persons have a voucher and one pending
- 4 vessels have been purchased via the Vessel Buyback Program

VESSELS VS. HOUSING



	May-23	Jun-23	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Totals
Vessels	49	48	48	47	46	44	42	41	41
Floating homes	3	3	3	3	3	2	2	1	1
Combined Vessels and FH	52	51	51	50	49	46	44	43	43
Vessels Turned In	1	1	0	0	1	3	1	0	7
FH Turned In	1	0	0	0	0	1	0	1	3
Total vessels & FH turned in	1	1	0	0	1	4	1	1	9
Total Persons Housed	0	0	0	0	0	4	4	4	4
Persons With Vouchers	0	0	0	0	3	0	1	2	6



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THANK YOU

Brad Gross, Executive Director

bgross@rgs.ca.gov