

Comments may also be submitted electronically or through hand delivery/ courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Boyce, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7259, fax (214) 665-7263, e-mail address [boyce.kenneth@epa.gov](mailto:boyce.kenneth@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the State's request for delegation of authority as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: February 8, 2010.

**Al Armendariz,**

*Regional Administrator, Region 6.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 228**

[FRL-9136-9]

**Ocean Dumping; Guam Ocean Dredged Material Disposal Site Designation**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to designate the Guam Deep Ocean Disposal Site (G-DODS) as a permanent ocean dredged material disposal site (ODMDS) located offshore of Guam. Dredging is essential for maintaining safe navigation at port and naval facilities in Apra Harbor and other locations around Guam. Not all dredged materials are suitable for beneficial re-use (e.g., construction materials, landfill cover), and not all suitable materials can be re-used or stockpiled for future use given costs, logistical constraints, and capacity of existing land disposal or re-handling sites. Therefore, there is a need to designate a permanent ODMDS offshore of Guam. Disposal operations at the site will be limited to a maximum of 1 million cubic yards (764,555 cubic meters) per calendar year and must be conducted in accordance with the Site Management and Monitoring Plan. The proposed ODMDS will be monitored periodically to ensure that the site operates as expected.

**DATES:** Comments on this proposed rule must be received no later than May 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. Allan Ota, Dredging and Sediment Management Team, U.S. Environmental Protection Agency, Region IX (WTR-8), 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972-3476 or FAX: (415) 947-3537 or E-mail: [ota.allan@epa.gov](mailto:ota.allan@epa.gov).

**SUPPLEMENTARY INFORMATION:** The supporting document for this site designation is the Final Environmental

Impact Statement for the Designation of an Ocean Dredged Material Disposal Site Offshore of Guam. This document is available for public inspection at the following locations:

1. Guam EPA's Main Office, 17-3304 Mariner Avenue, Tiyan, Guam 96913.
2. Nieves M. Flores Memorial Public Library, 254 Martyr Street, Hagatna, Guam 96910.
3. Barrigada Public Library, 177 San Roque Drive, Barrigada, Guam 96913.
4. Dededo Public Library, 283 West Santa Barbara Avenue, Dededo, Guam 96929.
5. Maria R. Aguigui Memorial Library (Agat Public Library), 376 Cruz Avenue, Guam 96915.
6. Rosa Aguigui Reyes Memorial Library (Merizo Public Library), 376 Cruz Avenue, Merizo, Guam 96915.
7. Yona Public Library, 265 Sister Mary Eucharita Drive, Yona, Guam 96915.
8. EPA Region IX, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California 94105.
9. EPA Public Information Reference Unit, Room 2904, 401 M Street, SW., Washington, DC 20460.
10. EPA Web site: <http://www.epa.gov/region9/>.
11. U.S. Army Corps of Engineers' (USACE) Web site: <http://www.poh.usace.army.mil>.

**A. Potentially Affected Entities**

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material in ocean waters at the G-DODS, under the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* The Rule would be primarily of relevance to parties of the island of Guam seeking permits from the USACE to transport dredged material for the purpose of disposal into ocean waters at the G-DODS, as well as the USACE itself (when proposing to dispose of dredged material at the G-DODS). Potentially affected categories and entities seeking to use the G-DODS and thus subject to this Rule include:

| Category                                  | Examples of potentially affected entities   |
|---|---|
| Industry and General Public .....         | <ul style="list-style-type: none"> <li>• Ports.</li> <li>• Marinas and Harbors.</li> <li>• Shipyards and Marine Repair Facilities.</li> <li>• Berth owners.</li> </ul>  |
| State, local and Tribal governments ..... | <ul style="list-style-type: none"> <li>• Governments owning and/or responsible for ports, harbors, and/or berths.</li> <li>• Government agencies requiring disposal of dredged material associated with public works projects.</li> </ul> |
| Federal government .....                  | <ul style="list-style-type: none"> <li>• USACE Civil Works and O &amp; M projects.</li> <li>• Other Federal agencies, including the Department of Defense.</li> </ul>   |

This table lists the types of entities that EPA is now aware potentially could be affected. EPA notes, however, that nothing in this Rule alters in any way, the jurisdiction of EPA, or the types of entities regulated under the Marine Protection Research and Sanctuaries Act. To determine if you or your organization may be potentially affected by this action, you should carefully consider whether you expect to propose ocean disposal of dredged material, in accordance with the Purpose and Scope provisions of 40 CFR 220.1, and if you wish to use the G–DODS. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## B. Background

Ocean disposal of dredged materials is regulated under Title I of the Marine Protection, Research and Sanctuaries Act (MPRSA; 33 U.S.C. 1401 *et seq.*). The EPA and the USACE share responsibility for the management of ocean disposal of dredged material. Under Section 102 of MPRSA, EPA has the responsibility for designating an acceptable location for the ODMDS. With concurrence from EPA, the USACE issues permits under MPRSA Section 103 for ocean disposal of dredged material deemed suitable according to EPA criteria in MPRSA Section 102 and EPA regulations in Title 40 of the Code of Federal Regulations Part 227 (40 CFR 227).

It is EPA's policy to publish an EIS for all ODMDS designations (**Federal Register**, Volume 63, Page 58045 [63 FR 58045], October 1998). A site designation EIS is a formal evaluation of alternative sites which examines the potential environmental impacts associated with disposal of dredged material at various locations. The EIS must first demonstrate the need for the ODMDS designation action (40 CFR 6.203(a) and 40 CFR 1502.13) by describing available or potential aquatic and non-aquatic (*i.e.*, land-based) alternatives and the consequences of not designating a site—the No Action Alternative. Once the need for an ocean disposal site is established, potential sites are screened for feasibility through the Zone of Siting Feasibility (ZSF) process. Potential alternative sites are then evaluated using EPA's ocean disposal criteria at 40 CFR Part 228 and compared in the EIS. Of the sites which satisfy these criteria, the site which best complies with them is selected as the preferred alternative for formal designation through rulemaking published in the **Federal Register** (FR).

Formal designation of an ODMDS in the **Federal Register** does not constitute approval of dredged material for ocean disposal. Designation of an ODMDS provides an ocean disposal alternative for consideration in the review of each proposed dredging project. Before any ocean disposal may take place, dredging projects must demonstrate a need for ocean disposal. Alternatives to ocean disposal, including the option for beneficial re-use of dredged material, will be evaluated for each dredging project. Ocean disposal is only allowed when EPA and USACE determine that the proposed activity is environmentally acceptable according to the criteria at 40 CFR Part 227. Decisions to allow ocean disposal are made on a case-by-case basis through the MPRSA Section 103 permitting process, resulting in a USACE permit or its equivalent process for USACE's Civil Works projects. Material proposed for disposal at a designated ODMDS must conform to EPA's permitting criteria for acceptable quality (40 CFR Parts 225 and 227), as determined from physical, chemical, and bioassay/bioaccumulation tests as prescribed by national sediment testing protocols (EPA and USACE 1991). Only clean non-toxic dredged material is acceptable for ocean disposal. The proposed ODMDS will be monitored periodically to ensure that the site operates as expected. This proposed site designation has been prepared pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act (MPRSA). This ocean disposal site designation is based on EPA's general and specific criteria as evaluated in the March 2010 "Final Environmental Impact Statement for Designation of an Ocean Dredged Material Disposal Site Offshore of Guam" (Final EIS).

Historically, dredged material generated around Guam by the Navy and the Port Authority of Guam (PAG) has either been placed in upland dewatering/disposal sites or beneficially used. These are currently the only management options for dredged material. The anticipated volume of dredged material generated around Guam over the next 30 years would exceed the capacity of known or existing stockpile or beneficial use options. The need for additional dredged material disposal options is exacerbated by the planned increase in military presence on Guam, which would include extensive Navy and PAG harbor and navigation improvements. Assuming all existing upland dewatering facilities are used and all known beneficial use options are fully implemented, there would still be a

substantial excess of dredged material to be managed. An ODMDS provides an important management option for dredged material that is suitable and non-toxic, but for which other management options are not practical. The purpose of this action is to ensure that adequate, environmentally-acceptable ocean disposal site capacity, in conjunction with other management options including upland disposal and beneficial reuse, is available for suitable dredged material generated from Apra Harbor and other locations on and around Guam.

EPA and USACE encourage the use of dredged material for beach replenishment in areas degraded by erosion. The grain size distribution of dredged material must be compatible with the receiving beach, and biological and water quality impacts must be considered prior to permitting of beach disposal. EPA and USACE evaluate the selection of appropriate disposal methods on a case-by-case basis for each permit. Additionally, opportunities arise periodically to use dredged material for marine landfilling projects, also referred to as the creation of "fastlands." When the need arises, the use of dredged material for the creation of fastlands is considered a viable alternative to ocean disposal. Other potential beneficial uses for dredged material include construction fill, use as cap material in aquatic remediation projects, wetland creation, habitat restoration, landfill daily cover, and recycling into commercial products such as construction aggregate, ceramic tiles, or other building materials. Potentially practicable management options are evaluated as part of the permitting process for individual dredging projects.

EPA has determined that the Northwest Alternative identified in the Final EIS is the environmentally preferred site, and this action proposes to designate the G–DODS as an ocean dredged material disposal site, located approximately 11 nautical miles (21 kilometers) west of Apra Harbor. The circular seafloor boundary of the permanently designated G–DODS would be centered at 13°35.500' North latitude by 144°28.733' West longitude (North American Datum from 1983), with a diameter of 3 nautical miles (5.6 kilometers). However, all dredged material must be discharged within a smaller 3,280 foot (1,000 meter) diameter Surface Disposal Zone (SDZ) at the center of the overall site. The depth of the center of the site is 8,790 feet (2,680 meters). The action provides for adequate, environmentally-acceptable ocean disposal site capacity for suitable

dredged material generated from dredging projects in Apra Harbor and other areas in and around Guam by formally designating the G-DODS.

### C. Disposal Volume Limit

The action is formal designation of the G-DODS managed at a maximum annual dredged material disposal quantity of 1 million cubic yards (764,555 cubic meters) for the ocean disposal of dredged material from Apra Harbor and other areas in and around Guam. The need for ongoing ocean disposal capacity is based on historical dredging volumes from the local port districts, marinas and harbors, and Federal navigational channels, as well as estimates of future average annual dredging.

### D. Site Management and Monitoring Plan

Verification that significant impacts do not occur outside of the disposal site boundaries will be demonstrated through implementation of the Site Management and Monitoring Plan (SMMP) developed as part of the action and included with the Final EIS. The main purpose of the SMMP is to provide a structured framework to ensure that dredged material disposal activities will not unreasonably degrade or endanger human health, welfare, the marine environment, or economic potentialities (Section 103(a) of the MPRSA). Three main objectives for management of the G-DODS are: (1) Protection of the marine environment; (2) beneficial use of dredged material whenever practical; and (3) documentation of disposal activities at the ODMDS.

The EPA and USACE Honolulu District personnel will achieve these objectives by jointly administering the following activities: (1) Regulation and administration of ocean disposal permits; (2) development and maintenance of a site monitoring program; (3) evaluation of permit compliance and monitoring results; and (4) maintenance of dredged material testing and site monitoring records to insure compliance with annual disposal volume targets and to facilitate future revisions to the SMMP.

The SMMP includes periodic physical monitoring to confirm that disposal material is deposited within the seafloor disposal boundary, as well as chemical monitoring to confirm that the sediment actually disposed at the site is in fact suitable (is consistent with the pre-disposal testing results). Other activities implemented through the SMMP to achieve these objectives include: (1) Regulating quantities and types of material to be disposed, including the

time, rates, and methods of disposal; and (2) recommending changes to site use requirements, including disposal amounts or timing, based on periodic evaluation of site monitoring results.

### E. Ocean Dumping Site Designation Criteria

Five general criteria and 11 specific site selection criteria are used in the selection and approval of ocean disposal sites for continued use (40 CFR 228.5 and 40 CFR 228.6(a)).

#### *General Selection Criteria*

1. The dumping of materials into the ocean will be permitted only at sites or in areas selected to minimize the interference of disposal activities with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation.

The ZSF specifically screened the marine environment to avoid areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation. The alternatives evaluated in the Final EIS each avoid such areas to the maximum extent practicable.

2. Locations and boundaries of disposal sites will be so chosen that temporary perturbations in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within the site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.

Both alternative site boundaries are located sufficiently from shore (minimum 11 nautical miles [21 kilometers]) and from geographically limited fishing areas or other sensitive fishery resources to allow water quality perturbations caused by dispersion of disposal material to be reduced to ambient conditions before reaching environmentally sensitive areas.

3. If at any time during or after disposal site evaluation studies, it is determined that existing disposal sites presently approved on an interim basis for ocean dumping do not meet the criteria for site selection set forth in Sections 228.5 through 228.6, the use of such sites will be terminated as soon as suitable alternate disposal sites can be designated.

The interim ODMDS established for Guam does not meet current EPA criteria. It was never used and the designation was terminated.

4. The sizes of the ocean disposal sites will be limited in order to localize for identification and control any immediate adverse impacts and permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. The size, configuration, and location of any disposal site will be determined as a part of the disposal site evaluation or designation study.

The size and shape of the G-DODS is the minimum necessary to limit environmental impacts to the surrounding area and facilitate surveillance and monitoring operations, determined by computer modeling as described in the Final EIS. In addition, all dredged material discharge must take place within a smaller 3,280 foot (1,000 meter) diameter Surface Disposal Zone (SDZ) at the center of the overall site.

5. EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites that have been historically used.

The island of Guam is volcanic and not part of a continental land mass and does not have a continental shelf. In the absence of a shelf break, continental shelf can be defined as submerged land between shoreline and depth of 656 ft (200 m). On Guam, this typically occurs within 1 nautical mile (1.9 kilometers) of shore. The slope tends to increase rapidly offshore of Guam and depths can reach 6,000 ft (1.829 km) within 3 nm (5.6 km) (Weston Solutions and Belt Collins 2006). The center point of G-DODS is well beyond the continental shelf, 11 nautical miles (21 kilometers) from the shoreline. No ocean dumping sites have been used for Guam dredging projects.

#### *Specific Selection Criteria*

1. Geographical position, depth of water, bottom topography, and distance from the coast.

Centered at 13°35.500' N and 144°28.733' E and 11.1 nm (20.6 km) from Apra Harbor. The bottom topography at the site is essentially flat and the depth at the center of the site is 8,790 ft (2,680 m).

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.

Due to the marine open water locale of this site, the presence of aerial, pelagic, or benthic living resources is likely within these areas. However, the site location, water depth and sparse biological communities would minimize any potential impacts to pelagic and benthic resources.

3. Location in relation to beaches and other amenity areas.

The site is greater than 8.0 nm (14.8 km) from the jurisdictional 3nm coastal zone boundary and unlikely to interfere with coastal amenities. This site is not visible from shore. No adverse impacts from dredged material disposal operations are expected on these amenity areas.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packaging the waste, if any.

Only suitable dredged material may be disposed at the site—no dumping of toxic materials or industrial or municipal waste would be allowed. Dredged material proposed for ocean disposal is subject to strict testing requirements established by the EPA and USACE, and only clean (non-toxic) dredged materials are allowed to be disposed at the G–DODS. Most dredged material to be disposed will likely be fine-grained material (clays and silts) originating from the Inner Apra Harbor area, and coarser-grained material (sands and gravels) originating from the Outer Apra Harbor area. Maximum annual dredged material volumes would be set at 1,000,000 cy (764,555 m<sup>3</sup>). Dredged material is expected to be released from split hull barges.

5. Feasibility of surveillance and monitoring.

EPA (and USACE for Federal projects in consultation with EPA) is responsible for site and compliance monitoring. USCG is responsible for vessel traffic-related monitoring. Monitoring of the disposal site is feasible and facilitated through use of a satellite-based remote tracking system as specified in the SMMP.

6. Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.

Oceanographic current velocities are greatest at the surface due to atmospheric circulation (*e.g.*, wind-driven) events, while intermediate and bottom layer currents are much slower, driven by thermohaline circulation and influenced by tidal circulation. Computer modeling, taking into account all current depths and speeds, results in a 2.98 mile diameter footprint of deposits greater than 1 cm.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).

No evidence of previous dumping activities was observed during field reconnaissance and there are no designated discharge areas in the vicinity. No interactions with other discharges are anticipated due to the

distances from existing discharge points located on the island of Guam.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.

Minor short-term interferences with commercial and recreational boat traffic may occur due to the transport of dredged material along established shipping lanes to/from G–DODS. There are no oil or other mineral extraction platforms offshore of Guam. The site has not been identified as an area of special scientific importance. There are no fish/shellfish culture enterprises near the site, and transportation to the site avoids any fish aggregation devices (FADs). There may be recreational vessels passing through the site, but the area is not a recreational destination.

9. Existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.

Water quality is excellent with no evidence of degradation. Sediment quality is also typical of unaffected deep-ocean environments removed from pollutant sources. Baseline studies showed no significant benthic fish or shellfish resources in the area.

10. Potentiality for the development or recruitment of nuisance species in the disposal site.

The potential that any transported nuisance species would survive at the ODMDS is low due to depth and temperature differences between the deep ocean disposal site and the likely sources of dredged material in the harbors and other shallower areas in and around Guam.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

No culturally significant natural or cultural features, including shipwrecks, were identified in the vicinity of the ODMDS.

## F. Responses to Comments

The draft EIS was published in the **Federal Register** on August 7, 2009. A 45-day public review and comment period was extended to 60 days. Comments were received from 10 individuals, organizations, and agencies during the public review and comment period. In addition to the comments received, a public meeting was held on August 20, 2009, to solicit comments from interested parties. The comments, and associated responses, are summarized topically below.

Comments on the Draft EIS were received by letter, e-mail, and at

meetings during the public review and comment period from various individuals, organizations, and agencies. Many of the comments focused on specific errors, missing information, or outdated information, and the Final EIS was revised and updated accordingly. Other substantive comments and associated responses are summarized topically below. Detailed responses to individual comments are presented in Appendix A of the Final EIS.

### Modeling

(1) *Type of model used*—STFATE model, a standard model used for dredged material dispersion and deposition modeling, has been validated by monitoring studies around the U.S., including at a deepwater site located offshore of San Francisco, California.

(2) *Dredged material dispersing or settling outside of proposed site boundaries, including potential impacts to areas beyond the site boundaries, such as seamounts*—Site boundaries are set such that outside of these boundaries, plumes have already dispersed to background conditions and sediment deposits are indistinguishable from native sediments on the seafloor. No significant effects are expected outside site boundaries, including to seamounts or other major features.

### Site Selection

(1) *Placement of site should be in a deep area away from shallow areas containing corals*—A Zone of Siting Feasibility Study (ZSF) was conducted to evaluate existing physical, geological, and biological features as well as military, commercial, and recreational uses of the marine environment offshore of Guam. This ZSF study eliminated those areas from consideration resulting in the study areas evaluated in the EIS, all of which are in deep water many miles from areas containing corals.

(2) *General site selection criteria for placement of the ocean disposal site beyond the continental shelf should not apply to Guam's tropical setting*—The EIS evaluation noted the absence of continental shelf offshore of Guam and proposed alternative sites on abyssal plains away from submarine slopes, seamounts, or other unique features. While the temperate and tropical ecosystems are different in many aspects in the surface coastal waters, the physical oceanographic environments of the deep ocean are fairly consistent throughout the world, and EPA's site selection criteria remain valid for such areas.

(3) *Historic sites should be removed from consideration*—The EIS evaluation

eliminated the nearshore interim site (which expired in 1997) from consideration.

(4) *Waters near the equator have been scientifically determined to meet these qualifications [location in relation to breeding, spawning, nursery, feeding or passage areas of living resources in adult or juvenile stage] and should be avoided*—The EIS evaluation notes that due to the marine open water locale of this ocean disposal site, the presence of living organisms is likely within this very large region. However, any potential impacts to the overall pelagic and benthic communities would be minimized due to the site location (*i.e.*, very small percentage of area occupied offshore in the region), water depth, absence of unique physical features or habitats, and sparse biological communities.

(5) *Location relative to other amenity areas should not be limited to local jurisdictional areas but be inclusive of all historic fishing areas and Fish Aggregation Device placement areas with the same buffer zone consideration given to coastal areas*—The ZSF study did exclude the FAD areas from further consideration and modeling results indicate that potential impacts from disposal operations are not expected to reach those areas. Pelagic fishing can occur anywhere throughout this very large region, but impacts to pelagic fishing or fishery resources are not anticipated because disposal operations will affect a very small percentage of the area and discharge plumes will disperse to background conditions within the G-DODS boundary.

#### *Beneficial Reuse of Dredged Material*

(1) *Quality of sediments to be considered*—Only suitable (non-toxic) dredged material may be considered for ocean disposal. However, even sediments that are tested and determined to be suitable for ocean disposal must be evaluated for beneficial reuse opportunities such as beach nourishment, habitat restoration, or construction fill before ocean disposal will be permitted. Sediments that are not suitable for ocean disposal may still be considered for reuse in construction fill or landfill cover, *etc.*

(2) *Need for additional dewatering and stockpile sites*—EPA encourages evaluation of creating additional capacity of this nature to increase opportunities for beneficial reuse. However there remains a need for an ocean disposal site to address situations when suitable dredged material cannot be reused because of timing or logistics issues.

#### *Oceanography/Currents*

(1) *One full year of oceanographic current meter data collection is not sufficient to characterize ocean current anomalies seen periodically, so sediment plumes created by surface discharges may occasionally impact resources (pelagic and reef species, including larvae) much farther away than indicated by the computer modeling*—The potential effects of El Niño and La Niña conditions, in addition to local current patterns documented by the current meter study, were considered in the EIS evaluation by modeling “worst case” conditions including “accelerated” current speeds (up to an order of magnitude greater than actually observed in the current meter data records), various current directions, and current reversals in the surface layer (down to 300 meters). The result of this evaluation showed that surface layer dispersion would still be contained within the disposal site boundaries. It also showed that seafloor deposits would not be significantly different, because subsurface currents (which have the predominant effect on overall deposition) are not affected by even these severe surface current anomalies.

(2) *Ocean disposal site impacts to coral reef fish species which begin their life cycle as pelagic larvae, drifting with the currents and returning to the island in juvenile stage*—Pelagic larvae of coral and coral reef fish that may be present far offshore in the vicinity of the ocean disposal site for the most part would not be expected to return to Guam since the prevailing easterly tradewind patterns would result in them drifting farther offshore. Therefore, offshore disposal operations are not expected to have any significant effect on nearshore recruitment of coral or coral reef fish.

#### *Impacts to Corals*

(1) *Disposal should be conducted outside of annual coral spawning period*—This restriction has been included in the SMMP, and conditions on ocean disposal permits must reflect this SMMP requirement.

(2) *Degradation to water quality resulting from dredging project operations (i.e., turbidity, siltation, dredging/filling, debris, fueling of equipment)*—On a project by project basis, best management practices (BMPs) as permit conditions will be implemented as appropriate to minimize impacts associated with dredging operations themselves, including use of silt curtains and other measures to minimize turbidity, avoiding transportation during coral

spawning periods, implementing a debris management plan, and implementing other BMPs as needed. At an ocean disposal site, located at least 11 nautical miles from Guam, offshore disposal operations are not expected to affect corals located in Apra Harbor or along the coast of the island.

#### *Impacts to Fishing*

(1) *Site selection should consider avoidance of historic and current fishing areas, particularly in the vicinity of offshore seamounts such as Perez Bank and Spoon Bank*—The EIS evaluation did consider the locations of prominent submarine features and avoided those locations in selecting the preferred alternative. Furthermore, modeling showed surface plumes dispersed to background conditions within the site boundaries, even using severe (“accelerated”) surface current speeds for worst case scenarios. No significant effects are expected to fishery resources, or to fishing activities, outside the disposal site boundaries.

(2) *The proposed alternative sites are located in areas of upwelling which attract large fish as a result of deepwater nutrients rising to the surface resulting in high plankton production*—Extensive studies of seamounts suggest that Perez Bank and Spoon Bank are not shallow enough features (*i.e.*, summits are not close enough to the sea surface) to create substantial upwelling to provide nutrient benefits to the photic zone above. Measured nutrients were typical of tropical ocean environments and not indicative of upwelling zones.

(3) *Use of bottom trawl to determine species composition does not address impacts to surface fishery*—The EIS field studies were intended to fill in data gaps and to look for unknown or unexpected habitat types or species in the abyssal regions, about which much less is known relative to pelagic habitats where available information suggest that pelagic species are wide-ranging in the marine environment offshore of Guam.

#### *Threatened and Endangered Species*

(1) *The ocean disposal site should be limited in size for monitoring and surveillance but the limits should include an area up to five miles from the center*—The five mile extent is not necessary because the modeling results suggest that surface plumes dissipate to background with the site boundaries (out to 1.5 nautical mile radius) and the deposit footprint on the seafloor is also contained with these boundaries. Disposal operations are expected to result in temporary localized impacts within the site boundaries and to not have significant adverse impacts on

pelagic species which are known to occupy a wide range of the marine environment offshore of Guam.

Nevertheless, when site monitoring is conducted, adjacent areas outside the official site boundary will be included.

(2) *Published scientific reports document valuable marine life deserving of protection at depths along the coast down to 35,000 feet, the latter recognized by Presidential Proclamation*—The EIS evaluation considered important resource areas to avoid for site selection, including the areas identified by the Presidential Proclamation that established the Marianas Trench Marine National Monument which is located several miles to the east of Guam and well out of the influence of ocean dredged material disposal activities west of Guam.

#### *Sediment Testing*

(1) *Dredged material testing is site specific and does not characterize any potential shipboard contamination*—Project site sediments determined to be suitable (non-toxic) for ocean disposal are not expected to become contaminated in the dump scows during transportation to the ocean disposal site because the scows themselves do not contain machinery or other materials that can pollute the sediments in the bin of these vessels. Any disposal vessels that have handled contaminated material prior to ocean disposal operations should have their bins cleaned prior to taking on any clean dredged material.

(2) *The EPA should conduct an extensive series of tests and studies to determine if radiation exists in Apra Harbor waters or its sediments to independently confirm the Navy's claim that the amount of leakage from nuclear-powered vessels [submarines such as the USS Houston] is insignificant*—The designation of an ODMDS does not pre-approve any dredging project sediments for ocean disposal. Each proposed project must subject its sediments to a battery of physical, chemical, and biological tests to determine suitability (non-toxicity) for ocean disposal. Because EPA's Ocean Dumping Regulations explicitly prohibit the disposal or discharge of "high-level radioactive wastes \* \* \* [and] materials produced or used for radiological \* \* \* warfare" at ocean disposal sites [40 CFR 227.5], EPA provided comments on the Joint Guam Program Office (JGPO) draft EIS for the Guam and CNMI military relocation recommending that Dept of Defense summarize past survey data for Apra Harbor. Based on that information, EPA

would require radioactivity assessment as part of pre-dredging sediment sampling where appropriate. Any sediments with elevated radioactivity-proposed to be dredged from Apra Harbor must be managed separately at an appropriate upland location.

#### *Mitigation*

*Mitigation for unavoidable resource losses as a result of ocean disposal of sediments*—Evaluation in the EIS indicates that there may be localized temporary physical impacts within the ocean disposal site boundaries, but benthic community recovery between disposal operations is expected to be rapid, and no long term adverse environmental impacts to the surrounding marine region offshore of Guam are expected. Due to extreme distance offshore and prevailing currents away from Guam, no adverse impacts are expected in Apra Harbor or on the coast.

#### *Disposal Operations*

(1) *Lack of monitoring for transport of dredged material from the dredging site to the ocean disposal site*—The SMMP contains ocean disposal site use requirements that include automated satellite-based tracking of the transportation and disposal phases for each trip to document that no leaking or spilling of dredged material has occurred during transport and that proper placement occurs at the ocean disposal site (discharge only within the Surface Disposal Zone at the center of the overall site).

(2) *Observers should be present to authorize disposal operations after confirming the absence of seabirds, schooling fish, and marine mammals*—The EIS evaluation determined that use of G-DODS would not be expected to result in long term adverse environmental impact to the wide-ranging species of seabirds, schooling fish, and marine mammals in the region offshore of Guam, therefore EPA has not included a requirement for independent on-board observers. Automated compliance monitoring would ensure that disposal operations are restricted to the transportation route to and from the ocean disposal site.

(3) *Compounded environmental impacts of repeated disposals per day if weather days restrict trips to the ocean disposal site to accommodate one million cubic yards per year*—One million cubic yards represents the maximum disposal volume scenario, which is not expected to occur every year. No more than one scow would be allowed in the disposal site at a time, and turbidity impacts following

disposal operations are expected to be localized and temporary (reduced to background in less than four hours).

#### *Cultural/Environmental Justice*

(1) *Documentation that indigenous populace of Guam has long utilized the resources within the waters surrounding Guam for over 3500 years, hence the resource has historic significance and adverse impacts which may alter beneficial use should be [avoided]*—The EIS evaluation shows that there are no historic resources in deepwater in the vicinity of G-DODS, and there would be no expected restrictions on historic uses. As such, there will be no expectation of significant or long term impacts requiring mitigation.

(2) *Designation of an ocean disposal site may result in an environmental injustice perpetrated against minority and low-income populations, in this case, the Chamorro people*—The EIS evaluation does not indicate that designation of an offshore ocean disposal site more than 11 nautical miles offshore will result in any significant or long term impacts on island residents that would require mitigation.

#### *Nuisance Species*

*Presence of nuisance species in Apra Harbor has been documented, and while they are not expected to survive in the deep depths of the ODMDS, it may be possible for these invasive species to float or drift back to Guam or other islands areas, exacerbating the problem*—Prevailing currents to the west would prevent these organisms from drifting back to Apra Harbor or other locations on Guam, and significant dispersion over longer distance would make survival unlikely in sufficiently numbers before encountering another island or land mass to the west.

#### *Vessel Safety and Economics*

*Due to loss of fishing area as a result of designation of ODMDS, the fishing community may be forced to travel to other fishing areas where rescue or other services are not easily available; the change of fishing habits to unfamiliar may be considered a safety at sea issue as well as added expense to travel a greater distance to fish*—The EIS evaluation concludes that the site designation does not restrict fishing in the area and the potential adverse impacts are not expected with regard to vessel safety and operational costs. The lack of impact is expected because the frequency of dredged material transport vessels encountering fishing vessels at the site or along the transit route from Apra Harbor will be much lower than

frequency of encounter with other commercial and recreational vessels, due to the much larger numbers of the latter group.

#### NEPA/Consultation

(1) *Effects of mammals were not fully addressed*, (2) *consultation with Western Pacific Regional Fishery Management Council (WPRFMC)*, and (3) *Essential Fish Habitat*—The WPRFMC is not a formal consultation agency under NEPA. The required consultations were completed with NOAA and US FWS with regard to seabirds, marine mammals, threatened and endangered species, fisheries, and essential fish habitat. These agencies provided recommendations on additional information for EPA's assessment, contained in the draft EIS, to clarify the basis for overall conclusion of no significant impacts resulting from designation of an ODMDS in the marine region offshore of Guam. Additional information and revisions were incorporated into the final EIS in accordance with these recommendations. No significant resource issues were raised by these agencies.

#### G. Regulatory Requirements

##### 1. Consistency With the Coastal Zone Management Act

Consistent with the Coastal Zone Management Act (CZMA), EPA prepared a Coastal Zone Consistency Determination (CZCD) document based on information presented in the site designation DEIS. The CZCD evaluated whether the action—permanent designation of G-DODS would be consistent with the provisions of the CZMA. The CZCD was formally submitted to the Bureau of Statistics and Planning (BSP, Guam's CZM agency) on July 24, 2009. The BSP staff concurred with EPA's CZCD. The Proposed Rule is consistent with the CZMA.

##### 2. Endangered Species Act Consultation

During development of the site designation EIS, EPA consulted with the National Oceanic and Atmospheric Administration (NOAA) Fisheries and the U.S. Fish and Wildlife Service (FWS) pursuant to the provisions of the Endangered Species Act (ESA), regarding the potential for designation and use of the ocean disposal sites to jeopardize the continued existence of any Federally listed species. This consultation process is fully documented in the site designation EIS. NOAA and FWS concluded that proposed designation and use of the disposal site for disposal of dredged

material meeting the criteria for ocean disposal would not jeopardize the continued existence of any Federally listed species.

#### H. Administrative Review

##### 1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant", and therefore subject to Office of Management and Budget (OMB) review and other requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(a) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This Proposed Rule should have minimal impact on State, local or Tribal governments or communities. Consequently, EPA has determined that this Proposed Rule is not a "significant regulatory action" under the terms of Executive Order 12866.

##### 2. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the Proposed Rule would not establish or modify any information or record-keeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

##### 3. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that whenever an agency

promulgates a final rule under 5 U.S.C. 553, the agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 604 and 605). The site designation and management actions would only have the effect of setting maximum annual disposal volume and providing a continuing disposal option for dredged material. Consequently, EPA's action will not impose any additional economic burden on small entities. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the Proposed Rule will not have a significant economic impact on a substantial number of small entities.

##### 4. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any year.

This Proposed Rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The Proposed Rule would only provide a continuing disposal option for dredged material. Consequently, it imposes no new enforceable duty on any State, local or Tribal governments or the private sector. Similarly, EPA has also determined that this Rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this Proposed Rule.

##### 5. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This Proposed Rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Proposed Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, Executive Order 13132 does not apply to this Proposed Rule.

*6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” This Proposed Rule does not have Tribal implications, as specified in Executive Order 13175. The Proposed Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, Executive Order 13175 does not apply to this Proposed Rule.

*7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This Executive Order (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This Proposed Rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

*8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use Compliance With Administrative Procedure Act*

This Proposed Rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. The Proposed Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, EPA concluded that this Proposed Rule is not likely to have any adverse energy effects.

*9. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This Proposed Rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations*

Executive Order 12898 (59 FR 7629) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect

the level of protection provided to human health or the environment. EPA has assessed the overall protectiveness of designating the disposal Sites against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable.

**List of Subjects in 40 CFR Part 228**

Environmental protection, Water pollution control.

Dated: April 6, 2010.

**Jared Blumenfeld,**

*Regional Administrator, EPA Region IX.*

In consideration of the foregoing, EPA is proposing to amend part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

**PART 228—[AMENDED]**

1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (l)(12) to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

\* \* \* \* \*

(l) \* \* \*

(12) Guam Deep Ocean Disposal Site (G–DODS)—Region IX.

(i) *Location:* Center coordinates of the circle-shaped site are: 13° 35.500’ North Latitude by 144° 28.733’ West Longitude (North American Datum from 1983), with a radius of 3 nautical miles (5.6 kilometers).

(ii) *Size:* 7.1 square nautical miles (24.3 square kilometers).

(iii) *Depth:* 8,790 feet (2,680 meters).

(iv) Use Restricted to Disposal of: Dredged materials.

(v) *Period of Use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to a maximum of 1 million cubic yards (764,555 cubic meters) per calendar year of dredged materials that comply with EPA’s Ocean Dumping Regulations; disposal operations shall be conducted in accordance with requirements specified in a Site Management and Monitoring Plan developed by EPA and USACE, to be reviewed periodically, at least every 10 years.

\* \* \* \* \*

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