RULES and REGULATIONS

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-9197-6]

Ocean Dumping; Guam Ocean Dredged Material Disposal Site Designation

Wednesday, September 8, 2010

AGENCY: Environmental Protection Agency (EPA).

***54497** ACTION: Final rule.

SUMMARY: The EPA is designating 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. Beneficial re-use of dredged material (e.g., for habitat creation, construction material, or landfill cover) is preferred over ocean disposal. However, not all dredged materials are suitable for beneficial re-use, 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 and any project-specific permit conditions. The designated ODMDS will be monitored periodically to ensure that the site operates as expected.

DATES: Effective October 8, 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.

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.

***54498** 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/water/dredging/index.html.

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 Final 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	• Ports.
	• Marinas and Harbors.
	• Shipyards and Marine Repair Facilities.
	• Berth owners.
State, local and Tribal governments	• Governments owning and/or responsible for ports, harbors, and/or berths.
	• Government agencies requiring disposal of dredged material associated with public works projects.
Federal government	• USACE Civil Works and O & M projects.
	• Other Federal agencies, including the Department of Defense.

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 part 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).

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. To date these have been 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. Assuming all existing upland dewatering facilities are used and all known beneficial use options are fully implemented, there would still be an excess of dredged material to be managed. This need for additional dredged material disposal capacity would be exacerbated by the separately-proposed increase in military presence on Guam, which could include extensive Navy and PAG navigation improvements. 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.

Formal designation of an ODMDS does not constitute approval of dredged material for ocean disposal. Instead, 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. For every project, the permitting process includes evaluating the need for ocean disposal and suitability of the proposed dredged material. Even when alternatives, including beneficial reuse, are not practicable, dredged 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. Only clean non-***54499** toxic dredged material as determined under national sediment testing protocols (EPA and USACE 1991) is acceptable for ocean disposal. This ocean disposal site designation has been prepared pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act (MPRSA) and 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).

C. Disposal Site Location

EPA has determined that the Northwest Alternative identified in the Final EIS is the environmentally preferred site, and this action designates 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 G-DODS is centered at 13° 35.500′ North latitude by 144° 28.733′ East 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 Area (SDA) at the center of the overall site. The depth of the center of the site is 8,790 feet (2,680 meters).

D. Disposal Volume Limit

G-DODS is designated for a maximum annual dredged material disposal quantity of 1 million cubic yards (764,555 cubic meters) of suitable dredged material from Apra Harbor and other areas in and around Guam. This maximum volume, evaluated in the Final EIS, 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. However, EPA expects disposal volumes to be much less than the maximum in most years.

E. 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 SMMP will be reviewed periodically in combination with review of site monitoring data, and the SMMP may be updated as necessary.

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 generally 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.

F. Ocean Disposal 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 Area (SDA) 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 ***54500** 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 disposal 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. Corals, boulders, and other larger sized materials are not allowed to be disposed at the G-DODS. Maximum annual dredged material volumes would be set at 1,000,000 cy (764,555 m[FN3]). 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 disposal 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 and 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.

G. Responses to Comments

EPA received concurrences or lack of objection responses to the ocean disposal site designation Final EIS and Proposed Rule from several Federal and Guam agencies, including: U.S. Department of the Interior; National Park Service; U.S. Fish and Wildlife Service (USFWS); National Marine Fisheries Service (NMFS); U.S. Army Corps of Engineers (USACE); Guam Bureau of Statistics and Plans; and Guam EPA. Those comments require no response.

EPA also received 14 comment letters or e-mails on the Final EIS and Proposed Rule from 8 other entities and individuals. Taken together, these letters and e-mails generated approximately 90 individual comments. Many of these comments were similar to each other, and we have grouped them into 12 categories for purposes of responding to them here.

The first three categories of comments below relate to issues independent of this ocean disposal site designation action, and are only briefly addressed. The remaining comment categories are relevant to the scope of this action, and therefore are responded to here.

1. Concerns About Military Buildup on Guam

Several comments expressed concerns about effects of the proposed military buildup on Guam, including Environmental Justice issues, lack of trust of the military or other Federal regulatory agencies including EPA, and ideas for alternative expansion plans ***54501** that could reduce buildup-related dredging.

At the time of this ocean disposal site designation action, a separate EIS addressing the proposed military buildup on Guam was also in circulation. Although this ocean disposal site designation action takes into account potential ocean disposal needs of the possible military buildup, the two processes are independent. Guam has had no ocean disposal option available since 1997. EPA determined that there is a long-term need for an ocean disposal site whether or not the military buildup occurs, based on the need to support the Naval and commercial port facilities that currently exist. Effects of the proposed military buildup itself are outside the scope of this action, and such comments are not further addressed here.

2. Concerns About the Impacts of Dredging

Several comments were received concerning the direct impacts of dredging activities, as separate from ocean disposal. In particular, comments about dredging itself were related to: potential impacts to coral and other sensitive species and habitats, including cumulative impacts; the need for Best Management Practices (BMPs) to minimize direct impacts; and the need to mitigate for impacts of dredging.

The potential effects of each proposed dredging project will vary, and appropriate BMPs or other permit conditions must be determined on a case-by-case basis. Coral reef and other resource losses due to dredging, as well as measures to mitigate for such losses, are also evaluated during the USACE permitting process for individual projects. The designation of an ocean disposal site is a separate action from any decisions to permit or to not permit individual dredging projects. Since dredging-related effects are outside the scope of this ocean disposal site designation action, such comments are not further addressed here.

3. Concerns About Minimizing Ocean Disposal by Maximizing Beneficial Reuse

One comment expressed concern that dredged material which could be reused should not be considered for ocean disposal simply because the timing of the dredging project does not match that of the reuse project.

Disposal or reuse alternatives that could practicably meet the purpose and need of a dredging project must be evaluated at the time of project-specific permitting. Timing and logistics can affect the practicability of dredged material disposal or reuse alternatives. One option is to stockpile dredged material that is suitable for later reuse, and EPA has encouraged creation or coordinated management of stockpile capacity on Guam for just this purpose. For an individual project, ocean disposal is permitted only when other alternatives are not practicable. However, determining the availability of alternatives for individual projects is independent of this ocean disposal site designation action, and such comments are not further addressed here.

One comment expressed concern that dredged material found to be unsuitable for ocean disposal should also be considered unsuitable for any reuse on Guam, and should instead be removed from the island.

Suitability requirements for ocean disposal of dredged material are both strict, and specific to the contaminant exposure pathways at the ocean disposal site. Dredged material found unsuitable for ocean disposal may often be appropriate for placement or reuse in other environments where exposure pathways are different, provided that those pathways can be controlled and managed to avoid significant impacts. Specifically, dredged material that is not suitable for ocean disposal can often appropriately be included in otherwise approved projects where the material will be isolated from resources of concern; for example, in engineered fills, or as landfill daily cover. The need for any particular contaminant control or containment measures would be determined on a case-by-case basis. However, determining the appropriate disposal requirements for individual projects with ocean-unsuitable material is independent of this ocean disposal site designation action, and such comments are not further addressed here.

4. Adequacy of the Final EIS

Several comments focused on perceived inadequacies in the Final EIS evaluations that they viewed as so significant that a complete re-write and re-circulation of the EIS was needed.

Perceived inadequacies regarding different individual topics are addressed below. In each case, EPA disagrees that the Final EIS evaluations are inadequate for NEPA or MPRSA disposal site designation purposes, and has determined that

there is no need to re-write and re-circulate the EIS.

5. Preference for Other Locations

Some comments questioned the distance constraints used in the Final EIS, and recommended that disposal sites be prohibited within 30 nautical miles of western Guam and 15 nautical miles around seamounts.

The disposal site designation process included a Zone of Siting Feasibility (ZSF) evaluation that identified constraints on where a multi-user disposal site could be considered, including the economic transport distance (see Final EIS Section 2.2.1-2.2.4). The economic transport distance takes into account not just major potential construction projects such as may be proposed by the U.S. Navy or the Port Authority of Guam, but also other potential projects such as maintenance dredging of marinas outside of Apra Harbor where smaller commercial and recreational vessels are berthed. In order to accommodate such smaller maintenance dredging projects, the ZSF identified 18 nautical miles (nm) as the economically feasible transport distance. Within this radius, sites were identified and evaluated in detail in the Final EIS. Based on that evaluation, EPA determined that significant impacts would not occur at either alternative site. Since there would be no significant impacts (including to seamounts and related resources) at these sites within the economic haul distance, there is no need to prohibit disposal site designation there or to select a different (arbitrary) distance within which to consider other possible locations.

6. Preference for the No Action Alternative

Some comments expressed preference for the No Action Alternative (that an ocean disposal site not be designated at either of the alternative locations evaluated in the Final EIS).

Guam has had no ocean disposal option available since 1997. EPA determined that there is a need for an ocean disposal site to provide an additional option for the management of suitable material dredged from Guam and surrounding waters. This is based on the long-term need to support the Naval and commercial port facilities that currently exist, independent of potential military and port expansion proposals (see Final EIS Section 1.3). The No Action Alternative would not meet the purpose and need for this action. Furthermore, the evaluation contained in the Final EIS and reflected in this rulemaking action determined that designation and use of the disposal site in compliance with the SMMP would not result in significant adverse direct or cumulative effects.

7. Computer Modeling

One comment expressed concern that the Final EIS evaluations were based on ***54502** the same kinds of computer models that erroneously demonstrated the safety of oil drilling in the Gulf of Mexico and hull integrity of the Exxon-Valdez oil tanker. Modeling should not just include the ocean floor, but also the water column and the possibility of a catastrophic accident.

Using established and verified computer models, the Final EIS specifically evaluated suspended sediment plumes in the water column and sediment deposition on the seafloor associated with dredged material disposal (see Final EIS Section 4.1.3-4.1.4). (Oil has different buoyancy properties than dredged material, and different models would be used to evaluate oil spills.) Dredged material modeling considered the maximum volume disposal scenario developed from the ZSF process, and included both increased current speeds and reversed current directions to simulate the most severe El Ni˜no and La Ni˜na conditions expected (see Final EIS Section 3.1.2, 4.1.3-4.1.4). However, these models are not designed, and were not used, to consider other issues such as the possibility of accidents. Vessel-related accidents are always a risk during open ocean operations. The Site Management and Monitoring Plan (SMMP, included as Final EIS Appendix C) mit-

igates the potential for accidents during disposal operations by allowing operations only when weather and sea-state conditions are conducive with safe navigation, by requiring that transportation to the disposal site must be via the established vessel traffic lanes, and by requiring that only one disposal vessel at a time is allowed to be within the disposal area. Furthermore, vessel movements in the most congested area entering and exiting Apra Harbor are highly regulated. Vessels must contact Port Authority vessel control, and if a vessel movement is to or from Naval areas the vessel must also contact Navy vessel control. In general only one vessel is allowed to transit the entrance channel at a time.

Some comments stated the concern that the disposal modeling was based on inadequate collection of oceanographic data for the area.

EPA generally requires that a full year of continuous oceanographic conditions (current speed and direction at different depths, etc.) be collected in the vicinity of proposed ocean disposal sites, in order to capture the range of seasonal variability that occurs. This information is then used as direct input to the plume dispersion and seafloor deposition computer modeling. In this case, data were collected continuously throughout 2008 from two separate current meter arrays offshore of Guam in the vicinity of the proposed disposal site. It is recognized that the waters surrounding the island of Guam are subject to periodic El Ni˜no and La Ni˜na conditions, as well as typhoons, that can substantially affect current speed and direction (primarily in the surface water layer, down to a few hundred meters in depth.) Therefore the data collected in 2008 does not necessarily represent the full range of conditions that may occur in the area. For this reason, the Final EIS included additional modeling using both significantly accelerated current speeds and reversal in surface current direction to simulate the most severe El Ni˜no and La Ni˜na conditions expected (see Final EIS Section 4.1.3-4.1.4). (Typhoon conditions were not specifically modeled, because disposal operations are prohibited in weather conditions and sea states that are unsafe for navigation or that would risk spilling dredged material during transit.) The Final EIS evaluation concluded that even under severe El Ni˜no or La Ni˜na conditions, and even under the highly unlikely presumption that such extreme surface current conditions were to persist throughout the entire year, suspended sediment plumes would still dissipate to background concentrations within the disposal site boundary. It also showed that seafloor deposits would not be significantly different. This is largely due to the fact that the slow, deep subsurface currents (which have the predominant effect on overall deposition) are not affected by even severe surface current anomalies.

8. Environmental Effects of Disposal

Some comments expressed the belief that plumes of suspended sediments in the surface waters would be more persistent than described in the Final EIS, especially if the maximum one million cubic yards were really disposed in a one-year period.

As discussed in the Final EIS, computer modeling indicated that surface water plumes from individual disposal events will dissipate to background concentrations within 4 hours of disposal and within the boundary of the disposal site (see Final EIS Section 4.1.3). Although the Final EIS discussed an average of 1 disposal event per day under the maximum volume scenario of one million cubic yards in one year, it is conceivable that during occasional periods of heavy site use more than one disposal event may occur in a day. In such cases, a new disposal event could occur before the suspended sediment plume from the previous disposal event has fully dissipated. However these individual plumes, under the influence of surface currents and gravity, would each still be expected to dissipate to background levels within the disposal site boundary even under extreme current conditions. (This conclusion is consistent with experience at other open ocean disposal sites, including direct monitoring of plume dispersion following disposal operations.)

Some comments stated a concern that adverse impacts may occur outside the disposal site (i.e. to the marine ecosystem, to recruitment of organisms back to Guam, and to fishing opportunities around Guam more broadly) because planktonic

organisms including coral larvae, and larval or juvenile reef and pelagic fishes, as well as bait fish that attract larger pelagic fish, may be present at the disposal site and be affected by disposal operations.

The Final EIS acknowledged that planktonic larvae, including coral larvae as well as larvae and juveniles of both pelagic and reef fishes, can be found throughout the 200-mile Exclusive Economic Zone (EEZ) surrounding Guam (see Final EIS Section 3.2.3). However, the Final EIS concluded that water column properties are relatively uniform throughout the offshore region including around the disposal site (see Final EIS Sections 3.1.2-3.1.4). In the absence of persistent unique oceanographic or habitat characteristics, the overall distribution of planktonic and larval organisms (as well as bait fish feeding on them and larger pelagic fish attracted by bait fish) would be expected to be similar throughout the offshore waters west of Guam. Since the disposal site represents a very small proportion of those offshore waters (less than one percent of the area within the 18 nm ZSF economic feasibility distance, and still less of the area within the approximately 30 nm radius reported as being regularly utilized by fishers), no significant adverse effects are expected. In addition, planktonic larvae of coral and of reef fish that drift offshore to the ocean disposal site generally would not return to Guam to survive since the prevailing tradewind patterns and surface currents would continue to carry them even farther offshore most of the time (see Final EIS Sections 3.1.2 and 4.1.2). Finally, we are including a provision in the SMMP to prohibit disposal operations during the peak coral spawning period (an approximate six week period occurring between June and August each year), thus avoiding the time when larvae of these species would be most concentrated. For these reasons, offshore disposal operations are not expected to have any significant ***54503** effect on recruitment of coral or coral reef fish on Guam, or to the broader ecosystem or fishery resources utilized by fishers.

Some comments noted that reef fishes will sometimes cross deep ocean areas (for example between islands, reefs or seamounts) and may be affected by disposal.

Although reef fishes may cross deep areas, there are no appropriate island, reef, or seamount habitats in the direction of or in the vicinity of the disposal site for reef fish originating from nearshore areas around Guam. The peak of the Perez Bank seamount, west of the disposal site, is approximately 800 m deep at its shallowest (see Final EIS Section 3.1.5) and would not provide suitable habitat for reef fish species. Individual reef fishes transiting through the deep waters west of Guam would be as likely to be found anywhere offshore as within the disposal site, which represents a very small proportion (less than one percent) of such waters. Therefore, the potential impact of dredged material disposal operations is expected to be insignificant.

One comment stated that invasive or non-native species in dredged material might drift back to Guam.

Prevailing trade wind patterns and surface currents at the disposal site would generally carry any small organisms present in the suspended sediment plume even farther offshore most of the time (see Final EIS Sections 3.1.2 and 4.1.2). Larger organisms present would descend with the mass of dredged material to the seafloor. The seafloor at the disposal site is very deep (over 8,000 feet), and (as evidenced by sediment characteristics and deep water current speeds—see Final EIS Sections 3.1.2 and 3.1.4) is in a depositional environment where the sediment would not become resuspended or migrate toward shore. Future disposed sediments would tend to cover previously placed material over time. In addition, only non-native species already brought to Guam by other mechanisms—i.e., in vessel ballast water—would be present, so disposal operations would not introduce new species. For these reasons ocean disposal of dredged material from Guam would not be expected to increase either the presence or the spread of non-native species.

Some comments expressed concern that consultations with NMFS (regarding endangered species, and regarding Essential Fish Habitat) were inadequate because coordination should also have occurred directly with the Western Pacific Regional Fishery Management Council (WPRFMC).

The required consultations were completed with NMFS and USFWS with regard to seabirds, marine mammals, threatened and endangered species, fisheries, and essential fish habitat. These agencies provided recommendations at the draft EIS stage, which were incorporated into the Final EIS. No significant resource issues were raised by these agencies over the Final EIS or Proposed Rule.

Some comments stated the Final EIS evaluation included insufficient information on the ranges and/or timing of important marine species—including sea turtles, and spinner and bottlenose dolphins—and failed to evaluate potential impacts of disposal operations on them.

EPA acknowledges that there is limited information for a number of species. Nevertheless, the Final EIS reflects the current scientific knowledge and reports applicable to the region, including the 2007 Mariana Islands Sea Turtle and Cetacean Survey. The Final EIS acknowledged that spinner and bottlenose dolphins, as well as several species of sea turtles, are expected to occur regularly throughout the region (see Final EIS Section 3.2.5). However, the Final EIS concluded that water column properties are relatively uniform throughout the offshore region including around the disposal site (see Final EIS Sections 3.1.2-3.1.4). In the absence of persistent unique oceanographic or habitat characteristics, the overall distribution of marine mammals and sea turtles (as well as their pelagic prey organisms) would be expected to be similar throughout the offshore waters west of Guam. Furthermore, the disposal plume in the water column will be temporary following individual disposal events, and will dissipate to background levels within the disposal site boundary even assuming the maximum disposal volume scenario and severe El Ni˜no or La Ni˜na conditions (see Final EIS Section 4.1.3). Since the disposal site represents a very small proportion (less than one percent) of the offshore waters, and since disposal effects will be limited and temporary even within the disposal site, the potential impact of dredged material disposal operations on marine mammals and sea turtles is expected to be insignificant.

One comment expressed concern that experience and knowledge of conditions in the deep ocean environment elsewhere are not necessarily representative of the tropical deep ocean environment off Guam.

Although temperate and tropical ecosystems are different in many aspects in the surface and coastal waters, the physical oceanographic conditions of the deep ocean are fairly consistent throughout the world. Nevertheless, the Final EIS evaluation did not rely exclusively on knowledge of deep ocean environmental conditions elsewhere. Extensive site-specific oceanographic and biological baseline studies were conducted for the Final EIS (see Final EIS Sections 3.1.2-3.1.6 and 3.2.2-3.2.3), focusing on critical information gaps. The resulting data greatly added to the available information about conditions offshore of western Guam, and allowed an adequate assessment of the potential impacts of ocean disposal activities. EPA's published site selection criteria, and relevant monitoring experience at other deep ocean disposal sites, remain valid for the deep waters offshore of Guam.

One comment expressed concern that noise and disturbance caused by vessels has not been studied.

The ocean disposal site is located outside of, but immediately adjacent to established vessel traffic lanes. Vessels transporting dredged material to the disposal site must remain within the traffic lanes at all times during their approach to the site. The amount of disposal-related vessel traffic will be small in comparison to existing commercial vessel traffic in the area (see Final EIS Section 3.3.4), even without considering Naval vessel traffic. The Final EIS concluded that even at the worst-case annual disposal volume (an average of 1 disposal trip per day), only minor navigation-related cumulative impacts to fishing or other vessels would result (see Final EIS Section 4.4.3). Disposal volumes, and therefore disposal-related vessel traffic, are expected to be much less than this most of the time, and in most years. For these reasons EPA believes that ocean disposal site designation will not cause significant adverse impacts as a result of vessel disturbance or noise.

9. Socioeconomic, Cultural, or Environmental Justice Issues

Several comments criticized the Final EIS for not properly recognizing the character of the local fishery, noting that the majority of fishers participate in the troll fishery for pelagic species within 20-30 miles of the coastline along Guam's western seaboard where conditions are more consistently safe for fishing. A disposal site in these waters could therefore have larger effects on the fishing community than noted in the Final EIS.

***54504** The Final EIS acknowledged that the pelagic troll fishery is significant, and takes place throughout the waters offshore of Guam as anglers pursue several highly mobile species (see Final EIS Section 3.2.3). However, the fishery is not concentrated around the disposal site (see Final EIS Sections 3.2.3 and 4.3) and this ocean disposal site designation action does not further prohibit or limit fishing, even in or immediately around the disposal site. The Final EIS concluded that water column properties are relatively uniform throughout the offshore region including around the disposal site (see Final EIS Sections 3.1.2-3.1.4). In the absence of persistent unique oceanographic or habitat characteristics in the vicinity, the overall distribution of planktonic and larval organisms, as well as bait fish feeding on them and larger pelagic fish attracted by bait fish, would be expected to be similar throughout the offshore waters west of Guam. Furthermore, suspended sediment plumes from disposal events are expected to quickly dissipate to background levels within the disposal site (see Final EIS Section 4.1.3). Following dissipation pelagic fishes or their prey would not necessarily avoid the area, and disposal operations are not expected to be so continuous or heavy that mobile fish species or their prey would avoid the area permanently. Since the disposal site represents a very small proportion of the offshore waters west of Guam (less than one percent of the area within the 18 nm ZSF economic feasibility distance, and still less of the area within the approximately 30 nm radius reported to be regularly utilized by anglers), and since disposal effects will be limited and temporary even within the disposal site, significant direct or cumulative impacts to the ocean ecosystem, including to pelagic fish species targeted by anglers, are not expected.

Several comments expressed concern that fishing would be prohibited around the disposal site and that, together with previous losses of pelagic fishing areas to military operations and the Mariana Trench Marine National Monument, any further losses would be unacceptable. A related concern was that the “From the Reef to the Deep Blue Sea” program, which promotes conservation of coral reef fish species by providing the island community with alternative and more abundant pelagic fish, would be impacted by any decline in pelagic fish or restriction of traditional offshore fishing areas.

EPA recognizes that fishing in some areas has become more difficult, or even off limits, as a result of other actions on and around Guam not related to this site designation. However this ocean disposal site designation action does not further prohibit or limit fishing, even in or immediately around the disposal site. In addition, since the Final EIS evaluation determined that no significant effect is expected to pelagic fish or the fishery targeting them, there should be no impact to Guam's “From the Reef to the Deep Blue Sea” program.

One comment noted that the Final EIS understated the economic value of the commercial fishery, and requested that EPA fund a baseline study of direct and indirect economic activity generated by fisheries on Guam, in order to assess economic impacts due to loss of fishing opportunities.

The Final EIS acknowledged that it is often difficult to distinguish between commercial, recreational, and other fishing activities conducted around Guam (see Final EIS Section 3.3.1). The direct value of strictly commercial fishery landings does not take into account the related economic benefit to supporting businesses. Nor does it reflect direct or indirect economic activity generated by non-commercial fishing, let alone cultural values associated with fishing on Guam. However, this ocean disposal site designation action does not further prohibit or limit fishing, even in or immediately

around the disposal site. In addition, as discussed above, the Final EIS evaluation determined that no significant environmental effects are expected to pelagic fish or the fishery targeting them. For these reasons, EPA disagrees that there is a need to further quantify the direct and indirect economic activity generated by fishing on Guam.

Several comments expressed concern that the Final EIS downplayed the cultural importance of fishing and the supply of fresh fish (including for religious purposes). In particular, the loss of fishing opportunity would have a negative cultural impact on Guam.

The Final EIS acknowledged that fish, and fishing, are important cultural aspects of life for many residents of Guam (see Final EIS Section 3.3.1). However, as discussed above the fishery is not concentrated around the disposal site (see Final EIS Sections 3.2.3 and 4.3) and this ocean disposal site designation action does not further prohibit or limit fishing, even in or immediately around the disposal site. The Final EIS concluded that water column properties are relatively uniform throughout the offshore region including around the disposal site (see Final EIS Sections 3.1.2-3.1.4). In the absence of unique oceanographic or habitat characteristics in the vicinity, the overall distribution of planktonic and larval organisms, as well as bait fish feeding on them and larger pelagic fish attracted by bait fish (and targeted by fishers), would be expected to be similar throughout the offshore waters west of Guam. Furthermore, suspended sediment plumes from disposal events are expected to quickly dissipate to background levels within the disposal site (see Final EIS Section 4.1.3). Following dissipation pelagic fishes or their prey would not necessarily avoid the area, and disposal operations are not expected to be so continuous or heavy that mobile fish species or their prey would avoid the area permanently. Since the disposal site represents a very small proportion (less than one percent) of the offshore waters and disposal effects will be limited and temporary even within the disposal site, significant direct or cumulative impacts to the ocean ecosystem, including to pelagic fish species targeted by fishers, are not expected. The Final EIS also noted that cumulatively there would be only minor potential for navigation-related impacts to fishing or other vessels, even during periods of maximum disposal activity (see Final EIS Section 4.4.3). Therefore EPA does not believe that designation of the ocean disposal site will have any significant effect on fishing, fishes themselves, or associated cultural aspects of life on Guam.

One comment argued that even though the economic impact threshold in Executive Order 12866 would not be exceeded, effects on the small island community of Guam would still be significant.

EPA recognizes that economic impacts far below the $100 million threshold in Executive Order 12866 could be “significant” to a small island community such as Guam's. However, the EIS process concluded that there would be no significant effects on Guam including to “the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities”, because significant environmental effects are not expected and because the action does not prohibit or further limit fishing.

One comment stated that the site designation violates Executive Order 13132 on Federalism because it represents yet another Federal action imposed on Guam without local consent.

This action does not have federalism implications and does not violate Executive Order 13132. It does not have a direct effect on the government of Guam, on the relationship between the ***54505** national government and the government of Guam, or on the distribution of power and responsibilities among the various levels of government. The designated site is over 11 nautical miles offshore, outside of the jurisdiction of Guam agencies. Furthermore, EPA consulted directly with the Guam Bureau of Statistics and Plans and received their concurrence that the action is consistent with Guam's Coastal Management Program. Since this action only has the effect of providing an additional option for managing dredged material and setting a maximum annual ocean disposal volume limit, Executive Order 13132 does not apply.

10. Sediment Testing Issues

Some comments expressed concern about possible radiation releases in the past and the reliability of the Navy to report any releases in the future. They believed that EPA statements about radiation testing have been inconsistent, and recommended that EPA be clear about requiring that sediment core samples (rather than surface grab samples) be analyzed for radiation prior to approval of dredging and disposal operations.

For every dredging project area tested, sediments will be representatively sampled down to the proposed dredging depth (design depth) plus overdepth (which is typically 2 feet below the project's design depth), using coring equipment (not just surface grab samples), and tested in accordance with the EPA/USACE national Ocean Testing Manual. However, in response to these comments, sediment samples collected from dredging areas in Apra Harbor will be subjected to radiation analyses in addition to the other standard physical, chemical, and biological analyses.

One comment requested that dredged material sampling plans, testing results, and site monitoring information be made accessible to the public (without a FOIA request).

Proposed Sampling and Analysis Plans (SAPs) for dredging projects that include ocean disposal must be provided to EPA, USACE and appropriate Guam regulatory agencies for review and approval prior to testing. In addition, EPA intends to make publicly available (via the EPA Region 9 Web site) SAPs and subsequent results reports for dredging projects that include ocean disposal, as well as site monitoring results, once such reports are finalized.

11. Site Management and Monitoring Plan (SMMP) Issues

One commenter was concerned that the language in Section 5.1.1 of the SMMP, which stated a number of permit requirements “may include the following * * *”, implied important provisions might sometimes not be required in permits.

EPA will revise this SMMP language to read: “shall include, but not be limited to, the following * * *”

One comment recommended that any disposal scow that has handled contaminated dredged material be required to be cleaned before loading clean material for discharge at the ocean disposal site.

EPA will add a requirement to this effect to the SMMP.

Some comments recommended that all dredging activities be prohibited at certain times, including during the peak coral spawning period, during seasonal appearance of harvested fish species, and west to east wind shifts.

Dredging operations on projects that include ocean disposal will not be allowed during the peak coral spawning period. (EPA generally agrees that any dredging in proximity to coral should not occur during this timeframe if at all possible; however, EPA does not have independent authority to require stoppage of dredging work on projects that do not include ocean disposal.) Different fish species are harvested at different times of the year, and there is no period during which disposal operations would avoid them all. However, based on the Final EIS conclusion that significant effects would not occur to these species, EPA has determined that no seasonal restriction on use of the disposal site is necessary. The Final EIS evaluations determined that disposal plumes would dissipate to background levels within the disposal site boundaries, even during current reversals and significant increases in surface current speed. Therefore EPA determined that timing restrictions to avoid wind and surface current shifts from west to east are also not needed.

One comment recommended that large pieces of coral debris, and especially live coral, be prohibited from ocean disposal.

EPA agrees that live coral should be salvaged for transplantation. Therefore we are adding a provision to the SMMP re-

quiring mechanical dredging operations in areas that include live coral, coral rubble, rocks, or other large debris to utilize a metal grate (known as a grizzly) with no greater than 12-inch openings, through which the dredged material is passed as it is placed in disposal barges. Material retained on the grizzly must be removed and managed elsewhere; it may not be taken to the ocean disposal site.

One comment stated that in light of the lack of trust by the local community, the entire dredging and disposal process needs to be monitored by independent observers.

As stated in the Proposed Rule, the Final EIS evaluation determined that use of the disposal site would not be expected to result in long-term adverse environmental impact to the wide-ranging species of seabirds, pelagic fish, sea turtles or marine mammals in the region offshore of Guam. Therefore EPA has not included a requirement in the SMMP for independent on-board observers. However, the SMMP requires automated satellite and sensor-based monitoring of all transportation and disposal operations. In addition, the SMMP requires that scows must be inspected prior to each disposal trip, and certified as being in compliance with other SMMP specifications.

One comment recommended that disposal scow tracking capability be “real time” so that a disposal scow found to be losing material could be recalled prior to disposal.

Real time monitoring for leaks is not considered essential for long-term management of ocean disposal operations. First, personnel are not necessarily available to review tracking data for every trip in real time. More importantly, even if a leaking scow were to be identified while during transit, it would generally be environmentally preferable to allow the scow to complete that trip to the ocean disposal site rather than to return and release additional material in closer proximity to corals and other sensitive habitats. Also, in some conditions there can be vessel safety concerns involved in aborting a trip and turning around a loaded scow in the open ocean. Instead, the continuous tracking system required by EPA documents whether a substantial leak or spill has occurred during a trip, and transmits that data at the end of each trip. Disposal operations may not proceed if the required tracking system is not operational. If a leak or spill was detected, an e-mail alert is sent to all appropriate parties (including the permittee, the dredging contractor, EPA, USACE, and relevant Guam regulatory agencies), advising to check the Web site for that trip. This system provides for timely communication with the dredging project managers so that information about causes and remedies can be exchanged quickly. When necessary, EPA and USACE can require physical or operational changes be ***54506** made, or even that the scow in question be pulled immediately from service and not allowed to be used for disposal operations until repairs are completed and shown to be successful.

One comment recommended that site monitoring include the seafloor area surrounding the site itself, that monitoring also occur for the presence of pelagics and planktonic organisms including coral larvae in the water column, and that sediment traps should be deployed outside the disposal site to verify the dispersion modeling.

Both on-site and off-site stations will be included in benthic monitoring surveys. Sediment traps are not needed based on previous monitoring of deep ocean disposal operations, and because benthic surveys conducted under the SMMP will provide a more integrated, cumulative measure of the extent of dispersion and deposition. Water column monitoring for the presence of pelagic organisms, including coral larvae, is not necessary based on the Final EIS conclusion, discussed above, that although these organisms are expected to be present within the disposal site (just as they are present throughout the offshore waters west of Guam), significant impacts to their populations are not expected because disposal operations will be limited in area, extent and duration.

12. Compensatory Mitigation

Some comments requested specific compensatory mitigation for disposal site designation, including deployment of new Fish Aggregation Devices (FADs) as alternative fishing areas to mitigate for loss of fishing opportunity, and direct monetary compensation for anglers of $1.9 million per year for the life of the disposal site or a lump-sum payment of $50 million.

A broad range of impact avoidance and minimization measures are built into the site designation process itself, and additional avoidance and minimization measures have been incorporated into the SMMP. As noted above, fishing is not prohibited in or around the disposal site. The fishery is not concentrated around the disposal site (see Final EIS Sections 3.2.3 and 4.3). The Final EIS concluded that water column properties are relatively uniform throughout the offshore region including around the disposal site (see Final EIS Sections 3.1.2-3.1.4). In the absence of unique oceanographic or habitat characteristics in the vicinity, the overall distribution of planktonic and larval organisms, as well as bait fish feeding on them and larger pelagic fish attracted by bait fish, would be expected to be similar throughout the offshore waters west of Guam. Furthermore, suspended sediment plumes from disposal events are expected to quickly dissipate to background levels within the disposal site (see Final EIS Section 4.1.3). Following dissipation pelagic fishes or their prey would not necessarily avoid the area, and disposal operations are not expected to be so continuous or heavy that mobile fish species or their prey would avoid the area permanently. Since the disposal site represents a very small proportion of the offshore waters targeted by anglers (less than one percent of the waters within 30 miles to the west of Guam) and disposal effects will be limited and temporary even within the disposal site, significant direct or cumulative impacts to the ocean ecosystem, including to pelagic fish species targeted by anglers, are not expected. EPA therefore disagrees that there is any further need for compensatory mitigation of the kinds recommended.

Some comments recommended that compensatory mitigation be required for any leakage or spills of dredged material outside the disposal site.

Leaking or spillage of material during transit to the disposal site is prohibited by the SMMP and any ocean disposal permits issued. Substantial mandatory compliance monitoring effort is directed at confirming that neither occurs. We have added a new provision to the SMMP specifying that if a disposal barge leaks or spills significantly during a trip to the disposal site, it may not be used on subsequent ocean disposal trips until approved again by EPA and USACE. EPA has substantial enforcement authority under the Marine Protection, Research, and Sanctuaries Act, and may also refer violators to the Department of Justice for civil or criminal prosecution if necessary. Enforcement actions or settlements can require restoration where possible (e.g., in shallow water), in addition to monetary penalties.

H. 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 Final 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 ex-

istence of any Federally listed species. This consultation process is fully documented in the site designation Final EIS. NOAA and FWS concluded that 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.

I. 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 Final Rule should have minimal impact on State, local or Tribal governments or communities. Consequently, EPA has determined that this Final 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 ***54507** recordkeeping 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 recordkeeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the Final Rule would not establish or modify any information or recordkeeping 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 Final 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 Final 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 Final 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 Final 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 Final 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 Final 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 Final 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 Final Rule does not have Tribal implications, as specified in Executive Order 13175. The Final 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 Final 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 Final 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 Ad-

ministrative Procedure Act

This Final 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 Final 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 Final 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, section 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 Final Rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

***54508** *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 Final 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.

11. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This Final Rule will be effective October 8, 2010.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: August 31, 2010.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

In consideration of the foregoing, EPA amends 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.

40 CFR § 228.15

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

40 CFR § 228.15

§ 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' East Longitude (North American Datum from 1983), with an overall diameter of 3 nautical miles (5.6 kilometers).

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

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

(iv) Use Restricted to Disposal of: Suitable 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 at least every 10 years.

* * * * *

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