

Public Notice of Application for Permit

Regulatory Office 230 Otake Street Fort Shafter, Hawaii 96858-5440 Public Notice Date: February 25, 2022 Expiration Date: March 12, 2022 DA File No.: **POH-2021-00220**

Interested parties are hereby notified that an application has been received for a Department of the Army (DA) permit for certain work in waters of the United States (U.S.) as described below and shown on the attached drawings.

APPLICANT: Kent R. Hendricks, Navy Region Hawaii, 400 Marshall Road, Joint Base Pearl Harbor-Hickam (JBPHH), HI 96860.

AGENT: Sherri R. Eng, Navy Facilities Engineering Systems Command Hawaii, 400 Marshal Road, JBPHH, HI 96860.

LOCATION: The U.S. Navy Confined Disposal Facility (CDF) located at Waipio Peninsula, Waipahu, Hawaii (21.348° N; -157.974° W) and South Oahu Ocean Dredged Material Disposal Site (SOODMDS) offshore of the Island of Oahu (21.252° N; -157.947° W). See the enclosed figures for additional information regarding project location.

PROPOSED ACTIVITY: The applicant proposes to transport approximately 112,000 cubic yards (cy) of previously dredged material from the West Loch of Pearl Harbor to the SOODMDS, an U.S. Environmental Protection Agency (EPA) designated open ocean disposal site located about eight miles south of Honolulu and four miles south of the Pearl Harbor entrance channel. See "Additional Information" section below for details regarding the project scope.

AUTHORITY(S): This permit application will be reviewed under Section 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended (33 USC § 1413).

EVALUATION FACTORS: The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. In addition, the impact of the proposed activity on the public interest will include application of the criteria established under the authority of Section 102(a) of the MPRSA of 1972, as amended (40 CFR 220 to 229).

The U.S. Army Corps of Engineers (Corps) is soliciting comments from the public, federal, state, and local agencies and officials, Native Hawaiian organizations, and other interested parties in order to consider and evaluate the impacts of this activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for the work. To make this decision, comments are used to assess impacts on endangered species, historic properties, essential fish habitat, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the activity.

ADDITIONAL INFORMATION:

PROPOSED ACTIVITY REQUIRING DA AUTHORIZATION: The Navy Facilities Engineering Systems Command Hawaii (NAVFAC Hawaii) has applied for DA authorization to transport an estimated 112,000 cy of dredged material stockpiled in the CDF Cell #4 for ocean disposal at the SOODMDS. The transportation of dredged material for ocean disposal requires authorization from the Corps under Section 103 of the MPRSA. Ocean disposal of dredged material may only occur if beneficial uses of the dredged material or upland alternatives are not available, and such disposal complies with specific ocean disposal criteria and conditions.

PROJECT PURPOSE AND NEED: The dredging of sediments was completed by the Navy in 2009, but the material had not been transported to the SOODMDS before the original DA authorization expired in October 2010. Therefore, the stockpiled dredged material in the CDF Cell #4 requires new DA authorization for its transport and ocean disposal. NAVFAC Hawaii needs to gain capacity within the CDF Cell #4 to accommodate future upland disposal of dredged material resulting from environmental

remediation of contaminated sediments within the Pearl Harbor Naval Complex National Priorities List Site.

BACKGROUND: As background, the dredged material was originally sampled and subjected to full Tier-III testing in 2004 and 2006, with the results contained in the 2006 "Sampling and Tier III Analysis of Sediments for Construction Dredging West Loch" report prepared for the Navy by Environmental Engineering. Based on those testing results, EPA determined at the time that the material was suitable for ocean disposal at the SOODMDS. However, before the dredged material derived from the 2008-09 dredging operation could be transported for ocean disposal, it was required to first be placed in the CDF Cell #4 for screening of materials of explosive concerns (MEC) and subsequently placed into 120 individual stockpiles. After the MEC screening process concluded, the dredged sediments remained in the CDF Cell #4.

Given the amount of time that has elapsed since EPA's original suitability determination, NAVFAC Pacific conducted confirmatory testing (chemistry and grain size) to evaluate whether the dredged material stored in the CDF Cell #4 remains largely the same in chemical and physical composition as the material tested in 2006 (i.e., to confirm that there have been no additional sources of contamination since placement in the upland CDF Cell #4). This confirmatory testing was performed in accordance with a Tier-II Sampling and Analysis Plan (SAP) prepared by Cape Environmental Management, Inc. and the Navy (CAPE, 2021).

Following completion of the testing as prescribed in the SAP, NAVFAC Pacific prepared a sampling and analysis report (SAR) titled, "Dredge Evaluation Letter Report, Management of Dredged Material in Waipio Confined Disposal Facility Cell #4, JBPHH" detailing the results of the confirmatory sampling and analysis data (NAVFAC, 2021). This SAR was provided to EPA Region 9 for review to determine whether the material, or portions thereof, stockpiled in the CDF Cell #4 is suitable for ocean disposal.

For the 2021 confirmatory testing, the stockpiles from CDF Cell #4 were grouped into 22 division units (DUs) and tested for polychlorinated biphenyls (PCBs) aroclors, metals, and polynuclear aromatic hydrocarbons (PAHs). Additionally, a "super-composite" of the units was composited and tested for PCB congeners. The results for metals and PAHs were generally comparable to the 2006 sampling. Total PCB congeners were below the Effects Range-Low in the "supercomposite." Individual analyses for PCB aroclors in DU's 1-4, 7-10, and 12-22 similarly generally comport with the 2006 test results. However, the individual analyses for PCB aroclors in DUs 5, 6, and 11 indicate significantly higher levels of PCBs than expected, with concentrations ranging from 170-222 ug/Kg for Aroclor 1260, whereas PCB aroclor concentrations from all 2006 test results were non-detect.

Based on the significantly higher concentrations of PCBs in DUs 5,6, and 11, EPA determined the chemistry does not comport with the original testing, and consequently, these units are not suitable for ocean disposal. EPA further determined the sediments from DUs 1-4, 7-10, and 12-22 are suitable for ocean disposal at the SOODMDS and

conveyed this information to NAVFAC Pacific and NAVFAC Hawaii in an email dated January 11, 2022. Those sediments deemed suitable for ocean disposal account for approximately 112,000 cy of dredged material currently stockpiled in CDF Cell #4.

As of the date of this public notice, EPA Region 9 has not issued its concurrence for ocean disposal nor mandatory conditions for the use of the SOODMDS. EPA will provide concurrence separately, in response to this public notice for a USACE permit pursuant to Section 103 of the MPRSA and based on additional considerations, including the availability of feasible alternatives to ocean disposal and the transmittal of mandatory ocean disposal site conditions.

Construction Methodology and Schedule. The 112,000 cy of dredged material would be loaded onto trucks with an excavator; transferred by trucks from CDF Cell #4 to an offloading point on Waipio Peninsula; staged in a temporary upland stockpile; and then immediately loaded by crane from the shore onto the barge. A turbidity curtain would be placed around the barge during loading operations to minimize any turbidity plume. After each load is filled (approximately 1,300 cy per load), the barge would transport the material to the SOODMDS, making approximately 97 trips in total. The tentative start and end dates for the transport of the dredged material for ocean disposal are March/April 2022 and May/June 2022, respectively.

MITIGATION: The applicant's proposed mitigation (i.e., avoidance, minimization, and compensation) may change as a result of comments received in response to this public notice, the applicant's response to those comments, and/or the need for the project to comply with the public interest review factors. In consideration of the above, the proposed mitigation sequencing for the proposed project is summarized below.

Avoidance and Minimization. Impacts to waters of the U.S., federally listed threatened and endangered species, and other environmental resources would be minimized by the utilization of Best Management Practices (BMPs) in accordance with EPA's programmatic consultations with NOAA-National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) that addresses the on-going use of the five existing EPA-designated ocean dredged material disposal sites (ODMDS) serving the main Hawaiian Islands. In addition, an Environmental Monitoring and Management Plan (EMMP) has been prepared by the applicant's remediation contractor who would be responsible for loading, transporting and disposing the dredged material. The EMMP describes additional BMPs, including the location of turbidity controls that would be utilized during barge loading, water quality monitoring procedures, spillage precautions, and equipment inspection and maintenance to prevent leaks.

<u>Compensation</u>. The proposed transport of previously dredged material for disposal at the SOODMDS would not result in a loss of waters of the U.S. nor a permanent impact to special aquatic sites (e.g., coral reefs, vegetated shallows, etc.). Accordingly, the applicant does not anticipate a need for compensatory mitigation. Furthermore, the applicant acknowledges that as a general matter, the EPA does not

pursue benthic habitat restoration at its designated deep ocean disposal sites because, for the most part, such restoration is not practicable.

WATER QUALITY CERTIFICATION: Pursuant to Section 401 of the Clean Water Act (Public Law 95-217), the State of Hawaii, Department of Health, Clean Water Branch (CWB) determined the SOODMDS is not under State jurisdiction and therefore, a Section 401 water quality certification is not required for the disposal of dredged material in the SOODMDS.

COASTAL ZONE MANAGEMENT ACT CERTIFICATION: Section 307(c)(3) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456(c)(3)), requires federal agencies to certify that proposed activities affecting land or water uses in the coastal zone comply with the State's Coastal Zone Management (CZM) Program. In its December 2006 environmental assessment (EA) prepared for the original dredging of the West Loch of Pearl Harbor and proposed transportation of dredged sediments for ocean disposal, the NAVFAC Hawaii determined the proposed action is not subject to a coastal consistency determination because the action is located on Federal property and is not located within the State's coastal zone as defined by CZMA (Navy, 2006). In addition, the disposal of the dredged materials at the SOODMDS would be in accordance with EPA's disposal requirements and conditions. Accordingly, the NAVFAC Hawaii concluded the proposed transportation of dredged materials for ocean disposal would not result in any reasonably foreseeable direct or indirect effects on any coastal use or resource of the State's coastal zone. A letter notifying the State of Hawaii Coastal Zone Management Program Office of the NAVFAC Hawaii's negative determination is included in Appendix C of the December 2006 EA. The NAVFAC Hawaii considered its prior CZMA evaluation and concluded the original determination remains unchanged.

CULTURAL RESOURCES: Section 106 of the National Historic Preservation Act (NHPA) of 1966 requires federal agencies to take into account the effects of their undertakings on historic properties, consult with the State Historic Preservation Officer (SHPO) when appropriate, and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. As documented in the Navy's December 2006 EA for the original dredging of the West Loch of Pearl Harbor and proposed transportation of dredged material for ocean disposal, the NAVFAC Hawaii completed a NHPA Section 106 review by consulting with the SHPO and other consulting parties. Upon conclusion of the consultations, NAVFAC Hawaii determined the dredging and transport of dredged material would have "no adverse effect" on historic properties, and no objections or concerns were raised by the consulting parties. Documentation related to the original Section 106 consultation process is provided in Appendix A of the December 2006 EA. The NAVFAC Hawaii considered its prior NHPA Section 106 evaluation and concluded the original determination remains unchanged. The Corps has reviewed NAVFAC Hawaii's Section 106 of the NHPA documentation and concurs with the determination.

<u>ENDANGERED SPECIES</u>: Section 7 of the Endangered Species Act (ESA) of 1973, as amended, requires federal agencies to consult with NMFS and/or USFWS on all federal actions that may affect species listed (or proposed for listing) as threatened or endangered or that may destroy or adversely modify their designated critical habitat.

Beginning in 2018, EPA Region 9 conducted informal programmatic consultations with NMFS under the ESA and the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and with the USFWS under the ESA, for the transport of dredged material and disposal at the five existing EPA-designated ODMDS located off the shores of the islands of Kauai (2), Oahu (1), Maui (1) and Hawaii (1). These programmatic consultations were completed in late 2020 and early 2021. It is relevant to note that EPA's programmatic consultations addressed the transportation and ocean disposal of dredged materials at the five ODMDS but did not analyze or otherwise cover individual dredging projects or operations at specific sites. The latter actions would be evaluated on a case-by-case basis as part of the Corps' Section 10 of the Rivers and Harbors Act of 1899 permit application review processes.

The NAVFAC Hawaii considered the effects of the proposed transportation of 112,000 cy of dredged materials for ocean disposal on federally listed marine species known to occur or have the potential to occur within the project's action area. The NAVFAC Hawaii determined the proposed project "may affect but would not likely adversely affect" the species listed in the table below and would not adversely modify designated critical habitat. The NAVFAC Hawaii further determined the proposed action is eligible for coverage under the EPA-NMFS/USFWS Section 7 ESA programmatic consultations and therefore, no additional consultation is required. As appropriate, NAVFAC Hawaii will comply with the conservation measures and recommendations agreed upon between EPA Region 9, NMFS and USFWS in the Section 7 ESA programmatic consultations to ensure adverse effects to listed species are insignificant and discountable. The Corps has reviewed and concurs with NAVFAC Hawaii's Section 7 of the ESA determinations.

Species Common Name	Species Scientific Name	NAVFAC Hawaii Determination of Effect	
Threatened & Endangered Species Under NMFS Jurisdiction			
Hawaiian Monk Seal	Monachus schauinslandi	May Affect, NLAA	
Green Sea turtle	Chelonia mydas	May Affect, NLAA	
Hawksbill Sea turtle	Eretmochelys Imbricate	May Affect, NLAA	
Humpback Whale	Megaptera novaeangliae	May Affect, NLAA	
Hawaiian False Killer Whale	Pseudorca crassidens	May Affect, NLAA	
North Pacific Right Whale	Eubalaena japonica	May Affect, NLAA	
Sei Whale	Balaenoptera borealis	May Affect, NLAA	
Fin Whale	Balaenoptera physalus	May Affect, NLAA	
Blue Whale	Balaenoptera musculus	May Affect, NLAA	
Sperm Whale	Physeter macrocephalus	May Affect, NLAA	
Loggerhead Turtle	Caretta caretta	May Affect, NLAA	
Olive Ridley Turtle	Lepidochelys olivacea	May Affect, NLAA	
Leatherback Turtle	Dermochelys coriacea	May Affect, NLAA	

Species Common Name	Species Scientific Name	NAVFAC Hawaii Determination of Effect	
Giant manta ray	Manta birostris	May Affect, NLAA	
Oceanic whitetip shark	Carcharhinus longimanus	May Affect, NLAA	
Designated Critical Habitat			
Hawaiian Monk Seal critical habitat	N/A	No Adverse Modification	
Hawaiian Insular False Killer	N/A	No Adverse Modification	
Whale critical habitat			
Threatened & Endangered Species Under USFWS Jurisdiction			
Short-tailed albatross	Phoebastria albastrus	May Affect, NLAA	
Hawaiian petrel	Pterodroma sandwichensis	May Affect, NLAA	
Band-rumped storm petrel	Oceanodroma castro	May Affect, NLAA	
Newell's shearwater	Puffinus auricularis newelli	May Affect, NLAA	
NLAA = Not Likely to Adversely Affe	ct.		

ESSENTIAL FISH HABITAT: The proposed action was evaluated by NAVFAC Hawaii for potential direct, indirect and cumulative effects to Essential Fish Habitat (EFH) pursuant to Section 305(b)(2) of the Magnuson Stevens Fishery Conservation and Management Act of 1996 (MSA) and associated federal regulations found at 50 CFR Part 600, Subpart K. The marine water column from the surface to a depth of 1,000 meters from the shoreline to the outer boundary of the Exclusive Economic Zone (200 nautical miles), and the seafloor from the shoreline out to a depth of 700 meters around Hawai'i have been designated as EFH. Within the Pacific Islands Region, EFH is designated for all federally managed species, referred to as Management Unit Species (MUS). These MUSs include bottomfish, pelagics, precious corals, and crustaceans. The water column above the SOODMDS intersect with EFH for the crustacean MUS (Kona crab egg/larval life stage), bottomfish MUS (eggs and post-hatch pelagic of the shallow, intermediate, and deep stocks (post-settlement and sub-adult/adult life stages)), and pelagic MUS (egg/larval and juvenile/adult life stages).

The NAVFAC Hawaii determined the proposed action "may adversely affect" EFH, but the impacts would not be substantial based on implementation of BMPs and the EMMP. The NAVFAC Hawaii further determined the proposed action is eligible for coverage under the EPA-NMFS EFH programmatic consultation and therefore, no additional consultation is required. As appropriate, NAVFAC Hawaii will comply with EPA's agreed upon EFH conservation recommendations for the transportation of dredged sediments for ocean disposal to ensure the proposed action would avoid and/or minimize adverse effects to designated EFH resources. The Corps has reviewed and concurs with NAVFAC Hawaii's EFH determination.

<u>PUBLIC HEARING:</u> Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings must state clearly and concisely, the reasons and rationale for holding a public hearing.

<u>COMMENT AND REVIEW PERIOD:</u> Conventional mail or e-mail comments on this public notice received during the comment period will be made part of the record and considered in determining whether it would be in the public interest to authorize this proposal. In order to be accepted, e-mail comments must originate from the author's e-mail account and must include on the subject line of the e-mail message the permit applicant's name and Corps file number **POH-2021-00220**.

All e-mail comments should be sent to:

Susan.a.meyer@usace.army.mil.

Conventional mail comments should be sent to:

U.S. Army Corps of Engineers Honolulu District, Attn: CEPOH-RO, Susan Gayagas 230 Otake Street Ft. Shafter, Hawaii 96858-5440

Both conventional mail and e-mail comments must reach this office no later than the expiration date of this public notice to become part of the record and be considered in the decision. Please contact Susan A. Meyer Gayagas at (808) 835-4599 for further information concerning this notice.

This public notice is issued by the Chief, Regulatory Office.

Attachments



