

SMARM Responsiveness Summary

DMMP Clarification and Issue Papers

Clarification Paper: “Determining When Material Above Mean/Ordinary High Water Will be Characterized Under the DMMP” (Draft May 7, 2003).

The DMMP agencies received a single letter, from the Port of Tacoma, regarding the clarifications proposed in this paper (see attached Port letter). Major comments are summarized in the bullets below, followed by the agencies’ joint responses.

1. Comment

‘To be evaluated as dredged material under the DMMP, the action to excavate material from beyond the reasonable angle of repose must be ecologically beneficial to either the dredging site or the designated open-water disposal site, but not both, as stated in the clarification paper’ i.e., “EPTA provides for either A or B to exist” (first part of comment paraphrased from original letter).

Response

Nearly all of the clarification and issue papers prepared during the past 15 years have represented a strong consensus position among the DMMP agencies and staff. However, in preparing initial drafts of this clarification paper, it became apparent that neither the intent of the language in EPTA, nor the language itself, was completely clear. There were different opinions about what EPTA intended and what it states. After extensive discussions, most staff agreed that the EPTA language appeared to require ecological benefits at both the dredging and disposal site for material excavated from beyond the reasonable angle of repose to be evaluated as dredged material. Thus, we proposed the May 2003 clarification. But we did so with some uncertainty about our interpretation of EPTA and hoping the paper would elicit public comments (in keeping with the program’s open annual review process).

Prior to receiving comments from the Port of Tacoma, we consulted others involved in the original development of EPTA who concurred with the Port’s interpretation. After receiving the Port’s June 19, 2003 letter, we discussed this comment further. We now agree with the Port’s interpretation and have revised the clarification paper accordingly.

The primary goal of EPTA was to provide evaluation guidelines that would protect the benthic community found at the disposal site (Site Condition II allows

only minor adverse effects). To meet this goal, any materials excavated from beyond the reasonable angle of repose should be ecologically beneficial to the intended disposal site (e.g., chemically, toxicologically or in some other way “cleaner”). The majority of DMMP staff interprets “benefit”, in this case, to mean relative to the site’s baseline condition. Placement of such excavated material must improve the condition of the site relative to the baseline survey data.

A secondary intent of EPTA was to promote creation and/or enhancement of aquatic habitats. To do this, it appears that the agencies agreed to allow evaluating material excavated from beyond the reasonable angle of repose as dredged material if it results in ecological benefit to the dredging site (and not exceed disposal site guidelines).

2. **Comment**

“It is hard to imagine a clarification paper being based on an initial misinterpretation of the issue trying to be clarified. This makes the entire effort appear very arbitrary to the reviewer and generates concerns about the DMMP process being exhibited on this matter. It also raises concerns about what sort of things may not be as transparent or equally evident to the reviewing public as part of this ‘clarification’ process and paper.”

Response

Technical and policy issues in sediment management are often quite complex, especially when each new project is slightly different. With this in mind, the above statement of fact that “most clarification and issue papers prepared during the past 15 years represent a strong consensus position among the DMMP agencies and staff” is somewhat remarkable.

In addition, it should be noted that the process of preparing clarification and issue papers for presentation to the public as part of the annual review process (Final PSDDA EIS) has not changed. It is neither arbitrary nor hurried. Neither the DMMP agency staff nor the public have ever had to address such a difficulty in application of unclear guidance language to projects whose nature was never foreseen by the authors of EPTA. Rest assured that the SMARM process will continue to be as open and responsive as it has always been. If this paper raises concerns over the process by which the DMMP program evolves, whether on the part of the Port of Tacoma or any other member of the public, then we welcome recommendations for ways to improve it.

3. **Comment**

“It should also be noted that the results of monitoring at the Commencement Bay disposal site have not indicated adverse impacts to the aquatic environment due to the placement of shoreline cutback material from previous expansion projects.”

Response

The DMMP agencies agree with this statement. However, the volume and fine-grained nature of Blair Waterway sediments that have been placed at the Commencement Bay open-water disposal site over a relatively short period of time did result in a much larger footprint of dredged material than was predicted by early models. As a result, the agencies have gone to great lengths to show that the material discovered beyond the disposal site boundary only represents a *de minimis* volume and has not caused more than minor adverse biological effects.

4. **Comment**

“Further, the Port does not believe it is appropriate to redefine the interpretation and application of EPTA due to concerns about disposal site capacity issues. There are other remedies available to the agencies and the program to properly address and rectify these long-term issues to ensure the continued viability and vitality of the DMMP for the Puget Sound community.”

Response

This clarification paper didn't originate with concerns about the limited remaining capacity of the nearby Commencement Bay disposal site. Please see page 5 of both the draft and final papers: “Open-water disposal capacity exists and is provided on a regional basis, so available capacity of the nearest open-water disposal site should not be a factor in this determination.” The main concern was over potentially inappropriate management of “waste”, e.g., disposal of what might legitimately be considered a solid waste in a manner reserved for dredged material.

5. **Comment**

“The Port believes that the benefits of the constructing additional subtidal and water column habitat during future shoreline cutback dredging projects should not be discounted by the DMMP, regardless of the condition of the slope.”

Response

The final clarification paper has been revised, if only slightly. The agencies still believe that dredging that only creates new open water habitat should not

generally be considered beneficial to the dredging site. However, on a project-specific basis, we will confer with and accept the opinion of various resource agencies and/or other entities before making future decisions in this regard.

6. Comment

‘Ecological benefits to the dredging site SHOULD include those associated with off-site mitigation’ (language paraphrased, emphasis added).

Response

See response to Comment #1. The specific language found in EPTA does not appear to allow the broader definition of “dredging site” that the Port proposes. We believe the term “dredging site” was intended to apply only to the project site itself, and not to include off-site areas where mitigation is required. The agencies are open to discussing the Port’s comment further and to proposing an amendment to EPTA that would broaden what are considered “benefits to the dredging site” to include creation/enhancement of off-site habitat.

7. Comment

“As the majority of issues raised by the DMMP in the Draft Clarification Paper” seem based on either past Port projects or pending Port projects, it may be best to address these face-to-face rather than in a revised paper.”

Response

The DMMP agencies believe it is appropriate to revise and finalize this paper because it attempts to clarify difficult programmatic issues that are not specific to Port of Tacoma projects. The agencies have, in fact, evaluated a few shoreline cutback dredging projects other than those proposed by the Port of Tacoma. But it was the scale and nature of the recent the Pierce County Terminal turning basin cutback project, Blair Waterway, that raised our level of concern.

DMMP staff discussed many of the issues described in this clarification paper with one or more Port representatives at the inception of the project and various points thereafter. This was especially the case when the extent of the proposed cutback changed (more than once). We also began raising some of these issues with the Port of Tacoma in a greater policy context as early as December 2002.

We drafted a clarification paper with good intentions, believing it accurately reflected the original intent of EPTA and those who were instrumental in establishing the original the PSDDA program. The Port of Tacoma was the only entity that chose to comment on the need for and content of the proposed clarifications. We are responding to the Port comments by revising the paper and preparing this “responsiveness summary”. We would be happy to meet with Port

officials face-to-face to discuss this clarification paper further.

The DMMP agencies are always willing to discuss policy or technical issues with any regulated entity or member of the public at large.