

(n) Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions*, January 4, 1979.

### § 335.7 Definitions.

The definitions of 33 CFR parts 323, 324, 327, and 329 are hereby incorporated. The following terms are defined or interpreted from parts 320 through 330 for purposes of 33 CFR parts 335 through 338.

*Beach nourishment* means the discharge of dredged or fill material for the purpose of replenishing an eroded beach or placing sediments in the littoral transport process.

*Emergency* means a situation which would result in an unacceptable hazard to life or navigation, a significant loss of property, or an immediate and unforeseen significant economic hardship if corrective action is not taken within a time period less than the normal time needed under standard procedures.

*Federal standard* means the dredged material disposal alternative or alternatives identified by the Corps which represent the least costly alternatives consistent with sound engineering practices and meeting the environmental standards established by the 404(b)(1) evaluation process or ocean dumping criteria.

*Navigable waters of the U.S.* means those waters of the U.S. that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, have been used in the past, or may be susceptible to use with or without reasonable improvement to transport interstate or foreign commerce. A more complete definition is provided in 33 CFR part 329. For the purpose of this regulation, the term also includes the confines of Federal navigation approach channels extending into ocean waters beyond the territorial sea which are used for interstate or foreign commerce.

*Practicable* means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

*Statement of Findings (SOF)* means a comprehensive summary compliance document signed by the district engi-

neer after completion of appropriate environmental documentation and public involvement.

*Territorial sea* means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, extending seaward a distance of three miles as described in the convention on the territorial sea and contiguous zone, 15 U.S.T. 1606.

## PART 336—FACTORS TO BE CONSIDERED IN THE EVALUATION OF ARMY CORPS OF ENGINEERS DREDGING PROJECTS INVOLVING THE DISCHARGE OF DREDGED MATERIAL INTO WATERS OF THE U.S. AND OCEAN WATERS

Sec.

336.0 General.

336.1 Discharges of dredged or fill material into waters of the U.S.

336.2 Transportation of dredged material for the purpose of disposal into ocean waters.

AUTHORITY: 33 U.S.C. 1344; 33 U.S.C. 1413.

SOURCE: 53 FR 14912, Apr. 26, 1988, unless otherwise noted.

### § 336.0 General.

Since the jurisdiction of the CWA extends to all waters of the U.S., including the territorial sea, and the jurisdiction of the ODA extends over ocean waters including the territorial sea, the following rules are established to assure appropriate regulation of discharges of dredged or fill material into waters of the U.S. and ocean waters.

(a) The disposal into ocean waters, including the territorial sea, of dredged material excavated or dredged from navigable waters of the U.S. will be evaluated by the Corps in accordance with the ODA.

(b) In those cases where the district engineer determines that the discharge of dredged material into the territorial sea would be for the primary purpose of fill, such as the use of dredged material for beach nourishment, island creation, or construction of underwater berms,

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the discharge will be evaluated under section 404 of the CWA.

(c) For those cases where the district engineer determines that the materials proposed for discharge in the territorial sea would not be adequately evaluated under the section 404(b)(1) guidelines of the CWA, he may evaluate that material under the ODA.

#### § 336.1 Discharges of dredged or fill material into waters of the U.S.

(a) *Applicable laws.* Section 404 of the CWA governs the discharge of dredged or fill material into waters of the U.S. Although the Corps does not process and issue permits for its own activities, the Corps authorizes its own discharges of dredged or fill material by applying all applicable substantive legal requirements, including public notice, opportunity for public hearing, and application of the section 404(b)(1) guidelines.

(1) The CWA requires the Corps to seek state water quality certification for discharges of dredged or fill material into waters of the U.S.

(2) Section 307 of the Coastal Zone Management Act (CZMA) requires that certain activities that a Federal agency conducts or supports be consistent with the Federally-approved state management plan to the maximum extent practicable.

(b) *Procedures.* If changes in a previously approved disposal plan for a Corps navigation project warrant reevaluation under the CWA, the following procedures should be followed by district engineers prior to discharging dredged material into waters of the U.S. except where emergency action as described in § 337.7 of this chapter is required.

(1) A public notice providing opportunity for a public hearing should be issued at the earliest practicable time. The public notification procedures of § 337.1 of this chapter should be followed.

(2) The public hearing procedures of 33 CFR part 327 should be followed.

(3) As soon as practicable, the district engineer will request from the state a 401 water quality certification and, if applicable, provide a coastal zone consistency determination for the Corps activity using the procedures of

§ 336.1(b) (8) and (9), respectively, of this part.

(4) Discharges of dredged material will be evaluated using the guidelines authorized under section 404(b)(1) of the CWA, or using the ODA regulations, where appropriate. If the guidelines alone would prohibit the designation of a proposed discharge site, the economic impact on navigation and anchorage of the failure to use the proposed discharge site will also be considered in evaluating whether the proposed discharge is to be authorized under CWA section 404(b)(2).

(5) The EPA Administrator can prohibit or restrict the use of any defined area as a discharge site under 404(c) whenever he determines, after notice and opportunity for public hearing and after consultation with the Secretary of the Army, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreation areas. Upon notification of the prohibition of a discharge site by the Administrator the district engineer will complete the administrative processing of the proposed project up to the point of signing the Statement of Findings (SOF) or Record of Decision (ROD). The unsigned SOF or ROD along with a report described in § 337.8 of this chapter will be forwarded through the appropriate Division office to the Dredging Division, Office of the Chief of Engineers.

(6) In accordance with the National Environmental Policy Act (NEPA), and the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), an Environmental Impact Statement (EIS) or Environmental Assessment (EA) will be prepared for all Corps of Engineers projects involving the discharge of dredged or fill material, unless such projects are included within a categorical exclusion found at 33 CFR part 230 or addressed within an existing EA or EIS. If a proposed maintenance activity will result in a deviation in the operation and maintenance plan as described in the EA or EIS, the district engineer will determine the need to prepare a new EA, EIS, or supplement. If a new EA, EIS,