

**GOVERNMENT OF PUERTO RICO  
PUERTO RICO PLANNING BOARD**

September 14, 2022

**CZ-2023-0719-004**

**Determination about Federal Consistency  
Puerto Rico Coastal Zone Management Program**

**RESOLUTION**

TO NOTIFY PARTIES A DECISION ON A FEDERAL CONSISTENCY DETERMINATION  
REVIEW ACCORDING TO COASTAL ZONE MANAGEMENT ACT FEDERAL CONSISTENCY  
REGULATIONS AT 15 CFR Part 930

The Environmental Protection Agency (EPA) submitted a Federal Consistency Determination for the Site Management and Monitoring Plan (SMMP) of the Puerto Rico Dredged Marine Disposal Sites (ODMDS). According to Section 106 of the federal Water Resources and Development Act (WRDA) of 1992, the EPA must prepare an SMMP for the management of designated ODMDS. On July 18, 2022, the EPA submitted a Federal Consistency determination for the combined SMMP that will be implemented to manage the five (5) ODMDS established within the Puerto Rico Coastal Zone and state jurisdictional ocean waters.

As part of the required evaluation, the Puerto Rico Planning Board disclosed a public notice on August 22, 2022 and requested comments from the concerned state agencies. During the evaluation period, the following comments were received:

- **State Historic Preservation Office (SHPO):** provided comments as technical assistance. This agency believes that the SMMP will not affect historic properties. This technical assistance does not replace consultation that otherwise be required under section 106 of the National Historic Preservation Act.
- **Pedro Saadé Llorens in representation of El Puente Williamsburg Inc (ELAC), Alianza Comunitaria Ambientalista del Sureste Inc. (ACASE), Comité Yabucoño Pro-Calidad de Vida (YUCAE), Comité Diálogo Ambiental (CDA), Amigos del Río Guaynabo Inc. (ARG) and Coalición de Orgacitaciones Anti Incineración Inc. (COAI):**
  1. It is not possible that the PR Planning Board can concur with the EPA Federal Consistency Determination submitted with respect to the SMMP, because said federal agency does not demonstrate that such consistency exists. The EPA does not even refer to, discuss, much less demonstrate whether the SMMP, when compared to the PMZPR, is compliant or not. That conclusion is inevitable from the documents posted in file CZ-2023-0719-004, for which the violation of section 930.39(a) of the 40 CFR, cited above, is clear.
  2. Nor should this Board concur with the EPA Federal Consistency Determination since the SMMP, and other documents in file CZ-2023-0719-004, lack important information such as the current condition of the disposal sites in the affected bays; the physical and chemical characteristics of the materials to be deposited and the impacts on all marine species, not only the protected ones; and disposal alternatives.
  3. It is noteworthy that the EPA has excluded from the SMMP the final study of May 2021 on the chemical and physical characteristics of the seabed of the San Juan Bay. (Final MPRSAA Sector 103 Sediment Characterization Testing and Analysis.).
  4. The way and manner that both the EPA and the Board intends to obtain comments from the public is defective and violates the regulations since all the documents in the CZ-2023-0719-004 are written in English (except the notice). This prevents real participation, particularly from communities and sectors of Environmental Justice in Puerto Rico potentially affected by the SMMP.

5. This is apart from the fact that in said file the SMMP that is presented is a draft dated December 2021, Annex 4 (F&W letter) is left out and it does not indicate whether the EPA presented the Application form JPA-833.
6. The SMMP does not impose a limit on how much waste or material can be deposited in the next ten years in the Bays in question, nor is it limited to those releases (dumping) that originate from dredged by the Corps of Engineers, all which makes it even more urgent to evaluate the possible environmental impacts of the SMMP and its Consistency with the PRCZMP, in a joint and integrated manner and not from project to project as intended.

In conclusion, for the reasons indicated above, this Board should not concur with the Certification of Consistency that the EPA seeks, and at a minimum, it should first require strict compliance with the applicable legal standards and issue a new notice.

- **Coralations:** The dredge spoils proposed for dumping are not like surface receiving waters or benthic deep-water habitats in the areas where dredge spoils are proposed for dumping at any of the proposed dump sites. This ocean dumping has been going on for decades because given the limited information we have regarding the impacts to the receiving waters; the dumping practice is considered the most economical solution. No progress has been made in Puerto Rico and none will likely be made without some acknowledgement in this plan, and in coastal zone management plan that alternatives need to be moved and any continued practice of ocean dumping needs at least embrace precaution. Maintenance dredge limits should be well established for all disposal sites, and some are not listed/ estimated.

The management protocol references use of The Green Book to quantify toxicity levels of contaminants commonly found in the benthic sediment of industrial harbors. However, discharge into surface waters suspends fine particle toxic sediment and can be transported on littoral drift currents. Transport of the fine particles is governed by the same physical oceanographic factors that govern coral reef and fish larval distribution; therefore, it is likely the currents will consolidate the toxic suspended sediments in the same coastal areas that create eddies and allow coral and fish larvae to settle, replenishing reefs. Mixing, therefore in this context means suspending small particle toxic sediment in the littoral drift.

A mixing zone is a specific area that over the years has come to be considered by local managers as a defined area where serious environmental impacts are acceptable. However, mixing zones first were used to accommodate small POTW's to dilute wastewater by discharging in very deep offshore waters that already had high nutrients from upwelling. These discharges are miles deep and depend on physical differences in receiving waters, like a definitive thermocline for "mixing" of some parameters like nutrients, where background nutrient upwelling is already occurring. The freshwater discharge from these plants rises through distinct physical differences in the water resulting in mixing capable of diluting some of the parameters of concern. In this case however, the only mixing is a surface dump that essentially amounts to a resuspension of toxic sediments in littoral drift currents as described above. There is also no mixing or diluting many toxins.

It is important to be clear that ocean dumping is the cheapest disposal alternative for toxic dredge spoils, and that while monitoring can possibly safeguard illegal disposal practices which have in the past been caught and prosecuted where dredge dumps happened route to the ODMS, monitoring does not in any way make the practice of this ocean dumping more sustainable for the environment. Monitoring is not treatment.

Dredge disposal must be timed to avoid fall spawning cycles for coral and other marine creatures. Mesophotic corals appear to be mass spawning outside the well-defined lunar cycles known for shallow water coral species, all however occur during storm season likely as an evolutionary adaptation to increase spawn distribution.

This plan quantifies contaminants in sediment to be disposed, and then enters these into a mixing zone calculation which evaluates the endpoint concentration of the contaminant based on physical mixing parameters at the individual disposal sites. As mentioned before not all toxins can be diluted by mixing, and surface dumping is not mixing, it is suspending small toxic sediment particles to be transported by drift currents.

The plan does not offer terrestrial alternative dumping locations near dredge sites, should calculations reveal the toxicity values exceed parameters after mixing,

The area restrictions placed by the Corps to some of the sites could be adopted in the plan at this time to avoid future confusion as opposed to showing maps depicting dumping sites and providing a spread sheet amending areas.

The physical parameters to be entered into the proposed mixing zone calculations vary with season and according to this plan have not been evaluated post Irma or Maria, and during what we see today are dramatically shifting shoreline currents likely associated with climate change and associated offshore coral reef collapse (physical collapse) This is evidenced by localized areas experiencing unprecedented coastal erosion. Base conditions evaluation at sites have not been done in decades and this after estimates of close to 2 million cubic yards are estimated to have been dumped in the San Juan ODMS annually. More disturbing is that the Corps repeatedly refers to this disposal site in their various plans to expand SJH dredging, as not having any volume constraints. There is absolutely no scientific way EPA can conclude accumulations of tons of dredge spoils in these Deepwater habitats does not alter the habitat.

Today, the only way the public could oversee this is through a lengthy FOIA process. They could monitor if data was posted online. Low-cost AIS monitoring was mentioned in the draft plan, but not included in the Coastal Zone announcement. This should be included in the plan as it could at least ensure dredge scows do not dump dredge in the shallows.

Similarly end of disposal ROV monitoring of dredge scow paths would reveal spillovers and possible unauthorized take of listed species.

It is possible that a past Arecibo has court ruling established some precedent regarding dredge practices in this area. That involved a beach nourishment or renourishment case against the US Corps of Engineers.

- **Center for Biological Diversity:**

1. EPA failed to provide any characterization of the dredge spoils that will be dumped in the discharge site. EPA defers its determination on the suitability of dredged material for ocean disposal until each individual authorization. From what we know about sampling from the San Juan Bay Dredging Project that project may introduce concerning levels of heavy metals (specifically arsenic, cadmium, chromium, copper, mercury, and nickel), polycyclic aromatic hydrocarbons (specifically acenaphthylene and dibenzo(a,h)anthracene), and polychlorinated biphenyls (PCBs). Moreover, EPA's approach of using mixing zones and relying on dilution of toxic contaminants fails to adequately protect water quality from contamination.
2. EPA has failed to disclose and provide an analysis of consistency for the increased quantity of disposed materials due to the San Juan Bay Dredging Project. The EPA states that it considered the San Juan Harbor deepening and maintenance. Conversely, EPA also "anticipates similar volumes for dredging and disposal at the Puerto Rico ODMDs in FY21-FY30 as are reported for 2010-2020 in the above table." Thus, the only quantities provided in the application are the averaged volumes from maintenance dredging between 2010 and 2020. Yet, the San Juan Bay Dredging Project will dredge 2.2 million cu. yd. to be disposed of in the San Juan disposal area and an additional 15,000 cu. yd. per year for operations and maintenance dredging.
3. There is no reliable information on the present condition of these dumping sites, particularly the San Juan site after decades of use. Despite sediment samples having been collected outside of the ODMDs, these are woefully outdated. For example, the San Juan site was sampled in 1984—38 years ago. This does little to nothing to provide the Planning Board with information on the condition of the dumping site at present, its capacity to have the influx of a massive addition of dredge spoils from widening and deepening San Juan Bay shipping channels as well as the ongoing increase in maintenance dredging that the project will require.
4. A flawed assumption that the impact zone is limited to 150 meters from dredging underlies EPA's consistency certification, yet studies show impacts span an order of magnitude farther. Specifically, plumes from disposal scows contribute to smothering of corals and



other benthic life. Fringing reefs along the north coast of San Juan provide habitat for seven species of ESA-listed corals: elkhorn coral (*Acropora palmata*), staghorn coral (*Acropora cervicornis*), pillar coral (*Dendrogyra cylindrus*), rough cactus coral (*Mycetophyllia ferox*), mountainous star coral (*Orbicella faveolata*), lobed star coral (*Orbicella annularis*), and boulder star coral (*Orbicella franksi*). Federally designated critical habitat for elkhorn and staghorn corals as well as proposed critical habitat for the other corals are near dumping sites and dredge scow routes, and these habitats that are essential for the survival of these corals are at risk.

On September 8, 2022, the Puerto Rico Planning Board requested a 19-day extension to clarify matters related to submitted documents. No response was received from EPA on this request.

Considering the received comments and information at file, **the Puerto Rico Planning Board determined not to concur with the EPA Federal Consistency Determination without prejudice.** The Puerto Rico Planning Board determination is based on the following:

- A. Clarification as to whether the version of the document dated December 13, 2021, filed with the Planning Board is the current version of said document.
- B. According to Law Number 23 of June 20, 1972, as amended, it is public policy of the Puerto Rico State Government, the protection of wildlife and its habitat. Coral reefs constitute a critical habitat for many PR state listed species. Its health and survival are also critical for the maintenance of fisheries, protection of sandy beaches and to provide protection for PR citizens and infrastructure from storm surges caused by atmospheric events. The EPA must discuss and provide more information on the impacts that the ODMDS deposit activities has had on the reefs and the measures to be implemented to minimize and avoid this impacts as much as possible, taking into account the most recent sources of information or scientific research on the status of coral reefs in the Puerto Rico and Caribbean region.

**The following parties shall be notified:** Mark Reiss, Environmental Protection Agency; Kerry Kehoe, National Oceanic and Atmospheric Administration; Anaís Rodríguez; Department of Natural and Environmental Resources; Cristina Cabrera, Puerto Rico Coastal Zone Management Program; Carlos A. Rubio Cancela, State Historic Preservation Office; Pedro Saade, Esq, Clínica de Asistencia Legal de la Escuela de Derecho UPR; Coralations; and Miyoko Sakashita, Center for Biological Diversity



Julio Lassús Ruiz  
President

**Certify:** That this Resolution is copy of the agreement adopted by Puerto Rico Planning Board (PRPB) in its meeting of **September 14, 2022**. I expedite and notify this copy to the parties under my sign and official Puerto Rico Planning Board stamp, for general use and knowledge.

In San Juan, Puerto Rico, today

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Georgina González Oller  
Secretary

