Officer shall attend all Board meetings and subcommittee meetings.

The Board is authorized to establish subcommittees and workgroups, as necessary and consistent with its mission. Board subcommittees and workgroups shall operate under the provisions of Federal Advisory Committee Act of 1972, the Sunshine in the Government Act of 1976, and other appropriate Federal regulations.

Board subcommittees and workgroups shall not work independently of the Board and shall report all their recommendations and advice to the Board for full deliberation and discussion. Board subcommittees and workgroups have no authority to make decisions on behalf of the Board and may not report directly to the Department of Defense or any Federal officers or employees who are not members of the Board.

Pursuant to the Federal Advisory Committee Act of 1972 and 41 CFR 102–3.140(c), members of the public or interested groups may submit written statements to the members of the Board. Written statements may be submitted at any time to the Board's Designated Federal Officer or in response to the stated agenda of a planned meeting.

The contact information for the Designated Federal Officer for the Department of Defense Education Benefits Board of Actuaries can be obtained from the GSA's FACA Database: *https://www.fido.gov/facadatabase/public.asp*.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–2554.

Dated: January 3, 2008.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Kilo Wharf Extension (MILCON P–502) at Apra Harbor Naval Complex, Guam, Mariana Islands

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Record of Decision.

SUMMARY: The Department of the Navy announces its decision to extend Kilo Wharf by 400 feet (122 meters) to the west at Apra Harbor Naval Complex, Guam, Mariana Islands. The project includes dredging of reef flat and other marine habitats, construction of an additional mooring island, and improvements to the existing wharf. Improvements to the existing wharf include upgrades to the primary and secondary electrical power supply; upgraded lightning protection and grounding system; new electrical substation building, perimeter fencing, and floodlighting system; and seismic upgrades.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Macariola-See, Naval Facilities Engineering Command Pacific (Code EV2 NM), 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860–3134, telephone 808–472–1402.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision (ROD) is provided as follows: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. Section 4332(2)(c), and the regulations of the Council on Environmental Quality that implement NEPA procedures (40 Code of Federal Regulations Parts 1500–1508), the Department of the Navy (Navy) announces its decision to extend Kilo Wharf by 400 feet (ft) (122 meters [m]) to the west at Apra Harbor Naval Complex (AHNC), Guam, Mariana Islands. The proposed wharf extension will be accomplished as set out in the West Extension Alternative, described in the Final Environmental Impact Statement (FEIS) as the preferred alternative.

Kilo Wharf is located within the AHNC in Outer Apra Harbor, and is the Department of Defense's (DoD's) only dedicated ammunition wharf in the Western Pacific Region. The Navy proposes to extend Kilo Wharf to provide adequate berthing facilities (including shore utilities and wharf-side handling area) to support a new class of ammunition ship that will replace existing ammunition ships currently forward deployed to the AHNC. The DoD is developing a new class of multi-purpose dry cargo/ammunition ship (designated as ''T-AKE''), scheduled to be in service in Guam in fiscal year 2010.

The purpose of the Proposed Action is to ensure that Commander, Navy Region Marianas (COMNAVREGMARIANAS) continues to provide ammunition on and off loading capability in direct support of DoD strategic forward power projection and maintain the readiness of the Navy's operating forces in the Western Pacific region. COMNAVREGMARIANAS provides operational, fuel re-supply, ordnance, and other logistic support to Fleet units of the Pacific Region and operating forces of the Navy's Fifth and Seventh Fleets. The Proposed Action will enable COMNAVREGMARIANAS to provide adequate facilities for the new T-AKE vessels forward deployed to Guam in accordance with DoD technical design standards for safe and efficient ordnance loading/offloading, in order to maintain its current support mission. The need for the Proposed Action is to ensure Kilo Wharf meets *Facility Planning Criteria for Navy and Marine Corps Shore Installations (P–80)* and *Military Handbook 1025/1*, *Piers and Wharves* criteria for berthing the T-AKE. There are no other suitable facilities on Guam available to accommodate this class of ammunition ship.

Public Involvement: Public involvement is discussed in Section 1.6 of the FEIS and summarized here. A Notice of Intent to prepare an EIS for the Proposed Action was published in the **Federal Register** (Vol. 70, No. 145, Page 43848) on 29 July 2005. Two public scoping meetings were held on Guam 30 August 2005 and 2 September 2005. The Draft Environmental Impact Statement (DEIS) was filed with the U.S. Environmental Protection Agency (USEPA) on 2 March 2007. A Notice of Availability of the DEIS was published in the **Federal Register** on 9 March 2007 (Vol. 72, No. 46, Page 10749), initiating a 45-day public comment period which ended on 23 April 2007.

A Notice of Public Hearing for the DEIS was published in the **Federal Register** (Vol. 72, No. 46, Page 10721) on 9 March 2007. A public hearing was held on Guam 28 March 2007 to provide Federal, Territorial, and local agencies and interested parties the opportunity to provide oral and written comments on the DEIS. The Navy considered relevant issues raised during the 45-day public comment period for the DEIS. The Navy received 11 written comment letters by agencies, organizations and interested individuals during the DEIS public comment period. Issues raised during the DEIS public comment period are summarized in Section 1.6 of the FEIS.

The FEIS was filed with the USEPA on 11 October 2007. A Notice of Availability of the FEIS was published in the **Federal Register** on 19 October 2007 (Vol. 72, No. 202, Page 59287), initiating a 30-day wait period (no action period) which ended on 19 November 2007. The FEIS included identification of the Preferred Alternative, best management practices (BMPs) and mitigation measures to reduce environmental consequences, and public and agency comments on the DEIS as well as responses to those comments.

Alternatives Analyzed: The Navy initially evaluated a range of alternatives that would meet the purpose and need of the action and applied preliminary screening criteria to identify those that were ''reasonable'' (i.e., practical and feasible from a military mission, operations, technical, and economic standpoint). The screening process and criteria were set out in the DEIS. A range of alternatives were initially considered, but not all were carried through the EIS analysis because they did not satisfy the screening criteria.

Of the alternatives considered, the Navy determined that only two alternatives involving extension of the existing Kilo Wharf met the purpose and need and the preliminary screening criteria and were carried through the EIS analysis, in addition to the No Action Alternative. They are the ''West Extension Alternative'' and the ''East-West Extension Alternative.'' Both alternatives would provide adequate berthing for the T-AKE in accordance with DoD technical design standards for safe and efficient ordnance loading/offloading. Rationale for elimination of the other alternatives considered are discussed in Section 2.2.3 of the FEIS.

West Extension Alternative. Under this alternative, the existing wharf would be extended by 400 ft (122 m) to the west. This alternative would take about 26 months to construct, including approximately six months of dredging. In-water work would be limited to the west side of the existing wharf. An additional mooring island would be constructed on the reef flat to the west of the existing mooring island for construction period vessel mooring.

The Navy selected the West Extension Alternative as its preferred alternative in large part because it best avoided and/or minimized potential environmental impacts, when compared with the other alternative considered that met the project objectives (i.e., the East-West Extension Alternative). Furthermore, the West Extension Alternative would meet all technical and operational requirements for the project at a lower cost and shorter construction period than the East-West Extension Alternative.

East-West Extension Alternative. This alternative would extend Kilo Wharf by 115 ft (35 m) to the east and 285 ft (87 m) to the west. This alternative would take about 28 months to construct including approximately eight months of dredging. In-water work would be necessary on both the west and east ends of the wharf, leading to a longer construction period with greater impacts on wharf operations. Two additional mooring islands would be constructed on the reef flat to the east and west of the existing mooring islands for construction period vessel mooring.

No Action Alternative. Under the No Action Alternative, the T-AKE would replace the current ammunition ships forward-deployed to AHNC as planned, but would berth at the existing, substandard Kilo Wharf. The No Action Alternative assumes that the existing explosives safety quantity distance (ESQD) arcs originating from Kilo Wharf would be revised to meet current Navy standards, with or without extension of the wharf. The No Action Alternative provides the least environmental impacts because it would not involve any change to the physical environment. However, this alternative does not meet the purpose and need and is not operationally acceptable because it does not conform with Navy design criteria for ammunition wharves, would adversely impact ordnance operations efficiency, would not adequately provide electrical power, fire protection, lighting, telecommunications, and security surveillance for the T-AKE, and presents substantial challenges to properly secure the larger ship during rough sea conditions.

Environmentally Preferred Alternative. Through the EIS analysis, the West Extension Alternative was found to be the environmentally preferable alternative of the alternatives that met the purpose and need of the proposed action and operational requirements. As described in the FEIS, the West Extension Alternative would have the same or similar impacts as the East-West Extension Alternative in most environmental resource areas analyzed in the EIS, with the following exceptions. The West Extension Alternative would result in fewer adverse impacts than the East-West Extension Alternative on: (1) Marine benthic habitats, specifically coral reef resources (smaller structural and sedimentation impact footprints, resulting in fewer ecological services lost); (2) Essential Fish Habitat (shorter duration of construction period impacts); and (3) land or water use constraints resulting from the variations in the wharf's ESQD arcs (East-West Extension Alternative ESQD arcs encumber 17 additional Navy family housing units and one additional dive/marine recreational site compared to the West Extension Alternative).

Decision: After considering the potential environmental consequences of the operationally viable alternatives (West Extension Alternative and East-West Extension Alternative), and the No Action Alternative, the Navy has decided to implement the preferred alternative (West Extension Alternative) and extend Kilo Wharf 400 ft [122 m] to the west.

Environmental Impacts. In the EIS, the Navy analyzed the environmental impacts that could occur as a result of implementing each of the alternatives, as well as the No-Action Alternative. Chapter 4 of the FEIS provides a detailed discussion of impacts and mitigation measures. This ROD, however, focuses on the impacts associated with the West Extension Alternative.

Physical Environment: Construction period dredging associated with the West Extension Alternative would generate total suspended sediment loads that temporarily exceed Guam Water Quality Standards for marine waters, but are anticipated to return to background levels rapidly after cessation of dredging. BMPs to avoid or minimize water quality impacts as described in Section 4.2.6.4 of the FEIS will be implemented. BMPs will include appropriate use of silt curtains, disposal of dredged materials at approved disposal sites, and water quality monitoring.

The construction contractor will prepare a Storm Water Pollution Prevention Plan (SWPPP) and a Storm Water Notice of Intent before work commences. The SWPPP will meet the Guam Environmental Protection Agency (GEPA) general permit requirements for storm water discharges from construction sites and select applicable BMPs. During the operational period, Kilo Wharf will be covered under a multi-sector general permit, which controls industrial discharges.

No adverse operational period impacts to marine water quality are expected.

Biological Resources: The West Extension Alternative would have unavoidable adverse impacts to approximately 4.75 acres (ac) (1.92 hectares [ha]) of benthic habitat, including about 0.39 ac (0.16 ha) of high density live coral cover (i.e., ''coral reef communities''). This area of marine benthic habitat provides ecological services that would unavoidably be affected due to structural impacts from construction dredging and fill. Dredging-related sediment plumes have the potential to adversely affect marine habitats. The affected areas would be localized around the dredging site and primarily affect marine habitats with low coral cover. Sediment transport computer modeling indicated that the West Extension Alternative could generate adverse sedimentation levels potentially affecting about 1.69 ac (0.68

ha) to 14.88 ac (6.02 ha) of benthic habitat, including about 0.14 ac (0.06 ha) to 0.72 ac (0.29 ha) of coral reef communities, over the course of the dredging period, depending on dredging rate and environmental conditions present.

There would be adverse impacts to coral reef biota due to the general loss of ecological services, including non-motile species within the construction impact area. The West Extension Alternative would pose low potential for adverse effects on overall coral reproduction in the region of influence, since the Navy will comply with U.S. Army Corps of Engineers (USACE) permit conditions requiring that it avoid dredging activities during the peak spawning event on Guam, which is seven to ten days after the full moon in July, in consultation with Guam Division of Aquatic and Wildlife Resources. Construction BMPs described in Section 4.3.1.1 of the FEIS will be implemented to minimize impacts on the coral reef communities.

No adverse impacts on Federal- or Territory-listed protected species or sensitive environments are expected during construction or operation. The Navy conducted informal consultation with the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NOAA Fisheries) under Section 7 of the Endangered Species Act (ESA). The Navy determined that although threatened or endangered species (i.e., sea turtles) may be affected by the West Extension Alternative, they are not likely to be adversely affected. By letter dated 29 June 2007, NOAA Fisheries concurred with the Navy's determination (Appendix N of FEIS). The Navy will implement construction period BMPs to minimize the potential for adverse effects on sea turtles, as described in Section 4.3.3.1 of the FEIS.

The Navy initiated formal Essential Fish Habitat (EFH) consultation 24 April 2007. The Navy concluded that the West Extension Alternative would have temporary adverse impacts on motile Fishery Management Plan species, eggs, and larvae due to dredging and in-water construction. NOAA Fisheries reviewed the EFH assessment and provided conservation recommendations dated 4 June 2007. The Navy supports the conservation recommendations provided 15 June 2007 with the following clarification: (1) The preferred mitigation is the Cetti Bay watershed reforestation; (2) success of the preferred mitigation will include performance measures with input from resource agencies; (3) dredging will be avoided during the peak coral spawning (seven to ten days after the July full moon); and (4) BMPs will be utilized to minimize impacts to corals. NOAA Fisheries conservation recommendations are addressed in the FEIS. The Navy's EFH assessment and correspondence with NOAA Fisheries are included in Appendix M of the FEIS.

No adverse operational period impacts to the biological environment are anticipated from implementation of the West Extension Alternative. Ship berthing and unberthing procedures would be similar to that of the No Action Alternative and would continue with or without the wharf extension.

Social and Economic Environment: The West Extension Alternative would not increase the number of family housing units or dive sites encumbered by the ESQD arcs above the No Action Alternative levels.

Cultural Resources: No impacts to cultural resources are expected. Guam State Historic Preservation Officer (SHPO) concurred with the Navy's determination of ''no historic properties affected'' (See Appendix O of FEIS for correspondence with Guam SHPO).

The West Extension Alternative presents no significant impacts to climate and air quality; geology, seismology, soils and marine sediments; ambient noise; physical oceanography; groundwater quality; invasive species; terrestrial flora and fauna; aesthetics/visual environment; economics; social and demographic factors; infrastructure and services; and hazardous and regulated materials and waste.

Mitigation Measures. The Navy will implement BMPs during construction and operation of the West Extension Alternative to avoid or minimize adverse environmental impacts. Because the West Extension Alternative will result in unavoidable adverse environmental impacts, primarily to the marine environment, the Navy will also fund or implement compensatory mitigation to provide substitute resources or environments for those ecological services expected to be lost.

In coordination with Federal and Government of Guam (GOVGUAM) resource agencies, the habitat equivalency analysis (HEA) process was used to estimate the spatial and temporal ecological service losses to marine benthic habitats resulting from the West Extension Alternative and identify appropriate levels of mitigation to compensate for the losses. Independent but coordinated HEA analyses were conducted by both the resource agencies and the Navy.

Findings from both HEAs indicated similar levels of ecological services lost for the West Extension Alternative: the resource agency HEA estimated losses of 102 acre-years and the Navy estimated 116 acre-years of lost ecological services in its HEA. The HEA resulted in 102–116 acre-years.

Selection, scaling and implementation of appropriate compensatory mitigation actions are being carried out in consultation with USACE, NOAA Fisheries, U.S. Fish and Wildlife Service (USFWS), USEPA, and GOVGUAM resource agencies. A USACE permit would be required for the West Extension Alternative for alteration of navigable waters and discharge of fill material into the water (caisson and construction mooring islands). This permit is the vehicle through which compensatory mitigation would be implemented. The Navy has coordinated with the resource agencies to develop a Mitigation Plan to satisfactorily meet the USACE permit requirements. The Navy and resource agencies have agreed on the general concepts of the Mitigation Plan.

Before, during, and after construction, additional data would be collected on physical, chemical and biological factors in the vicinity of the construction project and used in post-construction monitoring and analysis. The Navy is developing the details of this monitoring plan, which will be submitted in the USACE permit process.

Preferred Mitigation. The Cetti Bay watershed reforestation project is the Navy's preferred mitigation action. It was proposed by GOVGUAM based on HEA principles (i.e., identifying lost ecological services to be replaced). Although there is no direct correlation between the number of lost acre years of coral and number of acres to be reforested as compensatory mitigation, a mutual consensus was reached between Navy and GOVGUAM that the Cetti Bay watershed reforestation project will consist of reforestation of up to 500 ac (202 ha) of savanna grasslands and/or badlands within the Cetti Bay watershed, located on the southwestern coast of Guam, approximately 9 miles (14.4 kilometers) south of Apra Harbor. As stated in the Guam Department of Agriculture (GDOAG) reforestation plan, the bay's coral reef resources have been heavily degraded over the past few decades. One of the factors is believed to be upland erosion caused primarily by road construction, wildland fires, and feral ungulates (unrelated to Navy activities). Reforestation of the savanna grasslands and/or badlands within the Cetti Bay Watershed will reduce terrigenous sediment loads entering Cetti Bay, thereby improving water quality. This may have an indirect beneficial effect on the coral reef habitat

in the receiving waters. Reducing sediment flow is intended to support and enhance the terrestrial and marine ecosystems, including fish and wildlife habitat within Cetti Bay and the Cetti Bay watershed. The following provides examples of the actions included in the reforestation project: (1) Conversion of savanna grasslands and/or badlands to forest lands around Cetti Bay; (2) reforestation of the area's badlands; (3) fencing of identified reforested areas to provide ungulate control; and (4) implementation of erosion BMPs.

Performance standards for the Cetti Bay reforestation projects will not be tied to coral health improvement. Coral health monitoring conducted in Cetti Bay will not trigger a requirement for additional Navy mitigation action.

GDOAG will be responsible for the implementation and long term management of the reforestation projects. A cooperative agreement between the Navy and GDOAG will be executed to authorize the transfer of Navy funds to GDOAG; therefore an appropriate real estate agreement between the Navy and GOVGUAM is required for the Cetti Bay parcel Lot No. 275, which is the area that will be reforested. The Navy will fund a third party contractor to conduct the terrestrial and marine monitoring at Cetti Bay as prescribed in the Mitigation Plan.

The USACE's Permit mitigation procedures call for identification of a contingency mitigation project. The USACE permit would identify specific requirements associated with the preferred mitigation; however, failure to meet the requirements would trigger implementation of the contingency mitigation. An example of such a requirement would be that GOVGUAM provides real estate protection in perpetuity to the Cetti Bay mitigation site as described in USACE's DEIS comment letter in Appendix B–4 of the FEIS. Accordingly, the Navy, with USACE support, identified a contingency mitigation plan.

Contingency Mitigation. The contingency mitigation plan consists of four components: Ordnance Annex Watershed Afforestation; Outer Apra Harbor Deep Water Substrate; Coral Reef Ecosystem Protection at Orote Point Ecological Reserve Area (ERA); and Shallow Water Reef Enhancement. Should it be required, by the USACE, to implement the contingency mitigation plan, all four of the components would be implemented. The deep water substrate component alone would provide levels of ecological services equivalent to the estimated acre-year losses. Therefore, the combined actions would provide benefits that would more than offset the estimated ecological service losses due to the West Extension Alternative.

Ordnance Annex Watershed Afforestation. The Navy will conduct watershed afforestation of approximately 150 ac (60 ha) of savanna grassland vegetation in approximately 50 ac increments over a 3-year period within the northeastern portion of the Navy's Ordnance Annex. Afforestation will help reduce excessive terrigenous sediment loads entering Talofofo Bay, thereby improve water quality and support and enhance the terrestrial and marine ecosystems. This may have an indirect beneficial effect on coral reef habitat in the Bay.

Outer Apra Harbor Deep Water Substrate. The Navy will place concrete or limestone block substrate in specific locations in Outer Apra Harbor to offset habitat losses from implementation of the West Extension Alternative. Four sites (Glass Breakwater, Kilo Wharf, San Luis Beach, and Sasa Bay) have been evaluated as candidate deep water substrate sites. The substrate will increase overall biomass and provide new benthic habitat. This mitigation component has been scaled such that if it were to be the sole mitigation project implemented, it would fully offset the ecological services lost due to the West Extension Alternative.

Coral Reef Ecosystem Protection at Orote Point ERA. The Navy will expand the Orote ERA Area Marine Unit to include approximately 80 ac (32 ha) of Navy-owned submerged lands around Orote Point to Adotgan Point area, and approximately 32 acres (13 ha) of the Terrestrial Unit including the beaches and limestone forest area inland from the Marine Unit. The expanded Marine Unit would include shallow water benthic habitat around Orote Point that contains both hard and soft corals. The Navy will modify the management plan for the Orote ERA to restrict fishing and other types of consumptive activities that could potentially adversely affect EFH.

Shallow Water Reef Enhancement. The Navy will transplant corals that would be directly impacted by the wharf extension to several new sites on Navy submerged lands in Outer Apra Harbor. Navy will enter into an agreement with a qualified organization to physically move and transplant as much live coral as feasible to sites on Navy-owned lands. Project will focus on transplanting large specimens. A detailed transplanting plan will be prepared which will include methods for moving large colonies, techniques for stabilizing colonies at the transplant sites, and a monitoring protocol.

Since the contingency mitigation projects would take place wholly within Navy lands (including submerged lands), the Navy would be responsible for their monitoring and maintenance.

Agency Consultation and Coordination: The Navy consulted and coordinated with Federal and GOVGUAM resource agencies regarding: (1) ESA Section 7 consultation with NOAA Fisheries; (2) Magnuson-Stevens Fishery Conservation and Management Act consultation with NOAA Fisheries; (3) Section 106 consultation under the National Historic Preservation Act of 1966 with the Guam SHPO; and (4) Coastal Zone Management Act consistency determination with GOVGUAM Bureau of Statistics and Plans (BSP). Correspondence relating to these consultations is found in Appendices M, N, O and P of the FEIS. In addition, the Navy invited three Federal agencies to be cooperating agencies in the preparation of the EIS: USACE, NOAA Fisheries, and USFWS. Of the three agencies, only the USACE agreed to be a cooperating agency. Appendix A of the FEIS contains correspondence with USACE and the other Federal agencies invited to be cooperating agencies.

The FEIS includes an evaluation of potential impacts of implementing the preferred and contingency mitigation projects. In general, the watershed mitigation projects would have a beneficial effect on the environment by reducing erosion and sediment loading in surface and nearshore waters, thereby improving water quality. This may have an indirect beneficial effect on coral reef habitats in the receiving waters. The contingency mitigation projects would have direct beneficial effects on the marine environment either through habitat replacement (Deep Water Substrate and Shallow Water Reef Enhancement) or conservation (Orote ERA Expansion). The preferred and contingency mitigation projects would not adversely affect protected species or historic or cultural sites and, overall, would have beneficial effects on Guam's coastal management zone. GOVGUAM BSP concurred with the Navy's consistency determination that the proposed action and associated mitigation actions would be consistent to the maximum extent practicable with the enforceable policies of Guam's approved Coastal Management Program.

Responses To Comments Received On the FEIS: Four Federal agencies (USACE, USEPA, NOAA Fisheries, USFWS), three GOVGUAM agencies (GDOAG, GEPA, BSP), one organization

(The Nature Conservancy [TNC]) and a single commenter provided comment letters. Substantive comments are addressed below by topic.

Purpose and Need: Alternatives: NOAA Fisheries recommended reconciling inconsistencies in justifying the purpose and need for the proposed action and suggested that the descriptions of the No Action Alternative were inadequate for full evaluation. USFWS commented that the project's purpose and need do not support the proposed action. GDOAG and TNC commented that the proposed action is not economically justified.

The FEIS states that the No Action Alternative would not achieve the project objectives and COMNAVREGMARIANAS would not meet its mission to provide adequate waterfront facilities to replenish U.S. Fifth and Seventh Fleets. The FEIS explains that the action is needed because Kilo Wharf is inadequate to support the T-AKE and there are no other suitable facilities on Guam. The FEIS also states that although the No Action Alternative does not meet project objectives and is considered operationally unacceptable (for reasons described in the FEIS and earlier in this ROD), it provides a baseline to evaluate effects of the West Extension Alternative and East-West Extension Alternative. The decision to proceed with a proposed action is not made solely upon economic justification. Environmental, economic, and other factors were considered along with the operational need for the wharf extension in the decision-making process.

Compensatory Mitigation. USACE identified the required contents of the Navy's mitigation plan, which will be submitted in conjunction with the project's necessary Department of the Army permit. USEPA commented that the monitoring would be underfunded and not enable measurements of success. The Navy is coordinating with the resource agencies to develop a Mitigation Plan that will satisfy USACE mitigation and monitoring requirements. The Mitigation Plan will be submitted with the permit application package.

USEPA, GDOAG, and GEPA expressed concern over the Navy's timetable for reaching an acceptable agreement with the resource agencies on the preferred Cetti Bay watershed mitigation and questioned the Navy's commitment to this project. TNC commented that the Cetti Bay watershed mitigation is the only acceptable mitigation option. The Navy's preferred mitigation is the Cetti Watershed reforestation. The Navy and resource agencies have agreed on the general concepts of the Cetti Watershed reforestation plan to be submitted during the permitting process.

USEPA, NOAA Fisheries, USFWS, GDOAG, and BSP expressed concerns over the adequacy of the Navy's contingency mitigation plan to offset lost ecological impacts. USFWS requested agency coordination if the contingency mitigation had to be implemented. Commenters requested that the Navy implement the Ordnance Annex afforestation (BSP, TNC), Orote ERA expansion (TNC), and coral transplantation (BSP, TNC) either as part of its natural resources management stewardship or as a BMP and not as compensatory mitigation. BSP requested that the Navy discuss the Orote ERA expansion with resource agencies to resolve concerns about the imposition of planned fishing restrictions associated with the expansion.

The contingency mitigation plan is not the Navy's preferred mitigation, and would only be implemented if the preferred Cetti Bay watershed reforestation project does not proceed. It was developed in compliance with the USACE, whose mitigation requirements necessitate a contingency mitigation plan in the event the preferred plan is not implementable in accordance with USACE guidelines. The FEIS provides the rationale for each of the contingency mitigation components and describes their likely benefits to the environment. The deep water substrate component has been scaled such that if it were to be the sole mitigation project implemented, it would fully offset the ecological services lost due to the West Extension Alternative; the other three contingency mitigation components would provide additional ecological benefits. The Navy presented its contingency mitigation plan for resource agency comment prior to publication of the FEIS. Although the resource agencies indicated they did not support creation of artificial substrate, they did not provide alternatives for consideration. In its DEIS comment letter of 23 April 2007, the USACE stated that introducing deep water substrate at more than one location within Apra Harbor would ''provide appropriate substrate that would rapidly be colonized by *Porites*, macro-algae, and other organisms similar to those found in the deeper areas on the impacted site, and thereby provide perpetual reef habitat.'' Access to the Orote ERA is already restricted by its location within an active Navy base and ordnance handling activities in Kilo Wharf; therefore, any fishing restriction within the ERA will be enforced because of security and safety issues.

Marine Biological Environment-Existing Environment. Commenters questioned the Navy's benthic habitat mapping methodology (NOAA Fisheries) and its characterization of certain benthic habitats and resources (NOAA Fisheries, USFWS); claimed that the Navy too narrowly defined the coral reef community (NOAA Fisheries; GDOAG) and undervalued the affected marine habitats (NOAA Fisheries); requested the analysis incorporate more of the resource agencies' survey data in describing the affected marine resources (NOAA Fisheries, USFWS); suggested a correction to the table comparing resource agency and Navy quantitative coral data (USFWS); commented that the FEIS does not provide an analysis of coral reef resources at Kilo Wharf in terms of contributions (e.g., reproduction, genetic diversity, future survival) to other coral reef resources within Apra Harbor (USFWS); and objected to the representation of the resource agencies' marine biological assessment in the FEIS (NOAA Fisheries, USFWS).

The Navy's benthic habitat mapping methodologies were derived from the scientific literature and are described in the relevant studies, which were provided to the resource agencies prior to their in-water surveys and prior to inclusion in the DEIS. The EIS discusses the objectives and limitations of various approaches to assessing and characterizing benthic habitat data. The result of both methodologies utilized resulted in very close HEA results in acre-years. While all details of the technical reports (in the Appendices) are not reiterated in the FEIS, an adequate amount of information is presented to support the overall conclusions. The FEIS discussion of the resource agencies' assessment was not intended to undermine or criticize the data presented or methods employed. The purpose was to provide a general summary of the resource agencies' methods and findings, with attention to similarities and differences between the Navy and resource agency studies. FEIS reviewers were also encouraged to review the full reports appended to the FEIS. Despite the different approaches used to gather and present existing conditions data, the conclusions reached were similar. The resource agencies' and Navy's HEA projections of lost ecological services at Kilo Wharf were similar.

The FEIS describes the other (non-coral) components of coral reef benthic community and states that all the habitats provide ecological services. The

FEIS does explore the affected habitats; the results of the resource agencies' impact analysis and HEA are referenced and summarized in the FEIS text and received full evaluation. Complete reports are included as appendices. Both HEA results included estimates of the range of ecological services lost on all potentially impacted marine benthic habitats. The Navy is committed to providing full compensatory mitigation to offset lost ecological services estimated by the resource agencies' HEA.

Although it would not affect the analysis or findings of the FEIS, Table 3–9 should have been entitled ''Comparison of Coral Cover by Resource Agency and Navy Zones'' to avoid confusion.

The Navy recognizes that more than one approach may be employed to gather and present existing conditions data and to predict marine habitat impacts. It is currently working with Federal resource agencies to establish data gathering and pre- and post-construction monitoring protocols for future Navy projects (e.g., NOAA Coral Reef Ecosystem Division-sponsored Guam Monitoring Protocols Workshop held in December 2007).

Marine Biological Environment-Environmental Consequences. Commenters questioned the findings of the sediment transport numerical model and associated sedimentation impact analysis (NOAA Fisheries, USFWS) and its threshold values for impacts (USFWS); requested clarification of BMPs for silt curtains, a definition of ''sensitive coral habitat'' in a BMP, and modification of a BMP to ensure that control measures are in place and functioning properly throughout each work shift (NOAA Fisheries); raised the issue of impacts from the release of sediment-entrained metals into the water column (NOAA Fisheries); commented that the construction period (GDOAG) and operational impacts of tugboats on benthic habitats were not considered (NOAA Fisheries); recommended use of coral densities and sizes rather than coral cover in the analysis (NOAA Fisheries); objected to the analysis of coral spawning and recruitment impacts (NOAA Fisheries, USFWS, GDOAG, BSP, TNC) and suggested that suspension of dredging operations should occur over an expanded timeframe (BSP, TNC); questioned the water chemistry study methodology (NOAA Fisheries; GEPA); raised the issue of the lack of nighttime surveys for mobile invertebrates (NOAA Fisheries); disagreed with the impact analysis for the loss of vertical slope (GEPA); requested reevaluation of indirect long-term adverse impacts (GDOAG); requested compliance with stormwater BMPs in CNMI *and Guam Stormwater Management Manual* (GEPA); expressed concern that the FEIS minimizes impacts by considering only high coral cover areas (NOAA Fisheries, TNC); and requested that the impact analysis should include habitat types with little or no live coral coverage (TNC).

The water current data sampling period and meter placement provided the necessary information for the sediment transport model, including surface water movement. Wave effects are important only in shallow water and would likely inhibit sediment deposition through increased water motion. The study adopted a conservative (i.e., ''worst case'') strategy by not including these effects in the model. Because the harbor floor, as well as cover of the reef flats, consists of sediment similar to dredging-related sediments, once the dredging-related sediment is dispersed by currents, there is likely to be no difference in the sedimentation impacts compared to the present situation. The marine ecosystem impact analysis prepared for the EIS included a thorough review of the existing scientific literature of sedimentation impacts to coral, and used a conservative threshold value to estimate impacts. The Navy reviewed an article on ''marine snow'' cited in the USFWS comments for relevance to the potential sedimentation impacts to corals. The Navy concluded that because riverine muds and high nutrient water (which were key factors in the experiment reported in the article) are not components in the Kilo Wharf setting, the article's findings do not warrant the examination of lower threshold dredging-related sedimentation concentrations on coral reefs. In spite of the diverging views on the Navy's sediment transport modeling and associated impacts, the FEIS included the conclusions of the resource agencies' impact assessment and HEA, which included their projections of sedimentation effects on benthic organisms.

BMPs to avoid or minimize water quality impacts and impacts to coral reef habitats during construction are discussed in the FEIS. BMPs that will be required as conditions to the USACE permit will be addressed in the Mitigation Plan through the permitting process.

The FEIS lists metals that were reported in sediment tested at the project site, and also reports that they were reported at concentrations below the ER-L (effects range low). The text further states that these metals are likely to adhere to sediment which will resettle with the sediment rather than be released into the water column. Since the concentrations were below ER-L, these conditions are not elevated above what would be considered normal levels. In addition, these sediments presently exist in the harbor, therefore, any effect to fish or invertebrates would already be occurring. Presently, there are no documented indications that the metal concentrations would lead to blooms. As storm events resuspend sediments normally, any effects would be part of ongoing processes.

The FEIS discusses potential operational period impacts of tug boats in Section 4.3.1.1. Tug boat operations were not addressed in the construction period impact analysis because they are not considered a new activity related to construction. Tug boats already operate on an ongoing basis at the wharf, supporting ships far larger than a dredging construction barge.

The FEIS addressed the varying methods and included the resource agencies' survey in its entirety as an appendix in the interest of full disclosure.

The FEIS provides rationale for the conclusion that the project dredging is not likely to have adverse or significant direct or indirect impacts on the long-term reproductive potential and structure of the coral community in Apra Harbor. The consideration of the effects of sedimentation to corals was based on the resource agencies' species list and not on percent live coral in order to make all corals that were noted to occur essentially equal in terms of spawning potential. To further reduce potential adverse impacts, the Navy has committed to avoid dredging activities during the peak coral spawning period on Guam (seven to ten days after the full moon in July in consultation with GDAWR) in accordance with U.S. Coral Reef Task Force guidance and USACE permit conditions.

While replicate water chemistry sampling would have provided additional information on seasonal variations, the baseline water chemistry study results showed that the waters in the vicinity of the wharf are basically oceanic with a small indication of effect from draining of inner harbor water seaward, and water moving from land toward the center of the harbor. The Navy will implement a water quality monitoring plan, which will include a pre-construction component, as well as control stations. The Navy will also comply with the conditions of USACE permits required for the project.

Nighttime surveys for benthic invertebrates may have produced higher counts. However, the FEIS summarized the results of the resource agency-prepared marine benthic impact analysis and levels of corresponding compensatory mitigation, which the Navy has agreed to implement or fund. The HEA process, which both the Navy and resource agencies utilized, accounts for habitat or ecosystem losses which would include the broad matrix of marine flora and fauna associated with the underlying coral reef resource.

The FEIS notes that the loss of the vertical wall created by the original Kilo Wharf construction dredging would be replaced by similar, hard vertical substrate. The construction mooring island was not considered as part of the mitigation for ecological services lost, although it too would provide vertical substrate. Habitat removed or covered by both the construction mooring island and new shore protection was factored into the acre-year loss estimates for which the Navy will implement or fund compensatory mitigation.

The EIS states that should sedimentation effects occur, the affected habitats are able to recover over time when the stressor is removed, although species composition may be affected. This is evidenced by the healthy condition of the coral reefs that were adversely affected by sedimentation from the original Kilo Wharf construction (i.e., west and east of the existing wharf). Reevaluation of indirect long-term adverse impacts is not necessary because the FEIS reports the results of the resource agencies' impact analysis and HEA. These results considered the resource agencies' estimated sedimentation effects west of the project area, extending to Orote Island.

The Navy will consider the recommendations of the CNMI and Guam Stormwater Management Manual after a final report is issued. The Navy will comply with its NPDES permit regulations regarding stormwater runoff at the expanded wharf.

The ecological services lost estimated in both the Navy and resource agency HEAs accounted for all habitat types impacted and not only those with high coral cover. The Navy will fund or implement mitigation commensurate with the total lost ecological services (both spatial and temporal) identified by the resource agencies. The Cetti Bay watershed reforestation is the Navy's preferred mitigation. The Navy is working collaboratively with the resource agencies on the details of the preferred mitigation plan.

Cumulative Impacts. Commenters requested expanded analysis of cumulative effects of dredging on coral spawning in Apra Harbor (NOAA Fisheries); commented on the adequacy of cumulative impact analysis (NOAA Fisheries; TNC) and quantified data on the historical coral reef resources in Apra Harbor (NOAA Fisheries); requested the addition of a table containing the amount of actual direct and indirect impacts on coral reef communities and land/water use (GDOAG); and commented that the analysis should be considered in the context of reef decline worldwide, U.S. and on Guam (BSP).

The FEIS described the likely effects of in-water construction on coral spawning and subsequent recruitment of planulae to the coral community within the region of influence (ROI). The analysis included evaluation of the spatial extent of potentially affected habitat; likely coral species to be affected, the susceptibility of their spawning characteristics to the effects of sedimentation, and overall sedimentation tolerance levels; and, based on analyses of these factors, concluded that there is little potential for sedimentation effects (if they occur) to have a negative impact on overall coral reproduction in Apra Harbor—both for areas that support live coral and also in those that do not.

The FEIS cumulative impact assessment provides a sound characterization of past, present and reasonably foreseeable future actions in accordance with CEQ guidance. The absence of historical records on coral reef communities makes quantification of coral reef conditions in the post-WWII era speculative. The FEIS cumulative impacts analysis describes available pertinent information on past, present and future projects and therefore addition of a new table would not increase available data. The FEIS defines the ROI for cumulative impacts to coral reef communities as Inner and Outer Apra Harbor because this area represents the likely extent of the Kilo Wharf project's potential to contribute collective impacts.

Miscellaneous Comments. There were numerous miscellaneous comments, including, but not limited to: comment that FEIS lacks information to evaluate finding of ''no adverse impact to geological features'' (NOAA Fisheries); GDOAG commented that a GDOAG permit is required for removal of coral; resource agencies requesting involvement in the Navy's ROD development (USEPA, NOAA Fisheries, USFWS); objections to the adequacy of the FEIS (USFWS, GDOAG), including its description of the existing environment/lack of incorporation of resource agency data (USFWS), environmental consequences (USFWS), and the Navy's lack of commitment to adequate compensatory mitigation (USFWS, GEPA). GDOAG commented that the FEIS lacked sufficient information and recommended development of a supplemental EIS. Commenters stated that the economic value of the Kilo Wharf coral reefs cited in the FEIS represent an incomplete valuation of impacted resources and are misleading (USFWS); objected to the FEIS's characterization of the Federal Coastal Zone Management Act consistency concurrence for the contingency mitigation actions (BSP); requested clarification on impacts to resident seabirds (GEPA); requested ciguatera sampling of representative fishes (GEPA); requested discussion of Marine Mammal Protection Act (MMPA) (GEPA); stated that the Navy needs to consult with GDOAG and federal agencies regarding lighting specifications to help avoid or minimize potential impacts to threatened/endangered species due to concern with impacts to sea turtle nesting from dredging operations, fuel spills at night, and ship wakes from larger vessels (GDOAG); stated that the FEIS does not sufficiently describe placement of security and perimeter lighting to determine potential impacts to nesting and hatchling turtles (GDOAG); commented that FEIS is unclear on how Navy will address potential invasive species introductions via hull fouling (TNC); requested expanded discussion of Guam's water resources from a historical perspective (single commenter); and provided several factual corrections that do not affect the overall analysis or mitigation levels (GEPA, TNC).

The permanent removal of the coral reef and placement of fill on the coral reef flat is addressed in Section 4.2.2.1. The FEIS text in this section states that this substrate is common in the ROI. Geologically, the reef flat and reef slope are common in the ROI.

5 GCA § 63602 and § 63603 is not applicable to this project because the Navy is not commercially harvesting or commercially taking the coral.

By Navy policy, it does not include other agencies in development of its RODs.

The FEIS includes the results and full reports of three Navy marine surveys, a resource agency survey, and a current monitoring/sediment transport computer modeling study. The FEIS addressed all the comments provided on the DEIS either in the body of the FEIS

or in responses included in Appendix B–4 of the FEIS. If there were topics or conclusions contained in the DEIS that were not commented on at that time, it was concluded that they were acceptable to the DEIS reviewers. The FEIS explained that different methods were used in the resource agency and Navy surveys and analyses and included the resource agency reports in their entirety for interested readers. The FEIS summarized the marine habitat impacts prepared by the resource agencies and their resulting HEA estimates of lost ecological services (i.e., acre-year losses). The resource agencies involved in the marine assessment and impact analysis that formed the basis for the HEA lost ecological services estimate included both Federal (NOAA Fisheries, USFWS) and GOVGUAM agencies (GDOAG, GEPA). The Navy has committed to funding or implementing compensatory mitigation to fully offset the levels of ecological services calculated by the resource agencies. Therefore, the Navy considers the level of information and analysis in the FEIS sufficient and that a supplemental EIS is unwarranted.

The Navy agreed to fund/implement compensatory mitigation to offset lost ecological services (i.e., a service-to-service approach to scaling, rather than a valuation approach), commensurate with the HEA prepared by the resource agencies. The Van Beukering et al. (2007) study results cited in the FEIS have not been factored into compensatory mitigation scaling for the Kilo Wharf extension project, but were included in the EIS to illustrate that there are multiple approaches to estimating economic impacts of resource losses.

The Navy's completed Guam Coastal Management Program (GCMP) Assessment (FEIS Appendix P) evaluated the coastal zone consistency of wharf extension alternatives and the preferred and contingency mitigation plans. BSP's concurrence letter (5 September 2007) does not exclude any specific aspects of the Navy's determination or establish any preconditions for its concurrence.

Orote Island, a recognized habitat for migratory birds, is too far away and sheltered by Orote Point to be impacted significantly by existing and proposed activities at Kilo Wharf. Accordingly, the assessment of Migratory Bird Treaty Act-protected species in the FEIS is sufficient and additional information on the status of resident migratory birds at Orote Island is not warranted.

Requests for ciguatera testing were made by GEPA in response to the DEIS. The Navy responded at that time (response in FEIS Appendix B–4 to DEIS comment T.4.7), the link between the incidence of reported cases of ciguatera and the occurrence of ''new'' surfaces underwater (as occurs with construction) has not been demonstrated, thus the need for such a monitoring program is not warranted. Furthermore, commercially available ciguatera test kits yield numerous false positives and could lead to a very inaccurate picture of conditions in a given area and whether there were increases in ciguatera incidence with the construction of the wharf.

The FEIS (Sections 3.3.3, 4.3.2.1) notes that marine mammals are uncommon in Apra Harbor, including the Kilo Wharf vicinity. Because of this, the FEIS concludes that there is little potential for adverse construction noise impacts on these species (Sec. 4.3.2.1). Therefore, there is little potential for ''taking'' of marine mammals protected under the MMPA.

The FEIS includes sufficient information to analyze potential impacts to sea turtles (e.g., description of new security floodlighting illumination power, general location of new lighting, site plan of the wharf extension and new access road). As described in both the DEIS and FEIS, there is no evidence in literature or from field survey that sea turtles have nested at the beaches at either end of Kilo Wharf, both recently and at the time of the original wharf construction. FEIS Sec. 4.3.3.1 describes potential construction period impacts on threatened and endangered species as well as BMPs that will be implemented during the construction period, which address both noise/light impacts and fuel spills. FEIS Section 4.3.3.2 concludes that none of the alternatives would impact threatened, endangered or protected marine species during the operational period, and that the operational and security lighting on the wharf will be at a lower illumination level than what is currently used on the wharf. There is little potential for wakes from T–AKE ships entering Apra Harbor to impact turtle nesting beaches since ships preparing to berth at Kilo Wharf enter the harbor at much slower speeds than ships heading for the commercial port or Inner Apra Harbor. The FEIS also notes that NOAA Fisheries concurred with Navy's informal Section 7 consultation determination that effects on sea turtles would be insignificant and never reach the scale where take occurs.

The Navy follows much stricter ballast water and hull cleaning procedures than most, if not all, the commercial and private vessels that use Apra Harbor. Since ships would berth in Apra Harbor and at Kilo Wharf with or without the project, the proposed wharf extension would have no effect on marine introductions related to hull fouling, and thus, was not specifically addressed in the FEIS.

Because the project does not have the potential to significantly affect Guam's water resources, a comprehensive discussion of Guam's water resources history is not warranted in the EIS.

Summary: In determining how to provide adequate berthing for the T–AKE class of ammunition ship at AHNC, Guam, Mariana Islands, I considered impacts to the following areas: physical environment, land and water use, the social and economic environment, infrastructure and services, cultural resources, hazardous and regulated materials and waste, and biological resources. I have taken into consideration the Navy's consultation with the NOAA Fisheries regarding endangered species and EFH, and the Guam SHPO regarding cultural resources. I have considered the comments sent to the Navy by Federal and Territorial resource agencies, other Federal and Territorial government agencies, and the public. I have considered the preferred and contingency mitigation projects. After carefully weighing all of these factors, I have determined that the West Extension Alternative, extension of Kilo Wharf by 400 ft (122 m) to the west, will best meet the needs of the Navy while also minimizing the environmental impacts associated with providing suitable facilities on Guam to accommodate the new class of ship.

Dated: December 20, 2007.

BJ Penn,

Assistant Secretary of the Navy (Installations and Environment).

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DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 8, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs,