

SMALL BUSINESS ECONOMIC IMPACT STATEMENT

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Dredged Materials Management Program

WAC 332-30-166

October 2021

Washington Department of Natural Resources

Aquatic Resources Division

Olympia, WA

## I. Executive Summary

The Department of Natural Resources (DNR) proposes to modify [WAC 332-30-166](#), specifically the section related to fees for the disposal of approved dredged material onto state owned aquatic lands. The fees are charged for disposal of approved dredged material and are necessary to cover the costs of managing dispersive and non-dispersive disposal sites in Puget Sound, Grays Harbor, or Willapa Bay. DNR proposes to update the current fee rates in the existing WAC in order to address increased costs for monitoring and maintaining the disposal sites and a declining fund balance in the DMMP account, which DNR is charged with managing. DNR proposes to modify the fees and provide minor technical changes.

## II. Background

The dredged material management program (DMMP) operates to provide safe and economical disposal options for dredged material in Puget Sound, Grays Harbor, and Willapa Bay. DMMP is a multi-agency partnership that uses expertise and resources from the Department of Natural Resources (DNR), the Department of Ecology (ECY), the United States Army Corps of Engineers (USACE), and the U.S. Environmental Protection Agency (EPA) to evaluate requests for disposal, to monitor the designated disposal sites, and to do so in a way that complies with all local, state and federal laws.

DNR is proposing to modify the DMMP rules through an adjustment of fees to address increasing costs to monitor and maintain the disposal sites and a declining fund balance. Per [RCW 79.105.520/Fees for use of aquatic land dredged material disposal sites authorized](#), “The department shall estimate the costs of site management and environmental monitoring at aquatic land dredged material disposal sites and may, by rule, establish fees for use of the sites in amounts no greater than necessary to cover the estimated costs. All such revenues shall be placed in the aquatic land dredged material disposal site account under [RCW 79.105.510](#).” DNR is specifically charged with managing the fund for the DMMP and must ensure that adequate funding is available to cover all departmental costs associated with management of the sites. State laws and rules direct DNR to review and adjust fees for disposal sites on a regular basis.<sup>1</sup> DNR has not adjusted the current disposal fees since 1995. Funds from the DMMP account are used to conduct regular monitoring of the disposal sites, perform program compliance studies, and cover nominal agency management costs.

## III. Rationale: Why is DNR modifying the fees now?

The DMMP fund balance has been declining for over ten years due to a general decrease in the volume of paid material being disposed and an increase in the cost of monitoring contracts. The fund was established in order to cover all costs associated with monitoring of the DMMP disposal sites; monitoring is an obligation of the original Environmental Impact Statement (EIS) conducted for the creation of the dredged material program, and is necessary to:

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<sup>1</sup> See RCW 79.105.500 thru .520

- Ensure that the existing disposed material remains on site (a requirement of the EIS).
- Ensure the existing material is not having unintended negative impacts to aquatic habitat and species.
- Ensure compliance with the Endangered Species Act (ESA) as well as other federal laws.

Over the last decade, DNR and the other DMMP agencies have worked collaboratively to reduce costs as the fund balance has declined. Over this period, DNR has removed staff costs for one full time employee (FTE) and shifted that expense to other DNR budgets. In collaboration with the other DMMP managers, DNR has reduced contract costs through modifications to the monitoring framework, sought legislative approval to remove the cost of shoreline permits, and closely monitored spending from the fund. After making all practicable cost saving actions , the DMMP fund is now at a critical point and cost saving measures have been exhausted. Although DNR understands that an increase in fees will increase costs for marine based businesses that need to dredge, this revised fee schedule is necessary to continue to ensure sediment disposal sites remain open with proper management.

All businesses that need to conduct dredging to support navigational needs will pay more under the proposed rule, *if* they choose to continue to use the DMMP disposal sites. Alternatives to use of the disposal sites include:

- Not dredging, or a reduction in dredging volumes; this in turn could affect a business’ customer base as it may reduce the area available for navigation for some or many of the vessels located within, or using, their facility.
- Re-using the material in a beneficial way, either through nearshore restoration, transfer to upland areas that take clean fill, or storing it on their own upland properties for later use or sale.<sup>2</sup>
- Shipping the material to an offsite upland disposal facility.

These options all have their own costs depending upon the option chosen, but it is assumed that a business would only undertake an alternative if the cost would be less than disposal fees.

#### **IV. Summary of Proposed Rule**

DNR proposes to increase disposal fees as follows:

	Puget Sound	Grays Harbor/Willapa Bay
Current fee	\$.45/cy*	\$.10/cy
July 1, 2022	\$.75/cy	\$.15/cy
July 1, 2025	\$.95/cy	\$.20/cy
After July 1 2025	No additional increase	No additional increase

\*cubic yard (cy)

#### **V. Analysis of Compliance Costs for Business**

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<sup>2</sup> Note: sale of material dredged from state owned aquatic lands may be subject to a royalty as a valuable material sale.

The SBEIS requires agencies to calculate whether the proposed rule will have a disproportionate cost impact on small businesses. Any business with 50 or fewer employees is considered a small business (*RCW 19.85.020: Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.*).

While parties affected by the rule include public ports, public and private marinas, and other private industries that have commercial non-moorage business that necessitates dredging, for this analysis we will not include ports or marina facilities owned by cities. Ports in general have the ability to collect taxes or fees using their taxing authority to help defray the costs of dredging if they choose. City operated marinas also have the ability to use their taxing authority to defray disposal costs should they choose not to pass the costs of dredging onto their customers. A port, city, private marina, or other private marine business may have the need to dredge often and in large quantities, or infrequently, depending upon their location. All of these entities can pass the costs along to their customers in the form of higher fees, but only the private entities that lack taxing authority to defray the increased cost of the rule are included in this analysis.

DNR looked at dredging activity over the past decade to learn how the rule might affect small businesses, as well as proposed future dredging proponents based upon information provided to DMMP. Over the past ten years (2010 – 2020), 28 individual entities (port, city, or business) conducted one or more dredge projects that used the fee based open water disposal sites. Volumes ranged from less than 1,000 cy to over 100,000 cy. Twelve of these entities meet the definition of Small Businesses.

As of July 2021, thirteen private entities have obtained the necessary permits to dredge more than 10,000 cy in the foreseeable future (this also includes entities doing the work this year); and another three entities have the necessary permits to dredge volumes of less than 10,000 cy. Altogether, sixteen entities, including ports, have planned dredging that does not qualify for Federal Navigation<sup>3</sup> and which will not be disposed of at upland sites. Five of these would be meet the definition of Small Business. Additional dredge projects could be planned but these are all DMMP is aware of at this time.

Based upon the information available to DMMP as of September 1, 2021, a majority of the entities planning to use a disposal site will be paying a disposal fee. Many, but not all, ports qualify for no fee navigational dredging, or only some of a port's projects qualify for no fee dredging. A few private parties also qualify.

The proposed increased cost discussed in this SBEIS is a lump sum payment in the year the entity proposes to dredge, although dredging and thus fees can be spaced out over a few years. DNR did not calculate the additional costs for equipment, labor, supplies, or professional services, only payment of a fee to dispose the material. A proponent is not required to use the disposal site but it is often the most economical option. Other alternatives include use of an upland disposal site, placement of material on uplands for other upland purposes, beneficial use such as restoration, or sale of the material under agreement with the State.

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<sup>3</sup> The Corps determines which projects are eligible for federal navigational dredging with the Corps as a sponsor, and in those cases disposal fees do not apply to dredged material. Suitability determinations are located on the US Army Corps of Engineers website: <https://www.nws.usace.army.mil/Missions/Civil-Works/Dredging/Suitability-Determinations/>

DNR has created two hypothetical situations to assess potential impact to the businesses and how it would affect “\$100 in sales”, as required by the RCW:

*Hypothetical Situation I: a marina with 100 slips proposes to dredge 20,000 cy of material every ten years. Current disposal fees for 20,000 cy equates to \$9,000 for disposal of this material for use of the Puget Sound sites. If the rule increased the cost of the disposal fees as proposed, to \$.95 cy, in July of 2025, the new disposal cost for the marina owner would be \$19,000. The marina may be able to use some of the dredged material in other ways off site, or find a restoration project nearby that can use the material beneficially. But assuming the marina chooses to dispose of the material using DMMP, what are the impacts to \$100/sales?*

*For the purpose of this analysis, DNR found current slip fees of \$10.15 to \$30.45 per foot/month in one central Puget Sound marina. We will use this fee schedule as a prototype for this hypothetical scenario. In this hypothetical marina of 100 slips, one 20 ft. open moorage slip runs \$277/month during the summer months (April-September) and \$203/month during the winter months (October – March) for a total annual fee of \$2,880/year. If the additional \$10,000 in additional disposal fees was applied to each of the 100 slips over a 12 month period, and the slips were full, each tenant would pay an additional \$100.00 for one year every ten years, or \$10.00/year over ten years, to cover the additional cost of dredge disposal. This would result in an additional \$0.35 per \$100 of slip fees, at the 20 ft. open moorage rate.*

*If the marina was only half full the entire year, then each slip tenant would pay an additional \$200.00 every ten years, or \$20.00/year for ten years. This would result in an additional \$0.69 per \$100 of slip fees, at the 20 ft. open moorage rate.*

*Hypothetical Situation II: a medium sized marina with 300 slips proposes to dredge 40,000 cy once every 15 years. Disposal fees would be \$18,000 at existing rates; if the fee was increased to \$.95 c/yd, the fees would be \$38,000. Divide this additional \$20,000 between 300 slips over a fifteen year period. This would work out to \$67 per slip for a fifteen year period, or \$4.44/year for fifteen years. Assuming the same slip fees as the above example, this would result in an additional \$0.15 per \$100 of slip fees, at the 20 ft. open moorage rate. If the marina was only half full the entire year, then each slip tenant would pay an additional \$133.00 every fifteen years, or \$8.89/year for fifteen years. This would result in an additional \$0.31 per \$100 of slip fees, at the 20 ft. open moorage rate.*

In sum, the additional costs associated with the proposed rule would result in approximately twice the current disposal fees after the year 2025. However, as illustrated by the scenarios above, when spread out over the interval between dredging projects (typically ten to fifteen years) it represents less than 1% of each \$100 in sales. Whether this would represent a significant impact to a small business will depend on the circumstances specific to that business. However, considering that disposal fees have not been adjusted for nearly 25 years, DNR believes this is a reasonable adjustment in light of diminishing DMMP funds.

## **VI. Actions Taken to Reduce Costs to Small Business**

The cost of the rule requirements can be broken down into one single factor: the cost of an increased rate for use of the DMMP disposal sites. Per the rule, the increased rate of \$.75/cy will begin July 1, 2022 and top out at \$.95/cy beginning on July 1, 2025. The costs to each business will depend upon the need for dredging to

accommodate business needs; this in turn depends upon the business location, how frequently sediment accrues in that location, and if the business has other viable options instead of dredging.

DNR has taken steps to reduce costs of the DMMP in general through reducing expenditures from the DMMP account by:

- ✓ Eliminating the cost of one FTE and covering the funding for this position with other agency funds.
- ✓ Modification of the sediment analysis framework which has lowered sampling and site use authorization costs.
- ✓ Eliminating other agency staff charges associated with DMMP works.
- ✓ Contributions from other DMMP agencies in the forms of in kind staff work to complete compliance and testing.

## **VII. Actions Taken to Involve Small Businesses in the Development of the Rule**

DNR announced its intent to conduct rule making at the May 2021 Sediment Management Annual Review Meeting (SMARM), which invites over 700 attendees each year, and provided a detailed Power Point presentation at that meeting. DNR's presentation discussed the filing of the CR101, which is an announcement of intent to conduct rule making, and in addition, included an analysis of the fund balance dilemma and the agency's plans to modify fees to address the declining fund balance. Small businesses, consultants, ports and other local governments, tribes and environmental groups are all invited to this annual meeting.

DNR also made two presentations to the Washington Public Ports Association (WPPA), after the initial SMARM presentation (July and August of 2021). Both meetings were attended by a number of ports. In July, DNR also invited members of the Northwest Marine Trade Association to a meeting. Subsequent to that meeting, DNR reached out to several of the parties attending the meeting to see if they had additional questions or comments.

Upon filing of the CR102, DNR will reach out to all these parties again with details on the proposed fee changes. DNR will post information on the rule making on our website.

## **VIII. Industries Required to Comply With the Rule**

All businesses that conduct dredging for their business needs will be affected by the rule as the increased cost will apply to all dredged material bound for a disposal site (unless it qualifies as no fee navigation, as discussed above). However, no business is required to participate in the disposal program. It is an option for any business that has dredged material deemed suitable for the disposal site.

Currently, the DMMP is aware of 28 entities who could be eligible to dredge in the next ten years. Industries in general that may be affected include any marine commercial enterprises that have dredging needs not met by the Corps of Engineers.

This SBEIS does not conclude that jobs will be created or lost as the result of compliance with the rule. Rather, it is indeterminate. If a business dredges material in the hopes of disposing at a DMMP disposal site, and the cost to dispose of the material exceeds their ability to cover those costs unless they reduce the hours of an existing staff or eliminate a position, then that is an option they may consider. However, if the fees are not increased, one or more disposal sites may have to close, which would further limit a business's options for safe, efficient disposal of materials until such time as enough funding became available to conduct the required monitoring work at the disposal site.

There are no provisions in the rule to reduce the costs on small businesses. DNR considered whether or not there was an approach to pro-rate fees based upon volume of material or size of a facility. But in order to do that fees would have to be increased on other site users, and it was unclear how to equitably pass that cost on to other public and private parties; thus, that approach was rejected. A business owner could choose to search for an alternative to use of the DMMP site, such as nearshore restoration, upland storage or a reduction in the amount of material they propose to dredge. A business may also decide to dredge smaller amounts more frequently to spread out the cost of the increase over a greater number of years.

## **IX. Estimated Loss of Jobs**

As described above, whether or not this increase in disposal fees would result in any job losses would depend on the circumstances specific to the business. However, DNR believes that the increase in fees would represent a minimal financial impact compared to the overall costs of dredging and disposal. Therefore, DNR does not anticipate that the fee increase would result in widespread job loss.

## **X. Actions Taken to Reduce Impacts**

As described above, DNR has taken steps to reduce costs of the DMMP in general through reducing expenditures from the DMMP account by:

- ✓ Eliminating the cost of one FTE and covering the funding for this position with other agency funds.
- ✓ Modification of the sediment analysis framework which has lowered sampling and site use authorization costs.
- ✓ Eliminating other agency staff charges associated with DMMP works.
- ✓ Contributions from other DMMP agencies in the forms of in kind staff work to complete compliance and testing.

## **XI. Summary**

The Department of Natural Resources (DNR) proposes to modify [WAC 332-30-166](#), specifically the section related to fees for the disposal of approved dredged material onto state owned aquatic lands. For Puget Sound, the fees would increase from \$0.45/cy to \$0.95/cy by July 1, 2025. For Grays Harbor and Willapa Bay, the fees would increase from \$0.10/cy to \$0.20/cy by July 1, 2025. DNR believes that the increase in fees would represent a

minimal financial impact compared to the overall costs of dredging and disposal. The impact would vary depending on the business, but in the hypothetical scenarios described above this fee increase would result in an additional \$0.15 - \$0.69 of costs per \$100 in sales. Therefore, DNR does not anticipate that the fee increase would impose undue burden to small businesses.



## Appendix

RCW [19.85.040](#)

*(1) A small business economic impact statement must include a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements. It shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW [34.05.320](#), including costs of equipment, supplies, labor, professional services, and increased administrative costs. It shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue. To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:*

*(a) Cost per employee;*

*(b) Cost per hour of labor; or*

*(c) Cost per one hundred dollars of sales.*

*(2) A small business economic impact statement must also include:*

*(a) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW [19.85.030](#)(2), or reasonable justification for not doing so, addressing the options listed in RCW [19.85.030](#)(2);*

*(b) A description of how the agency will involve small businesses in the development of the rule;*

*(c) A list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply; and*

*(d) An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule.*

*(3) To obtain information for purposes of this section, an agency may survey a representative sample of affected businesses or trade associations and should, whenever possible, appoint a committee under RCW [34.05.310](#)(2) to assist in the accurate assessment of the costs of a proposed rule, and the means to reduce the costs imposed on small business.*