
**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 228****[EPA-R10-OW-2010-0086; FRL-9143-2]****Ocean Dumping; Designation of Ocean
Dredged Material Disposal Sites
Offshore of the Siuslaw River, Oregon****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Final rule.

SUMMARY: This action finalizes the designation of the Siuslaw River ocean dredged material disposal sites pursuant to the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). The new sites are needed primarily to serve the long-term need for a location to dispose of material dredged from the Siuslaw River navigation channel, and to provide a location for the disposal of dredged material for persons who have received a permit for such disposal. The newly designated sites will be subject to ongoing monitoring and management to ensure continued protection of the marine environment.

DATES: *Effective Date:* This final rule will be effective June 1, 2010.

ADDRESSES: For more information on this final rule, Docket ID No. EPA-R10-OW-2010-0086 use one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for accessing the docket and materials related to this final rule.

- *E-mail:* winkler.jessica@epa.gov.

- *Mail:* Jessica Winkler, U.S.

Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA-088), Environmental Review and Sediment Management Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

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Environmental Protection Agency, Region 10, Library, 10th Floor, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. For access to the documents at the Region 10 Library, contact the Region 10 Library Reference Desk at (206) 553-1289, between the hours of 9 a.m. to 12 p.m., and between the hours of 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, for an appointment.

FOR FURTHER INFORMATION CONTACT: Jessica Winkler, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA-088), Environmental Review and Sediment Management Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, phone number: (206) 553-7369, e-mail: winkler.jessica@epa.gov.

SUPPLEMENTARY INFORMATION: On February 4, 2010, EPA published a proposed rule at 75 FR 5708 to

designate two new ocean dredged material disposal sites near the mouth of the Siuslaw River, Oregon. EPA received three comments on the proposed rule.

1. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval by EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445. EPA's final action would be relevant to persons, including organizations and government bodies, seeking to dispose of dredged material in ocean waters offshore of the Siuslaw River, Oregon. Currently, the U.S. Army Corps of Engineers (Corps) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government	U.S. Army Corps of Engineers Civil Works Projects, and other Federal Agencies. Port Authorities, Marinas and Harbors, Shipyards and Marine Repair Facilities, Berth Owners. Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.
Industry and General Public	
State, local and Tribal governments	

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

2. Background

a. History of Disposal Sites Offshore of the Siuslaw River, Oregon

Three ocean dredged material disposal sites, an Interim Site and two selected sites were used by the U.S. Army Corps of Engineers (Corps) for the disposal of sediments dredged from the Siuslaw River navigation project. The "Interim Site," former Site A, was included in the list of approved interim ocean disposal sites for dredged material in the **Federal Register** in 1977 (42 FR 2461), a status superseded by later statutory changes to the MPRSA. Mounding at Site A and concern over the potential for ocean currents to move

sediments from Site A back into the dredged channel resulted in a selection of disposal Sites B and C by the Corps pursuant to Section 103 of the MPRSA. That authority allows the Corps to select a site or sites for disposal when a site has not been designated by EPA. The selection of Sites B and C was intended to reduce potential hazards associated with mounding at Site A. The selection of Sites B and C was also intended to increase long-term disposal site capacity near the mouth of the Siuslaw River. EPA concurred on the selection and approved the Corps' request to continue to use Sites B and C through the end of the 2009 dredging season. To provide for sufficient disposal capacity over the long term, EPA proposed to designate two sites, a North Site and a South Site, for the ocean disposal of dredged material near the Siuslaw River in the vicinity of former Sites A, B and C. Those proposed Sites are finalized in this action.

b. Location and Configuration of Siuslaw River Ocean Dredged Material Disposal Sites

This action finalizes the designation of two Siuslaw River ocean dredged material sites to the north and south, respectively, of the mouth of the Siuslaw River. The coordinates, listed below, and Figure 1, below, show the location of the two Siuslaw River ocean dredged material disposal sites (Siuslaw River ODMD Sites, North and South Sites, or Sites). The configuration of the North Site is expected to allow dredged material disposed in shallower portions of the Site to naturally disperse into the littoral zone and augment shoreline building processes. This final designation of the Siuslaw River ODMD Sites will allow EPA to adaptively manage the Sites to avoid creating mounding conditions that could contribute to adverse impacts to navigation.

The coordinates for the two Siuslaw River ODMD Sites are, in North American Datum 83 (NAD 83):

North Siuslaw ODMD Site	South Siuslaw ODMD Site
44° 01' 31.03" N, 124° 10' 12.92" W	44° 00' 46.72" N, 124° 10' 26.55" W
44° 01' 49.39" N, 124° 10' 02.85" W	44° 01' 06.41" N, 124° 10' 24.45" W
44° 01' 31.97" N, 124° 09' 01.86" W	44° 01' 04.12" N, 124° 09' 43.52" W
44° 01' 13.45" N, 124° 09' 11.41" W	44° 00' 44.45" N, 124° 09' 45.63" W

The two Sites are situated in approximately 30 to 125 feet of water located to the north and south of the

entrance to the Siuslaw River on the southern Oregon Coast (see Figure 1). The dimensions of the Sites are 4,800 by

2,000 feet and 3,000 by 2,000 feet, respectively.

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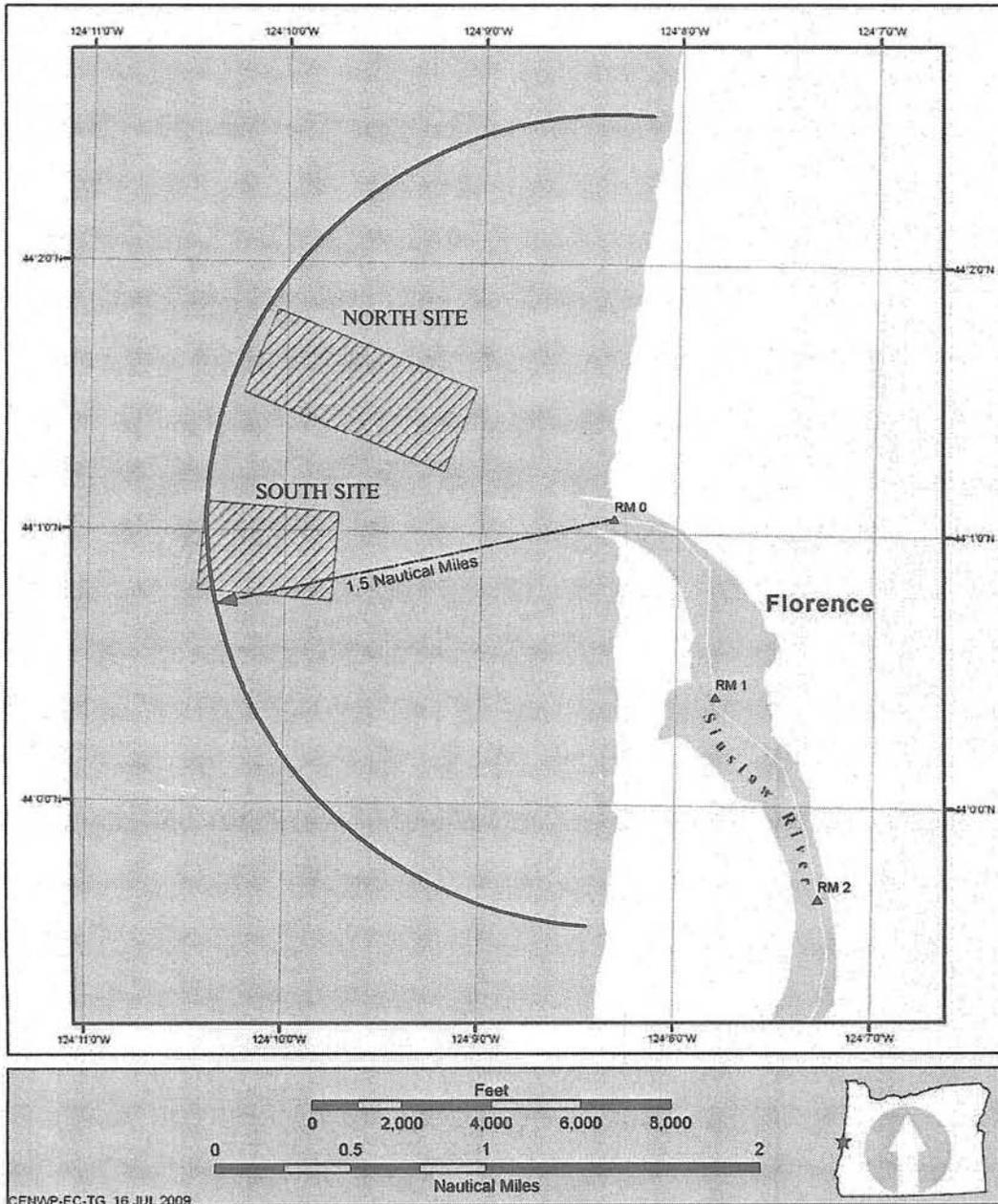


Figure 1. Final North and South Siuslaw ODMD Sites

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c. Management and Monitoring of the Sites

The final Siuslaw Sites are expected to receive sediments dredged by the Corps to maintain the Federally authorized navigation project at the Siuslaw River, Oregon and dredged material from other persons who have obtained a permit for the disposal of dredged material at the Sites. All persons using the Sites are required to follow the final Site Management and Monitoring Plan (SMMP) for the Sites. The SMMP finalized in this action includes management and monitoring requirements to ensure that dredged materials disposed at the Sites are suitable for disposal in the ocean and that adverse impacts of disposal, if any, are addressed to the maximum extent practicable. The final SMMP for the Siuslaw River Sites also addresses management of the Sites to ensure adverse mounding does not occur and to ensure that disposal events are timed to minimize interference with other uses of ocean waters in the vicinity of the proposed Sites.

d. MPRSA Criteria

EPA assessed the Sites against the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR part 228 to determine that the final Site designations satisfied those criteria.

General Criteria (40 CFR 228.5)

(1) Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).

EPA reviewed the potential for the Sites to interfere with navigation, recreation, shellfisheries, aquatic resources, commercial fisheries, protected geologic features, and cultural and/or historically significant areas and found low potential for conflicts. The final Sites are located close to the approach to the Siuslaw River entrance channel but are unlikely to cause interference with navigation or other uses near the mouth of the Siuslaw River provided close communication and coordination is maintained with other users, vessel traffic control and the U.S. Coast Guard (USCG). Based on the past history of fishing and disposal operations near the mouth of the Siuslaw River, use conflicts are not expected to occur. There is the potential for other recreational users, for example, surfers, boaters, boarders, and divers, to use the near-shore area in the vicinity of

the Sites, but EPA does not expect disposal operations at the Sites to conflict with recreationists. The final SMMP outlines site management objectives, including minimizing interference with other uses of the ocean. Should a site use conflict be identified, it is anticipated that site use would be modified according to the SMMP to minimize that conflict.

(2) Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

Based on EPA's review of modeling, monitoring data, analysis of sediment quality, and history of use, the primary impact of disposal activities on water quality is expected to be temporary turbidity caused by the physical movement of sediment through the water column. All dredged material proposed for disposal will be evaluated according to the ocean dumping regulations at 40 CFR 227.13 and guidance developed by EPA and the Corps. In general, dredged material which meets the criteria under 40 CFR 227.13(b) is deemed environmentally acceptable for ocean dumping without further testing. Dredged material which does not meet the criteria of 40 CFR 227.13(b) must be further tested as required by 40 CFR 227.13(c).

Disposal of suitable material meeting the regulatory criteria and deemed environmentally acceptable for ocean dumping will be allowed at the Sites. Most of the dredged material to be disposed of at the Sites is expected to come from the entrance channel, where material is predominantly sand (approximately 97%), while a small amount of material (up to 3%) would be classified as fine-grained. Based on modeling work performed by the Corps, the coarser (sandy) material is expected to settle out of the water column within a few minutes of disposal while the fine-grained material is expected to settle out of the water column less rapidly. No increase in turbidity is expected to be measurable at the beach.

(3) The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be

determined as part of the disposal site evaluation (40 CFR 228.5(d)).

EPA sized the final Sites to meet this criterion. The footprints of the Sites are based on the presumed northerly movement of coastal littoral material over the course of the yearly dredging and disposal cycle and are needed to optimize the dispersal of material into the active littoral zone, limit wave effects due to mounding, and keep material from reentering the navigation channel to the south. Use of the shallower portion of the North Site will facilitate increased sediment transport thereby increasing long-term site capacity. Preferential utilization of the shallow portions of the North Site also meets the management goal of keeping material in the littoral system. However, as seen in the 1977 Interim Site, mounding could occur if too much material is placed too quickly in shallow water. EPA's designation of the two Sites with deeper areas within each Site allows site managers to be responsive to annual and long-term sediment transport patterns. Effective monitoring of the Sites is necessary and required. EPA requires annual bathymetric surveys to monitor each Site for capacity and potential mounding concerns.

(4) EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).

Disposal off the continental shelf would remove natural sediments from the nearshore littoral transport system, a system that functions with largely non-renewable quantities of sand in Oregon. Some of the material disposed at the Sites is expected to be available to the littoral system. Keeping this material in the littoral system with the potential to sustain a dynamic equilibrium along the Oregon coast is perceived as a benefit. The Sites incorporate historic disposal locations within the footprint of each Site, but have been expanded to allow more of the material to remain in the littoral system and allow for increased site capacity.

Specific Criteria (40 CFR 228.6)

(1) Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1)).

The geographical position of each Site, including the depth, bottom topography and distance from the coastline, has been chosen to minimize adverse effects to the marine environment. As EPA understands the currents at the Sites and the influence of those currents on the movement of

material in the area, there is a high likelihood that some of the material disposed at the Sites, especially within in the shallower portion of the North site, will be transported to the littoral sediment circulation system. Disposal at the Sites will be managed to allow for maximum dispersal of material and minimal impact to each Site.

(2) Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

The Sites are not located in exclusive breeding, spawning, nursery, feeding or passage areas for adult or juvenile phases of living resources. Near the Sites, a variety of pelagic and demersal fish species, including salmon, as well as shellfish, are found. The benthic fauna at the Sites is common to nearshore, sandy, wave-influenced regions of the Pacific Coast in Oregon and Washington.

(3) Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).

The Sites, although located in close proximity to the Siuslaw River navigation channel, and near the northern boundary of the Oregon Dunes National Recreation Area, are located a sufficient distance offshore to avoid adverse impacts to beaches and other amenity areas including two public recreation areas located to the north of the Siuslaw River, Heceta Beach Park and Harbor Vista Park. Transportation of dredges or barges to and from the Sites to dispose of dredged material will be coordinated to avoid disturbance of other activities near the Siuslaw River entrance channel. There are no rocks or pinnacles in the vicinity of either Site. The Sites are sized and located to provide long-term capacity for the disposal of dredged material without causing any impacts to the wave environment at, or near, the Sites. Site monitoring and adaptive management are components of the final SMMP.

(4) Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).

Dredged material found suitable for ocean disposal pursuant to the regulatory criteria for dredged material, or characterized by chemical and biological testing and found suitable for disposal into ocean waters, will be the only material allowed to be disposed of at the Sites. No material defined as "waste" under the MPRSA will be allowed to be disposed of at the Sites. The dredged material to be disposed of at the Sites will be predominantly marine sand, far removed from known

sources of contamination. Generally, disposal is expected to occur from a hopper dredge, in which case, material will be released just below the surface and the disposal vessel will be required to be under power and to slowly transit the disposal location during disposal. This method of release is expected to spread material at the Sites to minimize mounding and to minimize impacts to the benthic community and to species at the Sites at the time of a disposal event.

(5) Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).

EPA expects monitoring and surveillance at the Sites to be feasible and readily performed from small surface research vessels. The Sites are accessible for bathymetric and side-scan sonar surveys. At a minimum, annual bathymetric surveys will be conducted at each of the Sites to confirm that no unacceptable mounding is taking place within the Sites or in their immediate vicinity.

(6) Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)).

Dispersal, horizontal transport and vertical mixing characteristics of the area at and in the vicinity of the Sites indicate that the marine sands and fluvial gravels from the Siuslaw River distribute away from the river mouth rapidly. The beaches do not show significant accretion or loss. The bottom current records suggest a bias in transport to the north. Fine grained material tends to remain in suspension and to experience rapid offshore transport compared to other sediment sizes. Sediment transport of sand-sized or coarser material tends to move directly as bedload, but is occasionally suspended by wave action near the seafloor. The Sites are not expected to change these characteristics.

(7) Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)).

Portions of the two Sites were historically used for disposal activity. Disposal of dredged material is not expected to result in unacceptable environmental degradation at the Sites or in the vicinity of the Sites, however mounding will be closely monitored in those previously used portions and preferential use of the shallower portions of the North Site is expected. The final SMMP includes monitoring and adaptive management measures to address potential mounding issues.

(8) Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish

Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).

The Sites are not expected to interfere with shipping, fishing, recreation or other legitimate uses of the ocean. Disposals at the Sites will be managed according to the SMMP to minimize interference with other legitimate uses of the ocean through careful timing and staggering of disposals in the Sites. Commercial and recreational fishing and commercial navigation are the primary concerns for which such timing will be needed. EPA is not aware of any plans for mineral extraction offshore of the Siuslaw River at this time. EPA would expect to revise the SMMP if necessary in the event wave energy projects or other renewable or traditional energy projects were proposed and potential conflicts seemed likely. Fish and shellfish culture operations are not under consideration for the area. There are no known areas of special scientific importance in the vicinity of the Sites.

(9) The Existing Water Quality and Ecology of the Sites as Determined by Available Data or Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9)).

EPA did not identify any potential adverse water quality impacts from ocean disposal of dredged material at the Sites based on water and sediment quality analyses conducted in the study area of the Sites and based on experience with past disposals near the mouth of the Siuslaw River. Fisheries and benthic data show the ecology of the area to be that of a mobile sand community typical of the Oregon Coast.

(10) Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10)).

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the Sites. Material expected to be disposed at the Sites will be uncontaminated marine sands similar to the sediment present at the Sites. The final SMMP includes biological monitoring requirements, which will act to identify any nuisance species and allow EPA to direct special studies and/or operational changes to address the issue if it arises.

(11) Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).

No significant cultural features were identified at, or in the vicinity of, the Sites. EPA coordinated with Oregon's State Historic Preservation Officer and with Tribes in the vicinity of the Sites to identify any cultural features. No cultural features were identified. No

shipwrecks were observed or documented within the Sites or their immediate vicinity.

3. Response to Comments

EPA received three comments on the proposed rule. All three comments supported the Site designations. One commenter asked whether the Sites could be extended to run parallel to the coastline in order to create a “speedbump” resulting in decreased wave energy and erosion on the beach. The final Sites include shallow areas (less than 50 ft), where more material is expected to remain in the littoral system, thereby potentially decreasing potential beach erosion. The creation of a nearshore “speedbump” or berm would dissipate wave energy reaching the beach, but would increase the wave height at the berm, potentially creating an unacceptable safety risk. The same commenter asked whether the sandy dredged material could be used to restore an eroded beach rather than be disposed in the Sites. The sandy dredged material in the vicinity of these Sites is already found in abundance onshore in the nearby Oregon Dunes Recreation Area and onshore dune fields. No eroded beaches in the immediate vicinity of the Sites for which this material is needed have been identified at this time.

4. Environmental Statutory Review—National Environmental Policy Act (NEPA); Magnuson-Stevens Act (MSA); Marine Mammal Protection Act (MMPA); Coastal Zone Management Act (CZMA); Endangered Species Act (ESA); National Historic Preservation Act (NHPA)

a. NEPA

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major Federal actions significantly affecting the quality of the human environment. NEPA does not apply to EPA designations of ocean disposal sites under the MPRSA because the courts have exempted EPA’s actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. EPA has, by policy, determined that the preparation of non-EIS NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. EPA’s “Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents,” (Voluntary NEPA Policy), 63 FR 58045,

(October 29, 1998), sets out both the policy and procedures EPA uses when preparing such environmental review documents. EPA’s primary voluntary NEPA document for designating the Sites is the final *Siuslaw River, Oregon Ocean Dredged Material Disposal Sites Evaluation Study and Environmental Assessment, April 2010* (EA), jointly prepared by EPA and the Corps. The final EA and its Technical Appendices, which are part of the docket for this action, provided the threshold environmental review for designation of the two Sites. The information from the EA was used extensively in the discussion of the ocean dumping criteria.

b. MSA and MMPA

EPA prepared an essential fish habitat (EFH) assessment pursuant to Section 305(b), 16 U.S.C. 1855(b)(2), of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d, and submitted that assessment to the National Marine Fisheries Service in July, 2009. NMFS reviewed EPA’s EFH assessment and an Endangered Species Act (ESA) Biological Assessment and addendum thereto for purposes of the Marine Mammal Protection Act of 1972, as amended (MMPA), 16 U.S.C. 1361 to 1389. NMFS found that all potential adverse effects to ESA-listed marine mammals from EPA’s action to designate the Siuslaw Sites are discountable or insignificant. Those findings are documented in the Biological Opinion issued by NMFS to EPA on April 16, 2010. With respect to EFH, NMFS concluded that disposal of dredged material will affect turbidity and sedimentation levels and temporarily decrease prey and nursery resources for pelagic organisms within the Sites during disposal events. However, these effects are avoidable or can be offset or mitigated through further evaluation of the effects and further study of seasonal distribution, abundance and habitat use. These findings are documented in the “Magnuson-Stevens Fishery Conservation and Management Act” section of the Biological Opinion. NMFS included two “conservation recommendations” which encouraged an effects evaluation and a study on distribution, abundance and habitat use. EPA will respond in a separate written response to the NMFS recommendations.

c. CZMA

The Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. 1451 to 1465, requires Federal agencies to determine whether their actions will be

consistent with the enforceable policies of approved State programs. EPA prepared a consistency determination for the Oregon Ocean and Coastal Management Program (OCMP), the approved State program in Oregon, to meet the requirements of the CZMA and submitted that determination to the Oregon Department of Land Conservation and Development (DLCD) for review on January 19, 2010. On April 14, 2010, DLCD concurred in writing with EPA that the Site designations were consistent to the maximum extent practicable with the enforceable policies of the OCMP.

d. ESA

The Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with NMFS and the U.S. Fish and Wildlife Service (USFWS) to ensure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of any critical habitat. EPA prepared a Biological Assessment (BA) to assess the potential effects of designating the two Siuslaw River Sites on aquatic and wildlife species and submitted that BA to the NMFS and USFWS in July, 2009. Subsequent to preparation of the BA, EPA prepared an addendum to the BA, which was submitted in December, 2009. EPA found that site designation does not have a direct impact on any of the identified ESA species but also found that indirect impacts associated with reasonably foreseeable future disposal activities had to be considered. These indirect impacts included a short-term increase in suspended solids and turbidity in the water column when dredged material was disposed at the new Sites and an accumulation of material on the ocean floor when material was disposed at the Sites. EPA concluded that while its action may affect ESA-listed species, the action would not be likely to adversely affect ESA-listed species or critical habitat. On August 24, 2009, the USFWS concurred in writing with EPA’s finding that the Site designations would not likely adversely affect ESA-listed species or critical habitat.

NMFS issued a Biological Opinion (BO) on April 21, 2010. NMFS concluded that EPA’s action is not likely to jeopardize the continued existence of Oregon Coast (OC) coho salmon or southern green sturgeon (*Acipenser medirostris*), or to destroy or adversely modify critical habitat designated for green sturgeon. NMFS

also concluded that EPA's action would not likely adversely affect southern green sturgeon, eucaloon, eastern Stellar sea lions, blue whales, fin whales, humpback whales, Southern Resident Killer whales, marine turtle species, or critical habitat designated for southern green sturgeon or proposed for green leatherback turtles. NMFS concluded that dredging activities were not interrelated to EPA's action. However, NMFS did make a finding that disposal of dredged material at the Sites by the Corps, the anticipated primary user of the Sites, was interrelated to EPA's action.

NMFS then focused its effects analysis on the effects of disposal at the Sites. Looking solely to the effects of disposal of dredged material at the Sites by the Corps from the Corps' Siuslaw River Navigation project, NMFS estimated 19 juvenile OC coho salmon per year were likely to be injured or killed by Corps activities. NMFS acknowledged that EPA's action does not authorize or compel site use and will not itself result in disposal of dredged material. NMFS found that all incidental take will occur at the project-specific level. Based on this finding, NMFS did not find a basis to provide a take authorization in the current BO. NMFS stated that all take authorization will occur in subsequent site-specific consultations.

Finally NMFS included two discretionary conservation recommendations in the BO. The first recommendation suggested collaborating with NMFS and the Corps on a methodology to evaluate the effects of dredging and disposal on ESA-listed species. The second recommendation suggested undertaking a study to determine seasonal distribution, abundance, and habitat use of salmon, sturgeon, and marine turtles in the nearshore within and near the contour of designated ocean dredged material disposal sites. Such recommendations are purely advisory in nature. EPA appreciates that collaboration on a methodology could be helpful and supports NMFS and Corps efforts in such an endeavor. EPA also appreciates that the study recommended by NMFS could contribute to the scientific knowledge base but believes that NMFS, the expert Federal agency on seasonal distribution, abundance and habitat use would be better suited than EPA to carry out such a study.

e. NHPA

EPA initiated consultation with the State of Oregon's Historic Preservation Officer (SHPO) on November 24, 2009, to address the National Historic

Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a-2, which requires Federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register. EPA determined that no historic properties were affected, or would be affected, by designation of the Sites. EPA did not find any historic properties within the geographic area of the Sites. This determination was based on an extensive review of the National Register of Historic Districts in Oregon, the Oregon National Register list and an assessment of cultural resources near the Sites. The SHPO concurred by letter on December 10, 2009, that the project would have no effect on any known cultural resources.

4. Statutory and Executive Order Reviews

This rule finalizes the designation of two ocean dredged material disposal sites pursuant to Section 102 of the MPRSA. This action complies with applicable executive orders and statutory provisions as follows:

a. Executive Order 12866

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

b. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, because this rule does not establish or modify any information or recordkeeping requirements for the regulated community.

c. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town,

school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA determined that this action will not have a significant economic impact on small entities because the final rule will only have the effect of regulating the location of sites to be used for the disposal of dredged material in ocean waters. After considering the economic impacts of this final rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

d. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or Tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or Tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

e. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action.

f. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 because the designation of the two ocean dredged material disposal Sites will not have a direct effect on Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action. Although Executive Order 13175 does not apply to this action EPA consulted with Tribal

officials in the development of this action, particularly as the action related to potential impacts to historic or cultural resources.

g. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The action concerns the designation of two ocean dredged material disposal Sites and only has the effect of providing designated locations to use for ocean disposal of dredged material pursuant to Section 102(c) of the MPRSA.

h. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355) because it is not a “significant regulatory action” as defined under Executive Order 12866.

i. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action includes environmental monitoring and measurement as described in EPA’s SMMP. EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the designated Sites. The Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the SMMP.

j. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA assessed the overall protectiveness of designating the disposal Sites against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable.

k. Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to the House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective June 1, 2010.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: April 21, 2010.

Dennis J. McLerran,
Regional Administrator, Region 10.

■ For the reasons set out in the preamble, EPA amends chapter I, title

40 of the Code of Federal Regulations as follows:

PART 228—[AMENDED]

■ 1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by adding paragraph (n)(14) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(14) Siuslaw River, OR—North and South Dredged Material Disposal Sites
(i) North Siuslaw River Site

(A) *Location:*

44°01′31.03″ N, 124°10′12.92″ W,
44°01′49.39″ N, 124°10′02.85″ W,
44°01′31.97″ N, 124°09′01.86″ W,
44°01′13.45″ N, 124°09′11.41″ W.

(B) *Size:* Approximately 1.5 kilometers long and 0.6 kilometers wide.

(C) *Depth:* Ranges from approximately 9 to 35 meters.

(D) *Primary Use:* Dredged material.

(E) *Period of Use:* Continuing Use.

(F) *Restrictions:* (1) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13 from the Siuslaw River navigation channel and adjacent areas;

(2) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(3) Monitoring, as specified in the SMMP, is required.

(ii) South Siuslaw River Site

(A) *Location:*

44°00′46.72″ N, 124°10′26.55″ W,
44°01′06.41″ N, 124°10′24.45″ W,
44°01′04.12″ N, 124°09′43.52″ W,
44°00′44.45″ N, 124°09′45.63″ W.

(B) *Size:* Approximately 0.9 kilometers long and 0.6 kilometers wide.

(C) *Depth:* Ranges from approximately 24 to 38 meters.

(D) *Primary Use:* Dredged material.

(E) *Period of Use:* Continuing Use.

(F) *Restrictions:* (1) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13, from the Siuslaw River navigation channel and adjacent areas;

(2) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

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(3) Monitoring, as specified in the SMMP, is required.

* * * * *

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