



OCT 22 1991

Reply to
ATTN of: WD-128

David C. Beach, P.E.
Acting Chief, Navigation Branch
Portland District, Corps of Engineers
P.O. Box 2946
Portland, Oregon 97208-2946

ATTN: Eric Braun, Project Manager

Dear Mr. Beach:

Attached for your information and use are copies of recent **Federal Register** notices for three ocean dredged material disposal site (ODMDS) designations published by this Region. Environmental impact statements (EIS) for each site have been prepared and circulated. Multiple copies of the EISs have been provided to District staff previously.

The notice for the Chetco site is a final rule. The Chetco notice contains an error: the effective date of designation was October 19, 1991 rather than September. The other two notices for Rogue and Umpqua are draft rules. Comments on the draft EISs and rules are due to this office by mid-November. As in the past, we will be working with Portland District staff to respond to public comments. Barring unexpected, substantive comments, we anticipate that final EISs and rules on these sites will be released in early January 1992.

Pursuant to the regional agreement between Region 10 and North Pacific Division, final designation of an ODMDS triggers development of a site-specific management plan. This requirement has been suspended by mutual consent while the Corps of Engineers and Environmental Protection Agency develop national guidance manuals addressing site monitoring and management for ocean dumping. Presently, Region 10 and the District cooperatively manage ODMDSs under our jurisdiction and monitor each site periodically on an agreed-upon schedule based on actual use and best professional judgment.

If there are any questions regarding this letter or the attached notices, please contact me at (206) 552-1286 (FTS: 399-1286).

Sincerely,

A handwritten signature in black ink that reads "John Malek".

John Malek
Dredging and Ocean Dumping Coordinator

Enclosures

cc: EPA-Portland (000)
Corps-Portland (Siipola)
Corps-Portland (Rose)
Corps-North Pacific (Reese)
Corps-North Pacific (Redlinger)
Corps-North Pacific (Zammit)

(5) For each carbon absorber, the dates of and data from the monitoring required in § 61.139(d) and (e), the date and time of replacement of each carbon bed, the date of each exceedance of the maximum concentration point, and a brief description of the corrective action taken shall be recorded for at least 2 years. Also, the occurrences when the captured benzene or spent carbon are not handled as required in § 61.139(b)(1) and (2) shall be recorded for at least 2 years.

(6) For each vapor incinerator, the data from the monitoring required in § 61.139(f)(1), the dates of all periods of operation during which the parameter boundaries established during the most recent compliance test are exceeded, and a brief description of the corrective action taken shall be recorded for at least 2 years. A period of operation during which the parameter boundaries are exceeded is a 3-hour period of operation during which:

(i) For each vapor incinerator other than a catalytic incinerator, the average combustion temperature is more than 28°C (50°F) below the average combustion temperature during the most recent performance test.

(ii) For each catalytic incinerator, the average temperature of the vent stream immediately before the catalyst bed is more than 28°C (50°F) below the average temperature of the vent stream during the most recent performance test, or the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference across the catalyst bed during the most recent performance test.

(7) For each vapor incinerator, the following shall be recorded for at least 2 years:

(i) If subject to § 61.139(f)(2)(i), records of the flow indication, and of all periods when the vent stream is diverted from the vapor incinerator or has no flow rate.

(ii) If subject to § 61.139(f)(2)(ii), records of the flow indication, and of all periods when the vent stream is diverted from the vapor incinerator.

(iii) If subject to § 61.139(f)(2)(iii), records of the conditions found during each monthly inspection, and of each period when the car seal is broken, when the valve position is changed, or when maintenance on the bypass line valve is performed.

(j) The following reporting requirements are applicable to owners/operators of control devices subject to § 61.139:

(1) Compliance tests shall be reported as specified in § 61.13(f).

(2) The following information shall be reported on a quarterly basis. Two of

the quarterly reports shall be submitted as part of the semiannual reports required in § 61.138(f).

(i) For each carbon adsorber:

(A) The date and time of detection of each exceedance of the maximum concentration point and a brief description of the time and nature of the corrective action taken.

(B) The date of each time that the captured benzene or removed carbon was not handled as required in § 61.139(b)(1) and (2), and a brief description of the corrective action taken.

(C) The date of each determination of the maximum concentration point, as described in § 61.139(h), and a brief reason for the determination.

(ii) For each vapor incinerator, the date and duration of each exceedance of the boundary parameters recorded under § 61.139(i)(6) and a brief description of the corrective action taken.

(iii) For each vapor incinerator, the date and duration of each period specified as follows:

(A) Each period recorded under § 61.139(i)(7)(i) when the vent stream is diverted from the control device or has no flow rate;

(B) Each period recorded under § 61.139(i)(7)(ii) when the vent stream is diverted from the control device; and

(C) Each period recorded under § 61.139(i)(7)(iii) when the vent stream is diverted from the control device, when the car seal is broken, when the valve is unlocked, or when the valve position has changed.

(iv) For each vapor incinerator, the owner or operator shall specify the method of monitoring chosen under § 61.139(f)(2) in the first quarterly report. Any time the owner or operator changes that choice, he shall specify the change in the first quarterly report following the change.

(3) If, for a given quarter in which no semiannual report is due under § 61.138(f), there is no information to report under § 61.139(j)(2)(i)(A), (j)(2)(i)(B), (j)(2)(ii)(A), and (j)(2)(ii)(B), then the owner or operator may submit a statement to that effect along with the information to be reported under § 61.139(j)(2)(i)(C) in the next semiannual report, rather than submitting a report at the end of the quarter.

(Approved by the Office of Management and Budget under control number 2060-0185)

[FR Doc. 91-22621 Filed 9-18-91; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-4010-2]

Ocean Dumping; Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today is designating a dredged material disposal site located offshore of the mouth of the Chetco River, Oregon, for the disposal of dredged material removed from the federal navigation project at the Chetco River, Oregon, and for materials dredged during other actions authorized by Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA). This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable, adverse environmental impacts do not occur.

EFFECTIVE DATE: September 19, 1991.

FOR FURTHER INFORMATION CONTACT: John Malek, 206/553-1286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping site will be designated by publication in part 228. A list of "Approved and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last updated on February 2, 1990 (55 FR 3688 *et seq.*). That list established this site an interim site.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly

is
oc
Th
pr
loc
ma
dis
cas
issi
T
to
dre
for
Pac
Che
The
inte
mou
desi
the
in
cc
This
suite
term
safet
term
predi
The
to
rec
Corp
feder
at
the
dispo
other
with
dispo
evalu
using
EPA
of
the
disapp
The
proces
with

affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this, 39 FR 16186 (May 7, 1974).

EPA prepared a draft and final EIS entitled "Chetco, Oregon, Dredged Material Disposal Site (ODMDS) Designation". Three letters of comment were submitted, which EPA assessed and responded to in the final EIS. As a separate but concurrent action, a notice of availability of the final EIS was published in the Federal Register. Anyone desiring a copy of the final EIS may obtain one from the address given above.

The action discussed in the final EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal of dredged material. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The final EIS provides documentation to support designation of an ocean dredged material disposal site (ODMDS) for continuing use to be located in the Pacific Ocean off the mouth of the Chetco River, in the State of Oregon. The designated ODMDS is the existing interim site located one mile south of the mouth of the Chetco River. Site designation studies were conducted by the Portland District, Corps of Engineers, in consultation with EPA, Region 10. This ODMDS is located in the area best suited for dredged material disposal in terms of environmental and navigational safety factors. No significant or long-term adverse environmental effects are predicted to result from the designation. The designated ODMDS would continue to receive sediments dredged by the Corps of Engineers to maintain the federally authorized navigation project at the Chetco River, Oregon, and for disposal of materials dredged during other actions authorized in accordance with section 103 of MPRSA. Before any disposal may occur, a specific evaluation by the Corps must be made using EPA's ocean dumping criteria. EPA makes an independent evaluation of the proposal and has the right to disapprove the actual disposal.

The study and final designation process were conducted in accordance with the Act, the Ocean Dumping

Regulations, and other applicable Federal environmental legislation.

C. Site Description

On April 10, 1990, EPA proposed designation of the Chetco ODMDS for the continuing disposal of dredged material. The public comment period for the proposed rule and draft EIS were concurrent and closed on May 25, 1990. Three letters of comment were received commenting on the draft EIS. No comments were received specifically referencing the proposed rule. These comments were responded to in the final EIS. The comments requested clarification and were not considered substantive. No one raised serious concerns regarding designation of management of the Chetco site. During the time between the draft EIS and the final EIS, additional species were added to the list of threatened and endangered species and reauthorization of the Coastal Zone Management Act (CZMA) occurred. Consultation with the National Marine Fisheries Service on the newly listed species resulted in a determination that designation and use of the ODMDS would not affect any listed species which is described in the final EIS. Additional coordination also occurred with the coastal zone management agency for the State of Oregon regarding federal consistency.

The proposed site is located approximately 1 mile offshore of the Chetco River entrance and occupies an area of about 74 acres (0.09 square nautical miles). Water depths within the area average 21 meters. The coordinates of the site (NAD 83) are as follows:

42°01'55" N.	124°16'37" W.
42°01'55" N.	124°16'13" W.
42°01'37" N.	124°16'13" W.
and	
42°01'37" N.	124°16'37" W.

If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be

designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The site, as discussed below under the eleven specific factors, is acceptable under the five general criteria, except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the EIS, that a site off the Continental Shelf is not feasible and that no environmental benefits would be obtained by selecting such a site instead of that proposed in this action. Historical use at the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the proposed site are reviewed below in terms of the eleven factors.

1. *Geographical position, depth of water, bottom topography, and distance from coast.* 40 CFR 228.6(a)(1). The site is 50 to 70 feet (15-21 m) of water, approximately 1.0 nautical mile offshore of the entrance to the Chetco River.

Coordinates are:

42°01'55" N.	124°16'37" W.
42°01'55" N.	124°16'13" W.
42°01'37" N.	124°16'13" W.
and	
42°01'37" N.	124°16'37" W.

The site's center line is on a 270 degree azimuth from the mouth of the Chetco River. Bottom topography within the site is varied.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult and juvenile phases.* 40 CFR 228.6(a)(2).

Aquatic resources at and near the site are described in detail in Appendix A of the EIS. The existing disposal site is located in the nearshore area and many nearshore pelagic organisms occur in the water column over the site. These include zooplankton (copepods, euphausiids, pteropods, and chaetognaths) and meroplankton (fish, crab and other invertebrate larvae). These organisms generally display seasonable changes in abundance. Since they are present over most of the coast, those from Chetco are not critical to the overall coastal population. Based on evidence from previous zooplankton and larval fish studies, it appears that there will be no impacts to organisms in the water column. The site is also adjacent to neritic reefs and haystack rocks. These reefs are unusual features along the coast and support a variety of aquatic organisms, including bull kelp (*Nerocystis luteana*) and its associated

fish and invertebrate community. Recently, the Oregon Department of Fish and Wildlife (ODFW) has identified a squid spawning area offshore of the disposal site.

Based on the analysis of benthic samples collected from the Chetco disposal site and the adjacent areas to the north and south, the disposal site contains a benthic fauna characteristic of nearshore, sandy, wave-influenced regions common along the coasts of the Pacific Northwest. The abundance and density of the infaunal community was found to be low at the disposal site, typical of shallow, nearshore, high energy habitats. The fauna is dominated by polychaete annelids (marine worms), small crustaceans (amphipods and cumaceans), molluscs (clams and snails), and echinoderms (sand dollars). The particular species identified from the disposal site are adapted to high energy environments and are able to withstand large sediment fluxes.

The disposal site is in an area where concentrations of common murre, gulls and other marine foraging species occur. Large concentrations have been observed shoreward of the interim site extending to and within the confines of the jetties. Concentrations undoubtedly occur at the site periodically. Concentrations of shorebirds, gulls, waterfowl, and other species occur in the Chetco estuary or on adjacent beaches.

Portland District requested an endangered species listing for the ODMDS from U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) as part of their coordination of the Site Evaluation Report. At that time only the brown pelican and the gray whale were listed. Based on previous biological assessments conducted along the Oregon coast regarding impacts to the brown pelican and the gray whale, it was concluded that no impact to either species is anticipated from the proposed designation and use. This information was presented in the draft EIS. Subsequently, the Corps was informed by the NMFS that they had revised their list of threatened/endangered species. Species listed by the NMFS included the gray, humpback, blue, fin, sei, right, and sperm whales; northern (Steller) sea lions; leatherback sea turtles, and Sacramento River winter run chinook salmon. A biological assessment was prepared addressing the newly listed species and revising previous biological assessment on the gray whale. The assessment concluded that no impact to any of the species is anticipated by designation and use of the Chetco

ODMDS. This information is presented in appendix F of the EIS, including a letter of concurrence from NMFS.

In summary, the proposed ODMDS contains living resources that could be affected by disposal activities. Evaluation of past disposal activities do not indicate that unacceptable adverse effects to these resources have occurred. There is no evidence that past disposal has seriously impacted the resources in proximity to the interim site. Accordingly, this site is considered an acceptable site for designation.

3. Location in relation to beaches and other amenity areas. 40 CFR 228.6(a)(3). Due to depth of disposal operations and the presence of the south reef, there is little possibility of beach nourishment by natural onshore movement of dredged material from the existing site. Summer wave conditions may transport some sediment from the site shoreward and south, but the limiting depth for this movement is probably 40 to 50 feet (12-15 m) mean lower low water. The majority of disposal material is deeper than 50 feet, so shoreward transport of dredged material is unlikely.

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). The proposed disposal site will continue to receive dredged materials transported by either government or private contractor hopper dredges. The current dredges available for use at Chetco have hopper capacities from 800 to 1,500 cubic yards. Barges have a greater capacity, up to 4,000 cubic yards, but have not been routinely used at this project in the past. This would be the range in volumes of dredged material disposed of in any one dredging/disposal cycle. The approximately 48,000 cubic yards estimated to be removed annually from the Chetco project can be placed at the site in one dredging season by any combination of private and government plants. The dredges would be under power and moving while disposing. This allows the ship to maintain steerage.

The material dredged consists of medium to fine grain marine sands and coarser materials, including gravels and cobbles (Appendix C of the EIS provides detailed grain size information for the disposal area and the dredged area). These materials are predominant throughout the entire project length, RM 0 to 2.8. The materials are very similar to bottom materials at the site and the entire nearshore area. All sediments destined for ocean disposal are subject to specific evaluation, including independent review by EPA. Past

sediments discharged at the interim site have typically met the exclusion criteria (40 CFR 227.13(b)).

5. Feasibility of surveillance and monitoring. 40 CFR 228.6(a)(5). The proximity of the disposal site to shore facilities creates an ideal situation for shore-based monitoring of disposal activities. There is, routinely, a Coast Guard vessel patrolling entrance and nearshore areas, so surveillance can also be accomplished by surface vessel.

Following designation of ODMDS, EPA, Region 10, and the Corps District develop a site management plan which addresses the need for post-disposal monitoring. All Oregon ODMDS are periodically monitored jointly by the Corps and EPA already. Several research groups are available in the area to perform any required work. The work could be performed from small surface research vessels at a reasonable cost.

6. Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction, and velocity. 40 CFR 228.6(a)(6). The sediments dredged from the Chetco River entrance are predominantly marine sands and fluvial gravels. These are generally similar to sediments at the disposal site. Under winter wave conditions common to this part of the Pacific Coast, the sand component is highly mobile to a depth of 90-120 feet (27-37 m). Summer wave conditions commonly mobilize sands to a depth of 40-60 feet (12-18 m). Studies at Coos Bay show wave-generated currents can move this size sediment over 60 percent of the time during summer and winter and over 50 percent of the time during spring and fall. While waves are responsible for resuspending bottom sediments, including dredged materials, it is the long-term mean current that determines the extent and direction of dispersal. While some winter storms would move gravels at the disposal site, these coarse sediments do not migrate very far away from the site and probably stay in the general area where they have been disposed.

The nearshore mean circulation is alongshore, closely paralleling the bathymetric contours, with a lesser onshore-offshore component. Circulation patterns are variable with season and weather conditions. In winter, the general shelf circulation is to the north, although short periods of southerly flow occur. Coos Bay studies suggest that offshore flow is more common in winter. This would indicate a tendency for sediment in the disposal site to move north and west under winter circulation conditions. During the

remainder of the year, flow is southerly with lower current velocities than in winter. Periodic changes in summer wind direction lead to episodes of upwelling in which near-shore ocean water transport causes a compensating near-bottom onshore flow. These upwelling events occur between April and July and continue for several days at a time. Near-bottom flow in the vicinity of the disposal site during summer should be generally southerly with onshore/offshore flow varying due to local wind conditions.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects). 40 CFR 228.6(a)(7). Appendix B of the EIS gives annual volumes of materials disposed for the last 10 years. On the average, 48,000 cubic yards have been annually disposed. Future volumes are expected to be similar; although probably showing some increase as other disposal options are exhausted.

Sidescan sonar of the disposal site and adjacent areas shows an area of coarse sand/gravel covering about half of the site and extending north and west of the site up to 1200 feet (31 m), both offshore and toward the river entrance. This is most likely an accumulation of the coarser dredged material fractions that have remained in the same general area since disposal. There are no bathymetric anomalies associated with this deposit (no mounding). The feature will persist as long as coarse sediments are disposed in this area. This has not caused adverse impacts on habitat, however, since the overall area is characterized by a wide range of bottom types.

No biological information has been found to exist regarding the interim site prior to any disposal having occurred. It is expected that no significant impacts to the interim site have occurred beyond the yearly, site-specific effects of past disposals. Oregon Department of Fish and Wildlife biologists have recommended that the site be left at its present location.

Sediments disposed in the past have been physically similar to the sample collected in close proximity to the disposal site, and have met the exclusion criteria. Elutriate analysis performed in the past show minimal contaminant releases during this simulated disposal operation with receiving water from the interim disposal site.

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 EIS identified no

legitimate uses of the ocean that would be interfered with as a result of designation of an ODMDS or its use. The following paragraphs summarize conclusions:

Commercial Fishing: Two active commercial fisheries occur in the inshore area, salmon trolling and Dungeness crab fishing. The length of the salmon fishing season varies each year depending upon the established quota; however, it normally extends from July to September. During this period, the potential exists for conflicts between the dredge and fishing boats. The Coast Guard and ODFW indicated that they were unaware that this had ever been a problem. The Dungeness crab season is from December 1 to August 15 each year; however, most of the fishing is done prior to June and usually ends early because of the increase in soft shell crabs in the catch which are not marketable. As a result, most crab fishing occurs outside of the normal dredging season and it is unlikely that a conflict would result. ODFW has identified a potential squid fishery offshore from the existing site. No fishery exists at present, but stocks may be sufficient to support a fishery if a market develops. There are no existing commercial fish or shellfish aquaculture operations that would be impacted by continued use of the existing disposal site.

Recreational Fishing: Recreational fishing opportunities are extensive and varied in the Chetco area. The small boat harbor is used extensively in the summer by recreational fishermen. Private party and charter boat recreational fishing for both salmon and rock and reef fish occur. The salmon fishing season coincides with the commercial season and extends from early summer until the quota for the area is reached. Recreational fishing boats have a potential for conflicting with dredging operations; however, none have been reported to date. It is unlikely that any significant conflict will develop in the near future.

Offshore Mining Operations: All considerations for offshore mining and oil/gas leases are in the development stages. The disposal site is not expected to interfere with any of the proposed operations, as most exploration programs are scheduled for the outer continental shelf.

Navigation: No conflicts with commercial navigation traffic have been reported and none are expected, due to the light traffic in the Chetco River area. This situation is not expected to change substantially. Rock pinnacles that are navigation hazards occur nearshore and south of the ODMDS. Avoidance of

these submerged and emergent pinnacles by navigation traffic and the dredges was considered during final positioning of the ODMDS

Scientific: There are no identified scientific study locations that could be impacted by the disposal site.

Coastal Zone Management: In reviewing proposed ODMDS for consistency with the Coastal Zone Management (CZM) plan, they are evaluated against Oregon's Statewide Goal 19 (Ocean Resources). Local comprehensive land use plans for the Chetco area have been approved by the State of Oregon. These plans discuss ocean disposal and recognize the need to provide for suitable offshore sites for disposal of dredged materials. The requirements of the ocean dumping regulations are broad enough to meet the needs of Goal 19. Therefore, the designation of this site for ocean disposal of dredged material following the ocean dumping regulations would be consistent with Goal 19 and the State of Oregon's Coastal Zone Management Plan.

Pursuant to an EPA, Office of Water, policy memorandum dated October 23, 1989, EPA has evaluated the proposed site designation for consistency with the State's approved coastal zone management program. The State of Oregon has concurred with this determination (appendix F of final EIS). In addition, as part of the NEPA process, EPA has consulted with the State of Oregon regarding the effects of dumping at the site on the State coastal zone. EPA has taken the State's comments into account in preparing the final EIS for the site, in determining whether the proposed site should be designated, and in determining whether restrictions or limitations should be placed on use of the site.

9. The existing water quality and ecology of the site as determined by available data or by trend assessment of baseline surveys. 40 CFR 228.6(a)(9). Water quality off the mouth of the Chetco River is considered excellent, typical of unpolluted seawater along the Pacific Northwest coast. Water and sediment quality analyses conducted at several Oregon ODMDS are discussed in appendix C of the EIS. These studies have not shown adverse water quality impacts from ocean disposal of entrance shoal sands. The ecology of the area is discussed in appendix A in the EIS. The offshore area within and adjacent to the ODMDS is a typical northwest Pacific mobile sand community, shifting to the north and southeast to a neritic reef system. The sand communities are ubiquitous to nearshore ocean habitats

off Oregon. The site is sufficiently removed from rock and kelp habitats so that they would not be impacted by ocean disposal. Designation and use of the proposed ODMDS is not expected to have significant ecological consequences.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* 40 CFR 228.6(a)(10). It is highly unlikely that any nuisance species could be established at the disposal site as a result of dredging and disposal activities.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.* 40 CFR 228.6(a)(11). Neritic reefs, common off the southern Oregon coast, comprise a unique ecological feature. They support a wide variety of invertebrates and fish species unique to rocky areas, as well as bull whip kelp communities. These areas are sheltered from wave action and, when receiving nutrients from both the ocean and the estuaries, are unusually productive. The ODMDS is removed from these areas.

A cultural resource literature search of the Chetco River study area did not document any wrecked vessels in the project area. This is consistent with the fact that the Chetco River historically has not been a major shipping point on the coast. Most export commodities, especially timber products, have been transported by rail and barge rather than by lumber schooner or ship. Wrecks could have occurred in the area that have not yet been discovered. However, based on previous investigations in other Oregon coastal settings (Yaquina Bay, Coquille, Columbia River Mouth), beaches, surf zones, neritic reefs, and shallow waters are the most likely areas for shipwreck occurrence. The ODMDS is removed from these areas. Also, there were no indications of wrecks from the side scan sonar survey completed during geophysical investigations.

No cultural resources impacts are expected to result from designation of the Chetco ODMDS. Existing information, along with supplementary side scan sonar data, has been reviewed by the Oregon State Historic Preservation Officer (SHPO). The SHPO letter of concurrence is included in the final EIS.

E. Action

The EIS concludes that the Chetco River site may be appropriately designated for use. The proposed site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the Chetco River ODMDS as an EPA approved Ocean

Dumping Site is being published as final rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region 10.

It should be emphasized that, if an ocean dumping site is designated, such a designation does not constitute or imply EPA's approval of actual disposal of material at sea. Before ocean dumping or dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping, it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of \$100 million or more or cause any other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: September 10, 1991.

Dana A. Rasmussen,

Regional Administrator for Region 10.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

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

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

2. Section 228.12 is amended by removing the entry for "Chetco River Entrance" from the Dredged Material

Site listing in paragraph (a)(3), and by adding paragraph (b)(85) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

(b) * * *

(85) Chetco River—Region 10.
Location: 42°01'55"N., 124°16'37"W.; 42°01'55"N., 124°16'13"W.; 42°01'37"N., 124°16'13"W.; and 42°01'37"N., 124°16'37"W. (NAD 83).

Size: .09 square nautical miles.

Depth: 21 meters (average).

Primary Use: Dredged material.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material determined to be suitable for unconfined disposal from the Chetco Estuary and River and adjacent areas.

[FR Doc. 91-22623 Filed 9-18-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6881

[MT-930-4214-10; MTM 067221]

Withdrawal of National Forest System Lands for Protection of Recreational Values; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 95 acres of National Forest System lands from mining for a period of 20 years to protect recreational values. The lands have been and remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: September 19, 1991.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the mining laws (30 U.S.C., Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect three Forest Service recreation areas:

Therefore, the Commission has directed its staff to examine the feasibility of an action plan which would develop model legislation and identify key groups and organizations to help promote ATV safety at the state level of government.

4. *Replacements or refunds.* Before the Commission can order replacement or refunds for products, the Commission must provide an opportunity for a hearing and find, among other things, that the product contains a "defect" that creates a substantial risk of injury to the public. If the Commission finds that a defective product presents a substantial risk of injury to the public and that the following relief is in the public interest, the Commission could order that a seller of the product take whichever of the following actions the seller elects: (1) Repair the defect, (2) replace the product with a nondefective product, or (3) refund the purchase price, less a reasonable allowance for use. *Id.* While the ATV distributors could elect one of the three remedies, a refund of the purchase price, less the statutorily required allowance for use, would probably be the most feasible of the alternatives to implement.

With regard to four-wheel ATVs, the same reasons why the Commission could not find from the currently-available information that a standard or ban was warranted would make it difficult to take action against four wheelers under section 15 of the CPSA. Although it might be easier to show that three-wheel ATVs contain a defect, the Commission cannot at this time conclude that an order for refunds of three-wheel ATVs would be in the public interest.

Under the consent decrees, new three-wheel ATVs have not been sold since 1987. Despite the fact that safety concerns about three-wheel ATVs have been well publicized, there is an active market for used three-wheel ATVs. Owners of three-wheel ATVs who want to sell them can do so on the used market. Thus, a refund may have little or no effect in removing three-wheel ATVs from the market.

Furthermore, based on the Commission's experience, an order for refunds, etc., would most likely result in protracted litigation. Due to the expected length of the process, and due to the projected life of the product, relatively few three-wheel ATVs would likely be in use at its conclusion. Even if finally achieved, the Commission sees no point in pursuing a such remedy when it would have little or no beneficial effect on the safety of ATV riders.

G. Termination of Rulemaking

For the reasons stated above, the Commission concludes that currently available evidence does not establish that there is an unreasonable risk associated with the new four-wheel ATVs that are now being sold. Further, the Commission has no reason to believe that information demonstrating the existence of an unreasonably risk will become available in the foreseeable future. Accordingly, the Commission cannot conclude that a rule is reasonably necessary to eliminate or adequately reduce the risks of injury identified in the ANPR. Therefore, the Commission concludes that a proposed rule is not in the public interest. Since there is no prospect for proposing a rule in the near future, the Commission hereby terminates the rulemaking proceeding that was commenced by the publication of the 1985 ANPR. In taking this action, the Commission specifically is not relying on a voluntary standard under the procedure set forth in section 9(b)(2) of the CPSA, 15 U.S.C. 2058(b)(2).

H. Future Commission Actions on ATVS

Although rulemaking is not appropriate for addressing the risks associated with ATVs, ATV riding remains a potentially hazardous activity. It is essential that ATV riders be aware of the risks involved so they can exercise appropriate precautions. The information provided to purchasers by the actions required by the consent decrees is essential toward this end. So is compliance with the age recommendations established by the consent decrees. Therefore, the Commission will continue, on a priority basis, to monitor compliance with the terms of the consent decrees. Such action could include undercover surveys of ATV dealers to determine compliance with the user age recommendations, dealer inspections to determine compliance with consumer information and training requirements, and evaluations of distributor training programs. If subsequent information indicates that the actions taken under the consent decrees are insufficient, the Commission may reconsider whether rulemaking is an appropriate response to ATV hazards.

In addition, the authority available to the states to address riding of ATVs by children is much stronger than that available to the Commission. Therefore, the Commission's staff is evaluating a possible program that could provide the governments of selected states (those without comprehensive ATV safety legislation) with ATV background and technical information, injury data, and

model legislation. Such model legislation might address such areas as minimum driver age and helmet usage.

The Commission's staff will also continue its efforts to advise ATV users and potential users of the dangers associated with ATVs.

Dated: September 9, 1991.

Sadye E. Dunn,

Secretary of the Commission.

[FR Doc. 91-21999 Filed 9-17-91; 8:45 am]

BILLING CODE 6355-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3997-9]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located offshore of Rogue River, Oregon, for the disposal of dredged material removed from the federal navigation project at the Rogue River, Oregon, and for materials dredged during other actions authorized by, and in accordance with, section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA). This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable, adverse environmental impacts do not occur.

DATES: Comments must be received on or before **November 4, 1991**.

ADDRESSES: Comments on this proposed rule should be sent to: John Malek, Dredging and Ocean Dumping Coordinator, Region 10, WD-128.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), room 2904 (rear), 401 M Street Southwest, Washington, DC.

EPA Region 10, 1200 Sixth Avenue Seattle, Washington.

U.S. Army Corps of Engineers, North Pacific Division, U.S. Custom House, 220 Northwest Eighth, Portland, Oregon.

U.S. Army Corps of Engineers, Portland District, 319 Southwest Pine, Portland Oregon.

FOR FURTHER INFORMATION CONTACT:
John Malek, 206/553-1286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1403 *et seq.* ("The Act"), gives the Administrator the authority to designate sites when ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping site will be designated by publication in part 228. A list of "Approved and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last updated on February 2, 1990 (55 FR 3688 *et seq.*). That list established this site as an interim site. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. 39 FR 16186 (May 7, 1974).

EPA has prepared a draft EIS entitled "Rogue, Oregon, Dredged Material Disposal Site Designation" (EPA 910/9-91-028). As a separate but concurrent action, a notice of availability of the draft EIS for public review and comment was published in the Federal Register. It is planned that the public review periods for the draft EIS and this proposed rule overlap. However, comments will be accepted on either the draft EIS or proposed rule until the end

of the latest 45-day period. Comments will be responded to in the final EIS and rule. Anyone desiring a copy of the EIS may obtain one from the address given above.

The action discussed in the draft EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of designation is to provide an environmentally acceptable location for ocean disposal of dredged material. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The draft EIS provides documentation to support final designation of an ocean dredged material disposal site (ODMDS) for continuing use to be located approximately two nautical miles (nmi) southwest from the mouth of the Rogue River. Site designation studies were conducted by the Portland District, Corps of Engineers, in consultation with EPA, Region 10. The ODMDS site proposed for designation is located in the area best suited for dredged material disposal in terms of environmental and navigational safety factors. No significant or long-term adverse environmental effects are predicted to result from the designation. The designated ODMDS would continue to receive sediments dredged by the Corps of Engineers to maintain the federally authorized navigation project at the Rogue River, Oregon, and for disposal of material dredged during other actions authorized in accordance with section 103 of the MPRSA. Before any disposal may occur, a specific evaluation by the Corps must be made using EPA's ocean dumping criteria. EPA makes an independent evaluation of the proposal and has the right to disapprove the actual disposal.

The study and final designation process are being conducted in accordance with the MPRSA, the Ocean Dumping Regulations, and other applicable federal environmental legislation.

C. Proposed Site Description

The proposed site is located approximately two nmi offshore of the mouth of the Rogue River, Oregon, and occupies an area of about 116 acres (.14 square nautical miles). Water depths within the area average 60 feet (18 meters). The coordinates of the site are as follows (NAD 83):

42° 24' 15" N 124° 26' 52" W
42° 24' 23" N 124° 26' 39" W
42° 23' 39" N 124° 27' 17" W
42° 23' 51" N 124° 27' 30" W

If at any time disposal operations at the site cause unacceptable adverse

impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The proposed site, as discussed below under the eleven specific factors, is acceptable under the five general criteria, except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the draft EIS, that a site off the Continental Shelf is not feasible and that no environmental benefits would be obtained by selecting such a site instead of that proposed in this action. Historical use at the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the proposed site are reviewed below in terms of the eleven factors.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast.

40 CFR 228.6(a)(1). The site lies in 52 to 90 feet (16 to 27.5 m) of water, approximately 2.0 nmi southwest from the entrance to the Rogue River.

Coordinates are (NAD 83):

42° 24' 15" N 124° 26' 52" W
42° 24' 23" N 124° 26' 39" W
42° 23' 39" N 124° 27' 17" W
42° 23' 51" N 124° 27' 30" W

The center of the site is on a 216 degree azimuth from the river mouth. Appendix B of the draft EIS contains a detailed discussion of the bottom topography of the site. In general, the interim site lies on bottom contours sloping at a rate of 8/1000 feet to the WSW.

Now adjusted

Should be changed to Rogue River, Ocean...

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Area of Living Resources in Adult and Juvenile Phases.

40 CFR 228.6(a)(2). Aquatic resources of the site are described in detail in appendix A of the draft EIS. The existing disposal site is located in the nearshore area, and the overlying waters contain many nearshore pelagic organisms which occur in the water column. These include zooplankton such as copepods, euphausiids, pteropods, chaetognaths and meroplankton (fish, crab and other invertebrate larvae). These organisms generally display seasonal changes in abundance. Since there present over most of the coast, those from Rogue are not critical to the overall coastal population. Based on evidence from previous zooplankton and larval fish studies, it appears that there will be no impacts to organisms in the water column.

Based on the analysis of benthic samples collected at and around the Rogue disposal site, the disposal area contains a benthic fauna characteristic of nearshore, sandy, wave-influenced regions common along the coasts of the Pacific Northwest. The sand-dwelling forms tolerate or require high sediment flux. Accordingly, continued use of the site for disposal is not expected to harm, but may enhance, these organisms.

The dominant commercially and recreationally important macroinvertebrate species in the inshore coastal area are shellfish, Dungeness crab and squid. The nearshore area off the Rogue River supports a variety of pelagic and demersal fish species. Pelagic species include anadromous salmon, steelhead, cutthroat trout, and shad that migrate through the estuaries to upriver spawning areas. Other pelagic species include the Pacific herring, anchovy, surf smelt, and sea perch. Demersal species are present in the area and include a number of flatfish which occur primarily over the sandflats. English sole, sandsole, and starry flounder spawn in the inshore coastal area in the summer and juveniles of these (as well as other) marine species may rear in the estuary.

The disposal site is in an area where numerous species of birds and marine mammals occur in the pelagic nearshore and shoreline habitats in and surrounding the proposed disposal site.

Portland District requested an endangered species listing for the ODMDS from U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) as part of their coordination of the Site Evaluation Report. At that time only the brown

pelican and the gray whale were listed. Based on previous biological assessments conducted along the Oregon coast regarding impacts to the brown pelican and the gray whale, it was concluded that no impact to either species is anticipated from the proposed designation and use. A letter of concurrence from the NMFS concluded that no impacts to the brown pelican or gray whale would be anticipated. This information was presented to EPA in the final Site Evaluation Report. Subsequently, the Corps and EPA were informed by the NMFS that they have revised their list of threatened/endangered species. Species listed by the NMFS now include the gray, humpback, blue, fin, sei, right, and sperm whales; northern (Steller) sea lions; leatherback sea turtles; and Sacramento River winter run chinook salmon. A biological assessment was prepared by the Corps addressing the newly listed species and revising previous biological assessment on the gray whale. The assessment concluded that no impact to any of the species is anticipated by designation and use of ODMDS. Based on this and previous biological assessments conducted along the Oregon coast, no impacts to any threatened or endangered species are anticipated as a result of designation and continued use of the Rogue ODMDS. EPA is requesting that the NMFS and USFWS review this determination during public review of this draft EIS.

In summary, the proposed ODMDS contains living resources that could be affected by disposal activities. However, evaluation of past disposal activities do not indicate that unacceptable adverse effects to these resources have occurred. In the absence of any indication that the resources in proximity to the interim site have been impacted, this site is considered acceptable for final ODMDS designation.

3. Location in Relation to Beaches and Other Amenity Areas

40 CFR 228.6(a)(3). The northwest corner of the proposed site is just over 2,000 yards (1828 m) from the end of the south jetty. The inshore corner of the site lies approximately 1,500 yards (1372m) offshore.

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). The disposal site will receive dredged materials transported by either government or private contractor hopper dredges or ocean-going barges. The dredges available for use at the Rogue River

have hopper capacities of 800 to 1,500 cubic yards. Barges have a greater capacity, up to 4,000 cubic yards. Thus, no more than 4,000 cubic yards would be disposed at any one time. For steorage purposes, the ships would be under power and moving while disposing. This would increase dispersion. Annual dredging volume averages just under 50,000 cubic yards and has ranged as high as 142,000 cubic yards. Disposal details are listed in the draft EIS.

The material to be dredged consists of medium to coarse sands. Appendices B and D of the draft EIS give results of sediment analysis performed on these materials. These materials are considered to meet the exclusion criteria from further testing as noted in 40 CFR 227.13. Periodic re-evaluation of sediment characteristics by the Corps and EPA occur as part of our management responsibilities.

5. Feasibility of Surveillance and Monitoring

40 CFR 228.6(a)(5). The proximity of the interim disposal site to shore facilities creates an ideal situation for shore-based monitoring of disposal activities. Routinely, a Coast Guard vessel patrols the entrance and nearshore areas, so surveillance can also be accomplished by surface vessel.

Following formal designation of an ODMDS, EPA and the Corps will develop a site management plan which will address post-disposal monitoring. All Oregon ODMDS are periodically monitored jointly by the Corps and EPA already. Several research groups are available in the area to perform any required work. The work could be performed from small surface research vessels at a reasonable cost.

6. Disposal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction, and Velocity

40 CFR 228.6(a)(6). The material dredged from the Rogue River navigation channel is medium to coarse sand. For the range of depths and grain sizes found at the Rogue ODMDS, there is nearly constant mobilization of bottom sediment due to wave action. This wave-induced motion is not responsible for net transport, but, once in motion, bottom sediments can be affected by other forces such as gravity or directional currents.

The nearshore circulation patterns at Rogue are still unclear. Their complexity is perhaps due to the rocky reefs in the northern part of the Zone of Siting Feasibility (ZSF). The prevailing currents at the depth of the disposal site

seem to be towards the north. Although the Rogue River must deliver a large sediment load, the bottom contours suggest a rapid distribution offshore. While there is shoreline accretion 1-2 miles to the north, the shoreline to the south seems to be in equilibrium, suggesting littoral transport to the south is balanced by offshore transport. Disposal of dredged material at the ODMDS does not appear to be a significant contribution to coastal processes.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects)

40 CFR 228.6(a)(7). Due to coarser sediments being deposited on finer ones at the disposal site, theoretically there is a potential for mounding to occur. Bathymetric surveys, however, have shown no signs of such a mound forming from past disposal. Periodic monitoring will continue to evaluate this potential problem.

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 22.6(a)(8). The draft EIS identified no legitimate uses of the ocean that would be interfered with as a result of designation of and ODMDS or its use. The following paragraphs summarize conclusions:

Commercial Fishing: Two existing commercial fisheries occur in the inshore area: salmon trawling and Dungeness crab fishing. The length of the salmon fishing season varies each year depending upon the established quota; however, it normally extends from July to September. During this period, the potential exists for conflicts between the dredge and fishing boats. The Coast Guard and ODFW indicated that they are unaware of any instance where this has ever been a problem. The Dungeness crab season is from 1 December to 15 August; however, most of the fishing is done prior to June and usually ends early because of the increase in unmarketable soft shell crabs in the catch. As a result, most crab fishing is done outside of the normal dredging season and it is unlikely that a conflict would result. There are no commercial fish or shellfish aquaculture operations that would currently be impacted by use of the existing disposal site.

Recreational Fishing: Salmon fishing is done by charter and private boats and occurs in the same areas as the commercial fishing, but generally closer to shore. Bottom fishing is done along

the reef areas to the northwest by private charter boat. Recreational fishing boats have a potential for conflict with dredging operations, however, no conflicts have been reported to date. It is unlikely that any significant conflict will develop in the near future.

Offshore Mining Operations: Although offshore deposits of heavy minerals containing magnetite, gold, platinum, chromite, and ilmenite are present offshore, no mining is currently taking place. No oil/gas wells have been drilled off this part of the Oregon Coast and no development is expected in the future. All considerations for offshore mining and oil/gas leases remain in the development stages. Designation and use of the disposal site is not expected to interfere with any of the proposed operations.

Navigation: No conflicts with commercial navigation traffic have been recorded in the more than 60-year history of hoper dredging activity. The probable reason for this is the light commercial traffic at Rogue. Navigation hazards do exist within the ZSF and should be avoided when considering possible disposal site locations. Ships cannot navigate in the northwest part of the ZSF due to the exposed reefs.

Scientific: No scientific studies have been identified within the ZSF that could be adversely effected by the disposal activity.

Coastal Zone Management: Local comprehensive land use plans for the Rogue area have been acknowledged and approved by the State of Oregon. These plans discuss ocean disposal and recognize the need to provide for suitable offshore sites for disposal of dredged materials. In addition, this site evaluation document establishes that no significant effects on ocean, estuarine, or shoreland resources are anticipated, as Goal 19 of the Oregon Statewide Planning Goals and Guidelines requires.

During coordination of the Site Evaluation Report, the Corps made a determination of consistency with Coastal Zone Management plans. EPA also concludes that designation of the proposed site is consistent to the maximum extent practicable with the state coastal management program. A letter of concurrence with that finding was provided by the Oregon Department of Land Conservation and Development, the state coastal zone management office. Their letter of concurrence is included in the draft EIS. The letter notes that the Department may reexamine the consistency issue if new information becomes available.

9. The Existing Water Quality and Ecology of the site as Determined by Available Data or by Trend Assessment of Baseline Survey

40 CFR 28.6(a)(9). Only limited water and sediment quality testing has been done, the details of which are provided in appendix D of the draft EIS. Sediments from the navigation channel are medium to coarse sands containing some gravel, with some fine sands present at the upper end of the project next to the boat basin. Elutriate testing was conducted in 1981 which showed no release of harmful concentrations of contaminants. These materials are considered to meet the exclusion criteria from further testing as noted in 40 CFR 227.13. Periodic re-evaluation of sediment characteristics by the Corps and EPA occur as part of our management responsibilities.

A general discussion of the ecology of the area based on available information is presented in appendix A of the draft EIS. The ODMDS and near vicinity is typical of a Pacific Northwest mobile sand community, shifting to the reef system to the north. Monitoring studies have not shown any adverse effects from historic disposal.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site

40 CFR 228.6(a)(10). It is highly unlikely that any nuisance species would be transported to the disposal site. Nuisance species are considered to be any undesirable organism not previously existing at the disposal site and either transported or attracted there because of the disposal of dredged materials which are capable of establishing themselves there.

11. Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Features of Historical Importance

40 CFR 228.6(a)(11). The neritic reefs off the Oregon Coast comprise a unique ecological feature. They support a wide variety of invertebrates and fish species, as well as bull whip kelp communities. These areas are sheltered from wave action and receive nutrients from both the ocean and the estuaries and are, thus, usually highly productive. The disposal site is located approximately 1.0 nmi SSE from the reefs. Since the disposal material is a clean sand that settles quickly, any movement of the disposed sand into the reef area would occur through natural littoral transport. Since the disposal quantity is relatively small compared to the longshore transport, disposal at the current site

should not adversely affect the aquatic community in the reef areas.

In spite of the heavy ship traffic supplying the gold fields in the late 1800s, there do not appear to be any shipwrecks of cultural significance that would be affected by continued use of the disposal site. Potential shipwreck area were evaluated in the draft EIS. A letter by the Oregon State Historic Preservation Officer (SHOP) concurs that no significant cultural resources will be affected by the proposed designation and use.

E. Proposed Action

The EIS concluded that the proposed site may be appropriately designated for use. The proposed site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the Rogue as an EPA approved ocean Dumping Site is being published as proposed rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region 10.

It should be emphasized that, if an ocean dumping site is designated, such a designation does not constitute or imply EPA's approval of actual disposal of material at sea. Before ocean dumping or dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory flexibility Act, EPA is required to perform a Regulatory flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of \$100 million or more or cause any other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements

subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dana A. Rasmussen,

Regional Administrator for Region 10.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

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 228.12 is amended by removing the entry for "Rogue River Entrance" from the Dredged Material Site listing in paragraph (a)(3) and by adding paragraph (b)(92) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

(b) * * *

(92) Rogue River Entrance—Region 10. location: 42° 24' 15" N, 124° 26' 52" W; 42° 24' 23" N, 124° 26' 39" W; 42° 23' 39" N, 124° 27' 17" W; 42° 23' 51" N, 124° 27' 30" W.

Size: .14 square nautical miles.

Depth: 18 meters (average).

Primary Use Dredged material.

Period of Use: Continuing use.

Restrictions: Disposal shall be limited to dredged material determined to be suitable for unconfined disposal from the Rogue Estuary and River and adjacent areas.

[FR Doc. 91-22480 Filed 9-17-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-264, RM-7791]

Radio Broadcasting Services; Bismarck, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Christopher G. Abbott seeking the allotment of Channel 248C to Bismarck, North Dakota, as the community's sixth local commercial FM service. Channel 248C can be allotted to Bismarck in compliance with the Commission's

minimum distance separation requirements with a site restriction of 3.4 kilometers (2.1 miles) southeast to avoid a short-spacing to vacant but applied-for Channel 250A at Beulah, North Dakota, at coordinates North Latitude 46-47-35 and West Longitude 100-48-18.

DATES: Comments must be filed on or before November 4, 1991, and reply comments on or before November 19, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Christopher G. Abbott, 1910 Santa Gertrudis Drive, Bismarck, North Dakota 58501 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-264, adopted August 30, 1991, and released September 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-22456 Filed 9-17-91; 8:45 am]

BILLING CODE 6712-01-M

reduction beyond the established baseline;

• AECF approvals shall be submitted to CARB and EPA as source-specific revisions to the SIP.

Rule 108 is applicable to an existing stationary source electing to comply by means of an AECF and subject to one of the following SCAQMD VOC rules:

- 1104—Wood Flat Stock Coating Operations,
- 1106—Marine Coating Operations,
- 1107—Coating of Metal Parts and Products,
- 1115—Motor Vehicle Assembly Line Coating Operations,
- 1124—Aerospace Assembly and Component Coating Operations,
- 1125—Metal Container, Closure, and Coil Coating Operations,
- 1128—Paper, Fabric, and Film Coating Operations,
- 1130—Graphic Arts,
- 1136—Wood Products Coatings,
- 1145—Plastic, Rubber, and Glass Coatings,
- 1151—Motor Vehicle and Mobile Equipment Non-assembly Line Coating Operations,
- 1164—Semiconductor Manufacturing,
- 1168—Control of Volatile Organic Compound Emissions from Adhesive Application.

These thirteen source categories represent a variety of surface coating operations, which emit VOCs. Prior to adoption of rule 108, the SCAQMD staff estimated that an undetermined number of sources representing six rule categories (1107, 1124, 1125, 1130, 1136, and 1145) had previously applied for and were operating using an AECF. Upon adoption of rule 108, applicable sources were required to reapply for an AECF under the revised criteria if they intended to continue using an AECF as a method of compliance. While today's action proposes to approve rule 108, EPA is not taking action in this notice on the individual rules listed above. Revisions to these rules and applicable AECF submittals will be addressed in future rulemaking actions. At that time, EPA will consider the applicability, if any, of the additional requirements in the ETPS for state assurances.

Rule 67.1 is applicable to an existing stationary source electing to comply by means of an AECF and subject to one of the following SDAPCD VOC rules:

- 67.3—Coating of Metal Parts and Products,
- 67.4—Metal Container, Metal Closure and Metal Coil Coating Operations,
- 67.5—Paper, Film and Fabric Coating Operations,
- 67.9—Aerospace Coating Operations,
- 67.11—Wood Products Coating Operations,
- 67.16—Graphic Arts Operations,
- 67.18—Marine Coating Operations.

These seven source categories represent a variety of surface coating operations which emit VOCs. Prior to adoption of rule 67.1, the SDAPCD staff estimated that three sources (all regulated under rule 67.9) were

operating under an AECF. Upon adoption of rule 67.1, applicable sources were required to reapply for an AECF under the revised criteria if they intended to continue using an AECF as a method of compliance. While today's action proposes to approve rule 67.1, EPA is not taking action in this notice on the individual rules listed above. Revisions to these rules and applicable AECF submittals will be addressed in future rulemaking actions. At that time, EPA will consider the applicability, if any, of the additional requirements in the ETPS for State assurances.

EPA Evaluation

EPA has evaluated SCAQMD Rule 108 and SDAPCD Rule 67.1 for consistency with the 1990 Clean Air Act Amendments (CAAA), 40 CFR part 51, and EPA policy. Specifically, this SIP revision complies with the requirements under: Section 110 (1) regarding non-interference with attainment and reasonable further progress; section 182(a)(2)(A) regarding the correction of RACT deficiencies; and section 193 which insures no relaxation of control requirements unless equivalent or greater reductions are achieved. SCAQMD Rule 108 and SDAPCD Rule 67.1 were also evaluated against criteria in the ETPS and EPA guidance as discussed in Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to appendix D of November 24, 1987 Federal Register; May 25, 1988. EPA has determined rules 108 and 67.1 to be consistent with the aforementioned criteria and, therefore, will improve the integrity of the AECFs and emissions reductions obtained under a variety of VOC regulations. Rules 108 and 67.1 will also correct a major appendix D deficiency for a number of SCAQMD and SDAPCD VOC rules, as required by EPA's 1988 SIP Call and section 182(A)(2)(A) of the CAAA. Accordingly, EPA proposes to approve Rules 108 and 67.1 as a revision to the California SIP because they improve and strengthen the SIP.

EPA Proposed Action

Under section 110 and part D of the CAA, EPA is proposing to approve rules 108 and 67.1 because they are consistent with the 1990 Clean Air Act Amendments, 40 CFR part 51, and EPA Policy. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to

relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989 the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642

Dated: September 28, 1991.

Nora L. McGee,

Acting Regional Administrator.

[FR Doc. 91-23707 Filed 10-1-91; 8:45 am]

BILLING CODE 6560-60-M

40 CFR Part 228

[FRL-4017-8]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a dredged material disposal site located in the Pacific Ocean offshore of the mouth of the Umpqua River, Oregon, for the disposal of dredged material removed from the federal navigation project in the Umpqua River and estuary, and for materials dredged during other actions authorized by, and in accordance with, section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA). This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable, adverse environmental impacts do not occur.

DATES: Comments must be received on or before November 18, 1991.

ADDRESSES: Comments on this proposed rule should be sent to: John Malek, Dredging and Ocean Dumping Coordinator, Region 10, WD-128.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), room 2904 (rear), 401 M Street Southwest, Washington, DC.

EPA Region 10, 1200 Sixth Avenue, Seattle, Washington.

U.S. Army Corps of Engineers, North Pacific Division, U.S. Custom House, 220 Northwest Eighth, Portland, Oregon.

U.S. Army Corps of Engineers, Portland District, 319 Southwest Pine, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Malek, 206/553-1286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator the authority to designate sites where ocean dumping may be permitted. On October 1, 1988, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter I, subchapter H, § 228.4) state that ocean dumping site will be designated by publication in part 228. A list of "Approved and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last updated on February 2, 1990, (55 FR 3688 *et seq.*). That list established an interim site in the vicinity of the Umpqua River entrance. Realignment of the approach channel to the estuary placed it directly over the interim site. An adjusted site was identified to avoid navigational conflicts and is being proposed for formal designation. The adjusted site is located 2,800 feet (853 m) north of the interim site in slightly deeper water. This site designation is being published as proposed rulemaking in accordance with section 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. (39 FR 16186) (May 7, 1974).

EPA has prepared a draft EIS entitled "Umpqua, Oregon, Dredged Material Disposal Site Designation". As a separate but concurrent action, a notice of availability of the draft EIS for public review and comment has been published in the *Federal Register*. It is planned that the public review periods for the draft EIS and this proposed rule overlap. However, comments will be accepted on either the draft EIS or proposed rule until the end of the latest 45-day period. Comments will be responded to in the final EIS and rule. Anyone desiring a copy of the EIS may obtain one from the address given above.

The action discussed in the draft EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal of dredged material. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The draft EIS provides information to support designation of an ocean dredged material disposal site (ODMDS) in the Pacific Ocean off the mouth of the Umpqua River in the State of Oregon. The proposed ODMDS is an adjusted location lying north of an existing, interim-designated site. Site designation studies were conducted by the Portland District, Corps of Engineers, in consultation with EPA Region 10. The adjusted ODMDS was judged to be a safer location than the interim site.

The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Proposed Site Description

The proposed site is located approximately one nautical mile offshore of the mouth of the Umpqua River and occupies an area of about 116 acres (.14 square nautical miles). Water depths within the site average 105 feet (32 m). The coordinates of the site are as follows (NAD 83):

43°40'34" N., 124°14'26" W.,

43°40'34" N., 124°13'50" W.,

43°40'20" N., 124°13'50" W.,

43°40'20" N., 124°14'26" W.

If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The proposed site, as discussed below under the eleven specific factors, is acceptable under the five general criteria, except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the draft EIS, that a site off the Continental Shelf is not feasible and that no environmental benefits would be obtained by selecting such a site instead of that proposed in this action. Historical use at the existing interim site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The adjusted site proposed for designation is in the same general area as the interim site and is not anticipated that its use would incur significantly different or greater adverse effects.

The characteristics of the existing interim site and the adjusted site being proposed for designation are reviewed below in terms of the eleven factors.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance from Coast

40 CFR 228.6(a)(1). The interim site, or areas in the same vicinity, have been used by Portland District since 1924. The site received its interim designation from EPA in 1977 (40 CFR 228.12); it was entitled "Umpqua River Entrance" and was given the following corner coordinates (NAD 83):
 43°40'06" N., 124°14'22" W.,
 43°40'06" N., 124°13'46" W.,
 43°39'52" N., 124°13'46" W.,
 43°39'52" N., 124°14'22" W.
 The approximate location of this site is one nautical mile from the Umpqua River entrance, with dimensions of 3600 feet by 1400 feet (1097 m by 427 m) and an average depth of 90 feet (27.5 m). The site occupies approximately 116 acres (.14 square nmi).

The U.S. Coast Guard raised some concern with the location of the interim site with respect to the marked approach channel. The approach channel was re-aligned in response to changes made in the entrance jetties in 1982. As a result, the approach channel became aligned directly over the interim ODMDS. Potential conflicts could occur between the dredge or tug-and-barge activity and local ships during disposal. Additionally, navigational problems could develop if mounding were to occur at the interim disposal site. As a result, an adjusted location was defined and is proposed for final designation. It has the following coordinates (NAD 83):

43°40'34" N., 124°14'26" W.,
 43°40'34" N., 124°13'50" W.,
 43°40'20" N., 124°13'50" W.,
 43°40'20" N., 124°14'26" W.

The adjusted site is located 2,800 feet (853 m) to the north of the interim site in slightly deeper water, with an average depth of 105 feet (32 m). Its dimensions are identical to the interim site, occupying approximately 116 acres (.14 square nmi). The center line of both sites is on a 270 degree azimuth.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult and Juvenile Phases.

40 CFR 228.6(a)(2). Aquatic resources of the site are described in detail in the draft EIS, appendix A. The interim and adjusted sites are located in the nearshore area, and contain an abundance of aquatic life characteristic of nearshore, sandy wave-influenced regions common along the coast of the Pacific Northwest. The infaunal community is dominated by gammarid amphipods and polychaete worms. The species of invertebrates inhabiting the

study area are the more motile psammnetic (sand-dwelling) forms which tolerate or require high sediment flux. Accordingly, use of the adjusted site for disposal is not expected to harm, but may enhance, these organisms. The dominant commercially and recreationally important macroinvertebrate species in the area are shellfish, Dungeness crab, and squid. The nearshore area off the Umpqua River supports a variety of pelagic and demersal fish species. Pelagic species include anadromous salmon, steelhead, cutthroat trout, and shad that migrate through the estuaries to upriver spawning areas. Other pelagic species include the Pacific herring, anchovy, surf smelt, and sea perch. Numerous species of birds and marine mammals occur in the pelagic nearshore and shoreline habitats.

Portland District requested an endangered species listing for the ODMDS from U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) as part of their coordination of the Site Evaluation Report. At that time only the brown pelican and the gray whale were listed. Based on previous biological assessments conducted along the Oregon coast, it was concluded that no impacts to either species is anticipated from the proposed designation and use. A letter of concurrence from the NMFS concluded that no impacts to the brown pelican or gray whale would be anticipated. This information was presented to EPA in the final Site Evaluation Report. Subsequently, the Corps and EPA were informed by the NMFS that they have revised their list of threatened/endangered species. Species listed by the NMFS now include the gray, humpback, blue, fin, sei, right, and sperm whales; northern (Steller) sea lions; leatherback sea turtles; and Sacramento River winter run chinook salmon. A biological assessment was prepared by the Corps addressing the newly listed species and revision previous biological assessment on the gray whale. The assessment concluded that no impact to any of the species is anticipated by designation and use of ODMDS. Based on this and previous biological assessments conducted along the Oregon coast, EPA has concluded that no impacts to any threatened or endangered species would result from designation and use of the Umpqua ODMDS.

In summary, both the interim and adjusted ODMDS contain living resources that could be affected by disposal activities. Evaluation of past disposal activities do not indicate that unacceptable adverse effects to these

resources have occurred. Based on resource considerations, both the interim and adjusted ODMDS are considered acceptable for ODMDS designation.

3. Location in Relation to Beaches and Other Amenity Areas

40 CFR 228.6(a)(3). The interim disposal site is 850 feet (260 m) from the end of the jetties and 1,900 feet (580 m) from the nearest beach. The adjusted site is 1,200 feet (365 m) from the end of the jetties and 2,200 feet (670 m) from the nearest beach. There are no rocks or pinnacles in the vicinity of either site.

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). The disposal site will receive dredged materials transported by either government or private contractor hopper dredges or ocean-going barges. The dredges typically available for use at the Umpqua project have hopper capacities of 800 to 1,500 cy. Barges have a greater capacity, up to 4,000 cy. Thus, no more than 4,000 cy would be disposed at any one time. For steorage purposes, the ships would be under power and moving while disposing. This would increase dispersion. To date, over 14.5 million cy have been disposed at sea, over 3.5 million cy of which were disposed in the interim ODMDS. Between the years 1968 and 1988, total annual dredging volume averaged 560,000 cy. Most of that material (average 312,000 cy) was disposed within the estuary. However, in the past five years, estuarine disposal has averaged just 180,000 cy. This trend toward greater reliance on ocean disposal is expected to continue.

Material dredged for offshore disposal comes from bars forming at the mouth of the Umpqua. They consist primarily of marine sand transported into the river's mouth. The sand is medium to fine grained, and is slightly coarser than the native offshore sediments. The sand has been excluded in previous disposal activities from further biological and chemical testing as discussed in 40 CFR 227.13b. Fine grain materials placed in the final site would receive chemical and biological testing, if appropriate, as outlined in the joint EPA/Corps national testing framework, supplemented by regional practices and best professional judgment. Periodic re-evaluation of sediment characteristics by the Corps and EPA occur as part of our management responsibilities.

5. Feasibility of Surveillance and Monitoring

40 CFR 228.6(a)(5). The proximity of the interim disposal site to shore facilities creates an ideal situation for shore-based monitoring of disposal activities. Surveillance can also be accomplished by surface vessel.

Following formal designation of an ODMDS, EPA and the Corps will develop a site management plan which will address post-disposal monitoring. All Oregon ODMDS are periodically monitored jointly by the Corps and EPA already. Several research groups are available in the area to perform any required work. The work could be performed from small surface research vessels at a reasonable cost.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction, and Velocity

40 CFR 228.6(a)(6). The sediments dredged from the Umpqua River entrance are predominantly marine sands and fluvial gravels. Although the Umpqua River delivers a large sediment load, the bottom contours suggest a rapid distribution away from the river mouth. The beaches seem to be in equilibrium, suggesting that littoral transport is in balance. From the bottom current records, there appears to be a slight bias in transport to the south year-round, with some northward transport in summer only. The more probable sediment transport system at the disposal site is a general movement southward and deeper from the site, with a northward movement at greater depths. The constantly varying river outflow combines with tidal flows to produce a highly variable influence on the nearshore circulation.

Sediment movement in the littoral zone consists of two mechanisms depending upon the size of the sediment. Anything finer than sand size is carried in suspension in the water and is relatively quickly removed far offshore. The almost total lack of silts and clays within the Umpqua area attests to the efficiency of this mechanism. Sediments sand size or coarser may be occasionally suspended by wave action near the bottom, and are moved by bottom currents or directly as bedload. Tidal, wind and wave forces contribute to generating bottom currents which act in relation to the sediment grain size and water depth to produce sediment transport.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects)

40 CFR 228.6(a)(7). Average annual volume of dredged material disposed offshore in the interim ODMDS from 1968 to 1988 was 147,349 cubic yards (cy). The maximum and minimum quantities of sandy material were 313,632 and 500 cy respectively. In appendix B of the draft EIS, table B-1 gives the volumes of material disposed of in the last 21 years. The adjusted site has not received any dredged material.

Detailed offshore bathymetry at the mouth of the Umpqua River shows a bulge in bottom contours between approximately -60 (-18 m) and -120 feet (-37 m) at the location of the interim ODMDS. The bulge is probably related to the combination of river discharge and ebb tide currents, which create an "ebb delta" of nearshore material. Ebb deltas are common in many areas of the world. The crest of the ebb delta runs through the interim disposal site. Historically there has not been mounding within the site, nor is there aggradation specific to the site. A post dumping survey in August of 1988 indicates some recent mounding within the interim site. The recent mounding may be attributed to above average disposal during the 1988 dredge season and mild wave climate during the winter of 1987-88. A general seaward movement of contours between 1984 and 1985 may be the result of seasonal variation or the effect of changes induced by El Nino.

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 draft EIS identified no legitimate uses of the ocean that would be interfered with as a result of designation of an ODMDS or its use. The following paragraphs summarize conclusions:

Commercial and Recreational Fishing: Major commercial and recreational fisheries occur in and around the disposal site. Coho and chinook salmon are taken in a nearshore commercial troll fishery. Salmon support a good recreational fishery centered off the Umpqua bar. Both commercial and recreational fishing seasons generally begin in June and run through October, subject to catch quotas set by ODFW. During this period, the potential exists for conflicts between the dredge and fishing boats. The Coast Guard and ODFW indicated that they are unaware

of any instance where this has ever been a problem.

The recreational Dungeness crab fishery takes place mainly within Winchester Bay. Some commercial crabbing occurs within close proximity to the two disposal sites. Mussels and shrimp support a small commercial fishery. Mussels are collected in nearshore areas, and shrimp are taken in deep waters well away from the disposal area.

Offshore Mining Operations: Although deposits of heavy minerals containing magnetite, gold, platinum, chromite, and ilmenite are present offshore along the Oregon coast, no metallic mineral deposits in the immediate area are known. There have been no exploratory wells drilled offshore near the mouth of the Umpqua. Exploratory wells near Reedsport (on land) did not result in production. In any case it is unlikely that production facilities would be placed near the river's mouth of the ODMDS due to the hazard to navigation that would be created.

Navigation: No conflicts with commercial navigation traffic have been recorded in the more than 60-year history of hopper dredging activity. The potential for serious conflict at the interim site was created when the navigation marked approach channel was realigned directly over the site. Conflicts at the adjusted site are not expected due to the light traffic in the Umpqua River area and the site's location away from the marked approach channel. This situation is not expected to change substantially.

Scientific: There are no known transects or other scientific study locations that could be impacted by the disposal site.

Coastal Zone Management: Local comprehensive land use plans for the Umpqua area have been acknowledged and approved by the State of Oregon. These plans discuss ocean disposal and recognize the need to provide for suitable offshore sites for disposal of dredged materials. In addition, this site evaluation document establishes that no significant effects on ocean, estuarine, or shoreland resources are anticipated, as Goal 19 of the Oregon Statewide Planning Goals and Guideline requires.

During coordination of the Site Evaluation Report, the Corps made a determination of consistency with Coastal Zone Management plans. EPA also concludes that designation of the proposed site is consistent to the maximum extent practicable with the state coastal management program. A letter of concurrence with that finding

was provided by the Oregon Department of Land Conservation and Development, the state coastal zone management office. Their letter of concurrence is included in the draft EIS. The letter notes that the Department may reexamine the consistency issue if new information becomes available.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment of Baseline Surveys

40 CFR 228.6(a)(9). Water quality off the mouth of the Umpqua River is considered excellent, typical of unpolluted seawater along the Pacific Northwest coast. No short of long term impacts to water quality are expected to be associated with disposal operations. The ODMDS and near vicinity is typical of a Pacific Northwest mobile sand community. Monitoring studies have not shown any significant adverse effects from historic disposal. Studies indicate a depressed density of benthic infauna within the interim disposal site, but no impact to densities outside of the site relative to the reference stations. Reasons for depression in the density may be due to the coincidence of the dredging activity and the benthic recruitment season. If disposal at the interim site is discontinued, the benthic densities should recover to normal levels. Shifting disposal activities to the adjusted site may result in a similar depression at the site.

10. Potentially for the Development or Recruitment of Nuisance Species in the Disposal Site

40 CFR 228.6(a)(10). It is highly unlikely that any nuisance species would be transported to the disposal site. Nuisance species are considered to be any undesirable organism not previously existing at the disposal site and either transported or attracted there because of the disposal of dredged materials which are capable of establishing themselves there.

In the past, all materials dredged and transported to the interim ODMDS have been noncontaminated marine sands similar to sediments from the interim disposal site. While there are no immediate plans for the disposal of fine grain material, the possibility exists in the future. It is anticipated that the quantity of fine grain material would be small and infrequent (less than 40,000 cy every four years). Any fine grain material disposed in the site would be subject to specific evaluation by the Corps and EPA as previously noted. The high energy wave and current environment would tend to rapidly disperse fine sediments. Therefore, it is

highly unlikely that any nuisance species could be established at the disposal site since habitat or contaminant levels are unlikely to change over the long term.

11. Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Features of Historical Importance

40 CFR 228.6(a)(11). The cultural resource literature search of the Umpqua River study area is described in appendix E of the EIS. Due to the proximity of the disposal site, the resource that has the greatest potential for impact by use of the ODMDS is shipwrecks. The most likely areas for shipwrecks in the project area are in the shallow breaker zone and the Umpqua River mouth. Any wreck within these areas would experience damage from the high energy wave climate. Deeper water would buffer the high energy wave climate, thus shipwrecks in deeper water could have less damage. The shipwrecks in deeper water tend to have more cultural value, but tend to be fewer than shipwrecks nearshore. Historical records indicate there are not any shipwrecks within the interim or adjusted ODMDS.

Wrecks could occur in the project area that have not yet been discovered. However, based on previous investigations in other Oregon coastal settings (Yaquina Bay, Coquille, Mouth of the Columbia River, etc.), beaches, surf zones, and shallow waters are the most likely areas for shipwreck occurrence. The Umpqua ODMDS is removed from these areas. A letter by the Oregon State Historic Preservation Officer (SHPO) concurs that no significant cultural resources will be affected by the proposed designation and use. The letter is included in the EIS.

E. Proposed Action

The EIS concluded that the proposed site may be appropriately designated for use. The proposed site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the Umpqua River ODMDS as an EPA approved Ocean Dumping Site is being published as proposed rulemaking. Management of this site will be delegated to the Regional Administration of EPA Region 10.

It should be emphasized that, if an ocean dumping site is designated, such a designation does not constitute or imply EPA's approval of actual disposal of material at sea. Before ocean dumping or dredged material at the site may commence, the Corps of Engineers must

evaluate a permit applications according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of \$100 million or more or cause any other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: September 23, 1991.

Dana A. Rasmussen,

Regional Administrator for Region 10.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as set forth below.

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 228.12 is amended by removing the entry for "Umpqua River Entrance" from the Dredged Material Site Listing in paragraph (a)(3), and by adding paragraph (b)(93) to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

(b) * * *

(93) Umpqua River—Region 10.

Location: 43°40'34" N., 124°14'26" W.;
43°40'34" N., 124°13'50" W.; 43°40'20" N.,
124°13'50" W.; 43°40'20" N.; 124°14'26" W.
(NAD 83)

Size: 0.14 square nautical miles
Depth: 32 meters (average)
Primary Use: Dredged material.
Period of Use: Continuing use.
Restrictions: Disposal shall be limited to
dredged material determined to be suitable
for unconfined disposal from the Umpqua
Estuary and River and adjacent areas.

[FR Doc. 91-23612 Filed 10-1-91; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 764

[OPTS-62089; FRL-3767-71]

RIN 2070-AC17

Proposed Ban on Acrylamide and N-methylolacrylamide Grouts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would prohibit the manufacture, importation, distribution in commerce, and use of acrylamide grout; and would prohibit all uses of N-methylolacrylamide (NMA) grout, except its use for sewer line repair. The proposed rule would also prohibit, after a period of 3 years, the manufacture, importation, and distribution in commerce of NMA grout for any purpose, and the use of NMA grout for sewer line repair. The proposed action is necessary to protect grouters from the neurotoxic and carcinogenic risks arising from significant dermal and inhalation exposures to these grouts encountered with their use, even while wearing personal protective equipment. EPA is issuing the proposed rule under the authority of sections 6(a) and 8(a) of the Toxic Substances Control Act (TSCA). This proposed rule is based on a determination that use of acrylamide and NMA grouts presents an unreasonable risk of injury to human health, and that pollution prevention through a ban on their manufacture, importation, distribution in commerce, and use, and appropriate labeling of the grouts, is necessary to protect adequately against these risks. EPA estimates that a 3-year delay of the ban on NMA grout use for sewer line repair will substantially ease the potential economic burden on the sewer sealing industry, without posing an unreasonable risk to workers during that 3-year period.

DATES: Written comments in response to this proposed rule must be received on

or before December 2, 1991. If persons request time for oral comment, EPA will hold an informal hearing in Washington, DC. The exact date, time, and location of the hearing will be made available by telephoning the Environmental Assistance Division at the telephone number listed under FOR FURTHER INFORMATION CONTACT. Written requests to participate in the informal hearing must be received by December 2, 1991. For further information regarding the hearing, see Unit XII of this preamble.

ADDRESSES: Submit written comments, in triplicate, identified by the docket number OPTS-62089, by mail to: TSCA Public Docket Office (TS-793), rm. NE-G004, Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. For further information regarding the submission of comments containing confidential business information, see Unit X of this preamble.

FOR FURTHER INFORMATION CONTACT: David J. Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Authority

If EPA determines that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance, or that any combination of such activities, presents or will present an unreasonable risk of injury to human health or the environment, section 6(a) of TSCA authorizes EPA to apply one or more of the following requirements to such substance, to the extent necessary to protect against the risk: prohibit or limit the manufacture, processing, or distribution in commerce; require labeling; prohibit or otherwise regulate any manner or method of commercial use or disposal; and require that chemical manufacturers notify the public of unreasonable risk associated with a chemical substance. Under TSCA, importation is included in the definition of manufacture. TSCA section 6 requires EPA to apply the least burdensome requirements to protect adequately against the risk.

This proposed rule will affect both private grouters and State and municipal workers engaged in grouting operations. Because acrylamide and NMA grouts have been sold as commercial products, grouting operations using these products

are considered commercial activities, subject to section 6(a)(5) of TSCA.

EPA is also proposing limited recordkeeping and reporting requirements under TSCA section 8(a). Section 8(a) authorizes EPA to require persons who manufacture or process chemical substances and mixtures to maintain records and submit reports for many purposes, including records and reports necessary for effective enforcement of TSCA requirements.

II. Background

1. *Acrylamide grout.* Acrylamide grout was first introduced into U.S. commerce in 1955. It quickly became popular because of its low cost and superior performance properties compared to other grouts then on the market. In the 1970's, demand for acrylamide grout grew as a result of an increase in sewer repair (rehabilitation) activities. In 1978, production of acrylamide grout in the U.S. ceased because of the producer's concern for its potential risk to human health. In response, users of acrylamide grout either obtained acrylamide grout from foreign sources, switched to other chemical grouts, or reduced/stopped grouting. Acrylamide grout continues to be the chemical grout selected most often for use in sewer operations. About 650,000 pounds of acrylamide grout were consumed in 1989, roughly 43 percent of the total chemical grout usage.

Acrylamide grouts generally consist of a 19:1 mixture of acrylamide and a crosslinking agent. When preparing the grout for use, water and small amounts of other chemicals are added. These chemicals include catalysts, activators or accelerators, and inhibitors. When the acrylamide grout polymerizes or "gels," it solidifies into a stiff gel that is impervious to water. In gel form, the grout contains less than 0.05 percent free acrylamide.

Grouters typically inject acrylamide grout in and around concrete, rock, and soil to increase the absolute strength of the mass and to restrict the flow of water through a structure or the grouted area. Approximately 87 percent of all acrylamide grout is used in sewer rehabilitation: 76 percent in sewer line repair and 11 percent in manhole sealing. Sewer rehabilitation helps minimize the demands on sewage treatment capacity and wastewater treatment costs by reducing the inflow of rainwater and nonpoint run-off and the infiltration of groundwater through cracks, holes, and joints in the sewer system.

In sewer rehabilitation of lateral and main lines, leaking pipes and joints are sealed remotely using equipment that