Ocean Dumping; De-Designation of Ocean Dredged Material Disposal Site and Designation of New Site Near Coos Bay, OR

[Federal Register: May 11, 2006 (Volume 71, Number 91)]
[Rules and Regulations]
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From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr11my06-4]

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 228
[FRL-8167-7]

Ocean Dumping; De-Designation of Ocean Dredged Material Disposal Site and Designation of New Site Near Coos Bay, OR

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is finalizing its proposal to de-designate an existing ocean dredged material disposal site and designate a new ocean dredged material disposal site located offshore of Coos Bay, Oregon. EPA's proposed rule was published March 31, 2000. The new site is needed for long-term use by authorized Coos Bay navigation projects and may be available for use by persons meeting the criteria for ocean disposal of dredged material. The de-designation of the existing site allows for its incorporation into the newly designated site. This will allow EPA to manage the entire new site to avoid adverse mounding conditions and will ensure site capacity is sufficient for total volumes of dredged material. The newly designated site is necessary for current and future dredged material ocean disposal needs and will be subject to ongoing monitoring and management to ensure continued protection of the marine environment so as to mitigate adverse impacts on the environment to the greatest extent practicable.

DATES: This final rule will be effective on June 12, 2006.

ADDRESSES: EPA has established a docket for this final action under Docket ID No. EPA-R10-OW-2006-0409. All documents in the docket are listed on the http://www.regulations.gov EXIT disclaimer Web site. The documents are also available for inspection at the Region 10 Library, 10th Floor, 1200

Sixth Avenue, Seattle, Washington 98101. For access to the documents at the Region 10 Library, contact the Region 10 Library Reference Desk at (206) 553-1289, between 9 a.m. to 11:30 a.m. and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, for an appointment or contact John Malek, U.S. EPA, Region 10, 1200 Sixth Avenue, Mail Stop ETPA-083, e-mail: malek.john@epa.gov, phone number (206) 553-1286.

FOR FURTHER INFORMATION CONTACT: John Malek, Ocean Dumping Coordinator, U.S. Environmental Protection Agency, Region 10 (ETPA-083), 1200 Sixth Avenue, Seattle, WA 98101-1128, telephone (206) 553-1286, e-mail: malek.john@epa.gov.

SUPPLEMENTARY INFORMATION:

1. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval by EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 to 1414, (``MPRSA''). EPA's action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Coos Bay, Oregon. Currently, the U.S. Army Corps of Engineers (Corps) and other persons with permits to use designated sites at Coos Bay would be most impacted by this final action. Potentially affected categories and persons include:

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

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

2. Background

a. History of Disposal Site Designations Off of Coos Bay, OR

Pursuant to the MPRSA, the Administrator of EPA, as delegated to the Regional Administrator, designated three disposal sites (Site E, original Site F and Site H) off of Coos Bay, Oregon in 1986. The original Site F began to experience mounding that rendered it unable to accept the total volume of dredged material generated on an annual basis. In 1989, with EPA approval, the size of the original Site F was

roughly doubled by the Corps exercising its Section 103 authority to select disposal sites under the MPRSA. In 1995, EPA approved a second Corps expansion of the original Site F. On March 31, 2000, EPA published in the Federal Register its proposal to de-designate the original Site F and designate a new Site F that consisted of the 103 configured Site F and the original Site F (65 FR 17240). A forty-five day public comment period, which closed on May 14, 2000, was provided. EPA did not receive comments from the public on the proposed rule. The coordinates of the proposed Site F (North American Datum 1983; NAD 83) were:

43[deg]22'58'' N, 124[deg]19'32'' W
43[deg]21'50'' N, 124[deg]20'29'' W
43[deg]22'52'' N, 124[deg]23'28'' W
43[deg]23'59'' N, 124[deg]22'31'' W

The proposed site was rectangular with an east-west side length dimension of 14,500 feet and a north-south side length dimension of 8,000 feet. Figure 1 is a diagram of the site EPA proposed in 2000.

Subsequent to EPA's proposed designation, the North Jetty at Coos Bay failed in December 2002, due in part to undermining. The Corps then examined the potential for augmenting transport of disposed material into the eddy created by the North Jetty itself. With EPA concurrence, the Corps began making selected disposals in the southeastern corner of the 103 Site F nearest the jetty. Monitoring indicated that some material was captured by the eddy and augmented the substrate that the jetty rests upon. This experience and the lessons learned during the designations of ocean dredged material disposal sites near the Mouth of the Columbia River in 2005, as well as increased public awareness of, and attention to, coastal erosion processes and opportunities to manage dredged material more beneficially led EPA to review its proposed site designation near Coos Bay. The result of this review is a minor change to the configuration of new Site F toward the North Jetty at the north side of the mouth of Coos Bay. This reconfiguration could potentially benefit the stabilization of the North Jetty and keep material in the littoral zone. This

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reconfiguration is expected to allow dredged material disposed in shallower portions of the new Site F to naturally disperse into the littoral zone without creation of mounding conditions that would contribute
to adverse impacts to navigation, including adverse wave conditions.

b. Location and Configuration of New Site F

Figure 2 is a diagram of the new Site F as EPA is finalizing the site in today's rule. It also shows the other designated sites (E and H), the de-designated Site F, the 103 configured Site F and the proposed Site F. The shoremost side of the site has been extended approximately 600 feet as compared to the site when proposed and the southeastern corner has been located closer to the North Jetty at the mouth of Coos Bay. This has resulted in an overall increase to the site footprint of 399.8 acres bringing the total area of new Site F to 3,075.2 acres. This configuration will allow EPA to ensure that disposal of dredged material into the site will be managed to retain more of the material in the active littoral drift area to augment

shoreline building processes. The relocation of the corner of the site closer to the jetty will allow dredged material to be more effectively placed to continue augmentation toward the nearshore and toward the North Jetty at the mouth of Coos Bay. This change, while minor, expands sediment management opportunities that are beneficial to the coastal environment in Coos Bay. The coordinates for the new Site F near Coos Bay (NAD 83) as finalized today are:

43[deg]22'54.8887'' N, 124[deg]19'28.9905'' W
43[deg]21'32.8735'' N, 124[deg]20'37.7373'' W
43[deg]22'51.4004'' N, 124[deg]23'32.4318'' W
43[deg]23'58.4014'' N, 124[deg]22'35.4308'' W

The new Site F is expected to accommodate the approximately 1.38 million cubic yards (mcy) of material dredged annually from the Coos Bay estuary by the Corps to maintain the existing Federal navigation channel. The nearshore boundary of the new site is within two thousand feet of the shoreline. Sediments disposed near this boundary are considered to be in the active transport zone and are expected to disperse rapidly both onshore and alongshore. Limited onshore transport is expected because of the nature of prevailing currents and wave transport in the vicinity. Predicted material transport at the new site is southward in the summer months and northward during the remainder of the year.

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c. Management and Monitoring of New Site F

The newly designated Site F will receive sediments dredged by the Corps to maintain the federally authorized navigation project at Coos Bay, Oregon and will be available to current permittees and for use by others after obtaining the appropriate permits and approvals. Existing permits issued pursuant to subchapter H of Title 40 of the CFR will not need to be modified to use new Site F. The new Site F is designated with restrictions with which all persons must comply. All persons using the site are required to follow the final Site Management and Monitoring Plan (SMMP) which is effective as of the effective date of this action. The SMMP generally addresses managing new Site F to minimize and avoid mounding and to ensure that dredged materials

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disposed at the site are suitable for ocean disposal. The SMMP includes management and monitoring requirements for all of the designated sites near Coos Bay and addresses the timing of disposal into new Site F to minimize interference with commercial crabbing in the nearshore zone.

Among other things, the SMMP sets out monitoring and management requirements to ensure that dredged material disposed at the site is suitable for disposal and will not lead to unacceptable impacts to human health or the environment during the dredging process, during transportation to the designated sites, during disposal or once disposed or at the disposal sites.

d. MPRSA

EPA finds that today's final action satisfies the site designation criteria of the MPRSA and the regulatory criteria of 40 CFR part 228. The assessment of the statutory criteria and general and specific regulatory criteria presented in the proposed rule has been examined in response to the slight reconfiguration of the new Site F. Moving the corner of the new Site F to the southeast and closer to the North Jetty based on EPA's increased understanding of coastal erosion issues will allow EPA to manage disposal at the new Site to retain material in the active littoral zone to augment shoreline building processes. This meets the statutory and regulatory criteria to use an appropriate location based on considerations affecting the public interest and to locate the site to minimize interference with other activities in the marine environment. New data collected since the proposed rule has been included in the discussion of the general and specific site designation criteria.

General Criteria (40 CFR 228.5)

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

EPA's assessment of information available at the time of the proposed rule demonstrated that new Site F as proposed would cause only minimal interference with fisheries and shellfisheries and with navigation notwithstanding the location of the site in the Coos Bay navigation channel. This assessment has not changed with the minor reconfiguration of the site toward the North Jetty. Most of new Site F has been used over the past decade for dredged material disposal pursuant to section 103 authority exercised by the Corps with EPA concurrence and mariners in this area are accustomed to the site use. In addition, based on a conservation recommendation from the National Marine Fisheries Service (NMFS) resulting from an EPA consultation on essential fish habitat, EPA will impose use restrictions at the site to minimize the use of the site before June 1 of any year to essential work and will encourage staggering of disposal events when juvenile coho and Chinook salmon are holding in nearshore habitats.

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

EPA's analysis at the time of the proposed rule concluded that the new Site F would satisfy this criterion. EPA's understanding of the nearshore processes near the North Jetty indicates that this criterion will continue to be met with the reconfiguration of new Site F as finalized today. Although EPA expects some material disposed at new Site F to reach the base of the North Jetty, normal ambient levels and undetectable contaminant concentrations or effects would be expected before any material reached any beach, shoreline, marine sanctuary or

known geographically limited fishery or shellfishery because of the existing high currents and wave energy.

3. If site designation studies show that any interim disposal sites do not meet the site selection criteria, use of such sites shall be terminated as soon as any alternate site can be designated (40 CFR 228.5(c)).

There are no interim disposal sites near Coos Bay as defined under the Ocean Dumping regulations. This criterion is not applicable to today's action de-designating existing Site F and designating new Site F.

4. The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

EPA sized the proposed site to meet this criterion. The site, as finalized in today's action, continues to meet this criterion. The total area of new Site F is approximately 3,075.2 acres or 3.63 nm\2\. The site tends to be moderately dispersive in the nearshore area and tends to be less dispersive in other parts of the site. The overall stability of the site is a significant part of the justification for the size of the site. The original Site F experienced significant mounding and lead to the selection of the larger site designated today. Data collected by the Corps through bathymetric monitoring shows the spread and movement of material placed at original Site F and suggests that material from the original Site F did eventually disperse over the footprint of the 103-selected site. This data also indicates that effective monitoring and surveillance of the site has been performed for many years. The SMMP describes the plan for management and monitoring of the site.

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

EPA's evaluation at the time of the proposed rule concluded that long distances and travel times between the dredging locations near Coos Bay and the continental shelf posed significant environmental, operational, safety and environmental concerns, including risk of encounter with endangered species and increased air emissions. This conclusion is unchanged and new Site F, finalized by today's rule, is consistent with this criterion.

Specific Criteria (40 CFR 228.6)

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

Based on the data available at the time EPA proposed the designation of Site F and data available from bathymetric surveys conducted by the Corps, EPA has concluded that the geographical position, depth of water, bottom topography and distance from the coast of new Site F will avoid adverse effects to the marine environment. Near the North Jetty, the new site will allow for the placement of material that is expected to contribute material to the littoral zone and may help decrease erosion of the jetty. Throughout most of the shallow portions of the new site the area is dispersive. Based on EPA's understanding of currents at the site and their influence on the movement of material in the area this means there is a high likelihood that material will be transported to the adjacent seafloor. The site is located and sized to allow for long-term disposal without creation of adverse mounding conditions.

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

New Site F is not located in breeding, spawning, nursery or feeding areas for adult or juvenile phases of living resources. The site is, or may be, a passage area for living resources during adult or juvenile phases. The National Marine Fisheries Service (NMFS), during consultations with EPA in 2005 and 2006 for endangered species and for essential fish habitat, requested that disposal at new Site F be restricted to stagger disposal events at the new site, particularly in the nearshore zone, to avoid continuous disposal while juveniles, including salmon and groundfish species, are outmigrating or holding in nearshore environments. EPA agreed to include staggered disposal in its final SMMP. This will benefit the juveniles of concern to NMFS and will also minimize any potential short-term localized effects to marine organisms in the immediate vicinity of disposal events by minimizing the creation of mounds at the site.

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

EPA's proposed rule concluded that the proposed site met this criterion and EPA's conclusion is not changed today notwithstanding the minor reconfiguration of the site toward the North Jetty. The site, although located in the navigation channel and close to the North Jetty is located to avoid adverse impacts to beaches and other amenity areas.

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 new Site F is being designated today for the disposal of dredged material. Disposal of other types of material will not be allowed at this site or at any of the ocean dredged material disposal sites at Coos Bay. Dredged material to be disposed at the new Site F will be predominantly sand and fine-grained material. Data collected subsequent to EPA's proposed rule included seventeen sediment samples collected from along the length of the federal navigation channel in Coos Bay, Isthmus Slough, and Charleston Channel in 2004 (Coos Bay Sediment Quality Evaluation Report, March 2005). These samples were subjected to physical and chemical analyses, which included analyses for metals, total organic carbon, pesticides, polychlorinated biphenyls (PCBs), phenols, phthalates, miscellaneous extractables, polynuclear aromatic hydrocarbons (PAHs) and total and pore water organotin (TBT).

The physical analyses resulted in mean values of 1.6% gravel (0%-10.0% range), 69.6% sand (4.0%-98.8% range), and 28.8% silt/clay (1.2%-96.0% range) with 4.5% volatile solids (0.2%-16.7% range). The chemical analyses indicated low levels of chemicals in some of the samples. The results were compared with results from previous Corps sampling efforts in 1980, 1986, 1987, 1989, 1993, 1994, 1995, and 1998. All the data are consistent in showing that material below river mile (RM) 12 of the Coos Bay channel is typically sand, while material above RM 12 is typically silt. With only a few exceptions (where adjacent sources are obvious) the sand matrix is considered low risk for contamination. The silty areas of the estuary and river typically contain low levels of contaminants-of-concern that have remained unchanged for many years or appear to be improving slightly (i.e. concentrations are dropping). Materials to be disposed of at the site must be suitable for ocean disposal.

With respect to proposed methods of releasing material at the new

site, material will be released just below the surface from dredges while the dredges are under power and slowly transit the site. This method of release is expected to minimize mounding at the site and to minimize impacts to the benthic community.

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

Monitoring and surveillance at new Site F is expected to be feasible. The site is accessible for bathymetric and side-scan sonar surveys. Most of the site has been successfully monitored by the Corps during the Corps's use of the 103 site. It is also expected to be feasible to monitor and survey the minor addition made to the site through the reconfiguration toward the North Jetty. The Corps has monitored the base of the jetty on a routine basis and during emergency repairs made in 2002 after a failure of the jetty. The final SMMP requires monitoring and surveillance of the new site. At a minimum, annual bathymetric surveys will be conducted at new Site F and more frequent surveys will be required in areas of the site that receive dredged material. Off-site beach monitoring will also be required. Routine monitoring will concentrate on determining how to ensure the distribution of material in the nearshore portions of the site to augment littoral processes and in the deeper portions of the site to avoid or minimize mounding.

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

At the time EPA proposed the designation of the new site, EPA understood the dispersal patterns along the Oregon coast to generally flow parallel to the bathymetric contours of the bottom. Local wave and current strength and direction are impacted by the variability of the local winds, especially in shallower water. During summer months which make up the normal dredge and disposal season, material transport trends southward. The trend at other times of the year is north and northwest for currents and material transport. Re-suspension and transport of material disposed at the site would be expected to be at a maximum during winter months when winter storms occur and when no active disposal is taking place at the site. Throughout the year, material disposed in the nearshore and shallower portions of new Site F are expected to be redistributed by existing littoral processes.

Mounding at originally designated Site F led the Corps to exercise its authorities pursuant to Section 103 of the MPRSA to select a significant expansion of the site and to use modeling techniques to model placement of material within the site to avoid excessive mounding. The originally designated Site F was generally not used for disposal after 1989. However, it was thought that material at that location was eroding toward the 103 selected Site F. For this reason, the original Site F, although proposed for de-designation as a stand-alone site, was to be incorporated into the new Site F. The movement of material was considered to be most dispersive in the shallower zones of the 103 site but material disposed in the deeper and less dynamic portions of the site are redistributed across the site. Eventually, the redistribution is expected to move the material disposed at the site to the north and east.

Subsequent to publication of the proposed Rule in 2000, the Corps continued to conduct annual bathymetric surveys at the 103 Site F and to share the data collected with EPA to assess capacity at the site for the coming year's anticipated dredging. This data tended to show that the mound at the 1986-designated Site F was slowly eroding to its present

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average at below minus 60 feet mean lower low water (MLLW). This indicates a minimum of 10 feet of material having eroded out of 1986-designated Site F. Dredged material was placed at various locations within the 103 Site F and monitored. Computer modeling of disposal operations was used to determine short-term and long-term sediment fate to design disposal units or cells. Bathymetric surveys during and following disposals were conducted. Initial work was focused on confirming accuracy of the models. Bathymetric changes measured by the monitoring compared well with the changes predicted by the model. For example, the model predicted a 2.9 foot change and monitoring measured the actual change at 3.0 feet. The model was used to predict disposal results in the nearshore area (i.e., along the innermost edge of the 103 Site F) and field monitoring was conducted to verify the modeled predictions. Placement height was managed to a maximum of 3 feet during initial disposal into 180 separate cells each sized as a 200 foot by 500 foot cell.

These bathymetric surveys show that the shallow water portion of the site has accumulated about 1 foot of material on the bottom, with small areas of accumulation of up to 5 feet. In the deeper portion of the 103 site, disposals were conducted to dispose of up to 24 feet of material at specific locations. Bathymetric monitoring indicates these thicker disposals had eroded down to 19 feet of accumulated material on the bottom. The surveys further show that this accumulated material is dispersing in a northeasterly direction.

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

Annually, approximately 1.3 million cubic yards (mcy) of material has been disposed of at the Coos Bay designated sites, Sites E, F and H, from dredging undertaken by the Corps to maintain the navigation channel. The Coos Bay sites were used consistently prior to their designations in 1986. Sites E and F were not used after the late eighties because of mounding concerns. As discussed above, the mounds at those sites have been eroding over time. Originally designated Site F was recently used by the Corps for the disposal of dredged material to maintain safe navigation in the navigation channel. This site, which is de-designated by today's rule as a stand-alone site, is incorporated into the footprint of the new Site F. EPA's evaluation of data and modeling results indicates that past disposal operations at these sites and current operations have not resulted in unacceptable environmental degradation. Adverse effects are not expected to result from the minor reconfiguration of the site toward the North Jetty. EPA expects that portion of the site to benefit the nearshore environment.

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 site is not expected to interfere with shipping, fishing, recreation or other legitimate uses of the ocean. Commercial crabbing, which was referenced in EPA's proposed rule as an activity occurring in the nearshore, is not expected to be impacted by the minor reconfiguration of new Site F. Disposals at the new site will be managed through the SMMP to minimize interference with other legitimate uses of the ocean through careful timing and staggering of disposals in the nearshore portion of the new site.

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

At the time of EPA's proposed rule in 2000, EPA had not identified

any adverse water quality impacts from ocean disposal of dredged material at originally designated Site F or at 103 selected Site F. In 2004, the Corps released a report titled ``Comparison of SPI Data and STFATE Simulation Results at Coos Bay, OR ODMDS Site `F','' which provided some verification of numerical models used to predict the behavior of disposed material on water quality and ecology of the site. The samples, i.e. sediment profile images, indicated some important characteristics about the native sediments and dredged sediments disposed of at the site. Native sediment in the shallow and intermediate water portions of the site did not show a layer of fine grained material at the sediment-water interface. This absence indicates that burrowing infauna were absent or extremely limited in the area. This finding was not unexpected because the intermediate/ shallow water locations within the site are heavily dominated by wave-current action which forces repeated and routine resuspension of sediment. The report found that ``the effects on initial disposal on benthic marine life in these areas are likely minimal.'' By contrast, the deeper portion of the site did indicate the presence of benthic infaunal activity. In addition to the sediment profile imaging (SPI), a plan-view video was also produced. Crabs, shrimp, and flatfish were all seen on the video; however, no inferences were made as to population. Biological activity and reworking of the surface sediments by natural forces was indicated in the imaging but it was not possible to penetrate the sandy substrate to measure the full thickness of the deposited material at the site.

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

In its proposed rule, EPA stated that nuisance species had not been observed at the existing Coos Bay sites in over ten years of monitoring and that EPA did not expect there to be a significant potential for the development or recruitment of nuisance species in the proposed site. That statement was based in part on the lack of organic material disposed at the site. Subsequent to EPA's proposed rule, however, circumstances at designated Site H have caused that site to be closed at present and the potential for organic material to be disposed of at new Site F has increased. Organic material is generally found above RM 12 in the Coos Bay Channel and is likelier than material below RM12 to be more attractive to nuisance species. While there is the potential for the development or recruitment of nuisance species where dredged material from above RM12 might be disposed of at the new Site F, this potential remains low. The SMMP will provide for monitoring of the new site to help ensure that nuisance species are not recruited to and do not develop at the new site.

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

EPA stated in its proposed rule that no cultural features of historical importance had been identified at or near the proposed site. This continues to be the case. The new Site F is located over 7 statute miles southwest of the Oregon Dunes National Recreation Area, a significant natural feature, but is not considered to be in close proximity to that feature. The new site is located approximately 3 statute miles northeast of three Oregon state parks: Shore Acres State Park, Cape Arago State Park and Sunset Bay State Park. The new site is not considered to be in proximity to these areas. The national historic landmark, located near Cape Arago State Park, over 4 statute miles south of the new site, is not within the proximity of

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the site. Impacts to significant natural or cultural features have not been identified.

e. National Environmental Policy Act (NEPA); Magnuson-Stevens Act (MSA); Coastal Zone Management Act (CZMA); Endangered Species Act (ESA)

1. NEPA

Section 102 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. NEPA does not apply to EPA designations of ocean disposal sites under the MPRSA as EPA has made clear in EPA's ``Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents,'' 63 FR 58045 (October 29, 1998). EPA did voluntarily cooperate with the U.S. Army Corps of Engineers (Corps) as a cooperating agency on the Feasibility Report on Navigation Improvements with Environmental Impact Statement (EIS) prepared in 1994. As discussed in the proposed rule, 63 FR 17240 (March 31, 2000), the EIS provided documentation to support the final designation of the proposed Site F. EPA did not see a need to supplement the EIS to address the minor reconfiguration of the new Site F which is finalized in today's designation.

2. MSA

In the fall of 2005, EPA consulted with the National Marine Fisheries Service (NMFS) concerning essential fish habitat. EPA prepared an essential fish habitat (EFH) assessment pursuant to section 305(b) of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1855(b). NMFS reviewed EPA's action and issued six non-binding conservation recommendations. EPA accepted three of the recommendations. The three accepted by EPA included: Using the best relevant analytical methods in sampling and analysis plans included in the final SMMP; limiting site use before June 1 and staggering disposal events during nearshore holding and outmigration of juvenile salmon; and provisions to provide the results of bathymetric monitoring to NMFS. EPA incorporated these recommendations into the final SMMP.

EPA did not accept the remaining three recommendations. These recommendations asked EPA to develop and implement studies to collect information to better inform agencies on species presence and use in the disposal area, in areas that might be designated in the future, and for all existing ocean disposal sites in Oregon. EPA did not accept these recommendations because EPA did not find that the collection of information as recommended by NMFS constituted measures for ``avoiding, mitigating, or offsetting the impact'' of the Federal action on essential fish habitat.

3. CZMA

EPA consulted with the state of Oregon on coastal zone management issues. EPA prepared a consistency determination for the Oregon Ocean and Coastal Management Program (OCMP) to address consistency determinations required by the Coastal Zone Management Act, 16 U.S.C. 1446. The Oregon Department of Land Conservation and Development (DLCD) reviewed the consistency determination and concurred with EPA that the action is consistent with the OCMP to the maximum extent practicable basing its findings on the certification EPA provided.

4. ESA

EPA also consulted with NMFS and the U.S. Fish and Wildlife Service on its action to de-designate existing Site F and to designate new Site F finding that the action would not be likely to adversely affect

aquatic or wildlife species listed as endangered pursuant to the Endangered Species Act, 16 U.S.C. 1531 to 1544, (ESA), or the critical habitat of such species. EPA found that site designation does not have a direct impact on any of the identified ESA species but also found that indirect impacts had to be considered. These indirect impacts included a short-term increase in suspended solids and turbidity in the water column when dredged material was disposed at the new site and an accumulation of material on the ocean floor when material was disposed at the site. EPA concluded that while its action may affect ESA-listed species, the action would not be likely to adversely affect ESA-listed species.

The U.S. Fish and Wildlife Service concurred with EPA's conclusion based on its finding that ``abundant suitable foraging habitat throughout the area'' for birds of concern would be available during disposal activities, i.e. site use, and that minor behavioral changes, such as foraging in areas other than the designated site, would be temporary. NMFS concurred with EPA's findings for ESA-listed marine mammals, sea turtles, and southern Oregon/northern California coho salmon, finding that the new site was not designated as critical habitat for any of those species. NMFS did not agree with EPA's conclusions for Oregon Coast coho salmon and requested additional consultation. Subsequent to that request, NMFS announced that it was withdrawing its proposal to list Oregon Coast coho salmon as endangered. The ESA consultation concluded with the withdrawal of the NMFS proposal to list Oregon Coast coho salmon and NMFS addressed Oregon Coast coho salmon in the EFH consultation.

3. Response to Comment

No public comments on the proposed designation were received; however, a letter from the Oregon Department of Environmental Quality (ODEQ) pointed out the need for improved coordination procedures between the EPA, the Corps, ODEQ's central office and ODEQ's Coos Bay field office for dredging projects in the vicinity of Coos Bay. EPA generally supports improved coordination between federal and state agencies. Coordination will be a priority for EPA at the new site to ensure that disposal activities by the Corps and by local port authorities are aware of site restrictions and are adhering to the SMMP.

4. Statutory and Executive Order Reviews

This rule finalizes the de-designation of an existing ocean dredged material disposal site, existing Site F, and designates a new ocean dredged material disposal site, new Site F. This rule complies with applicable executive orders and statutory provisions as follows:

a. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ``significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ``significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by

another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or

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the principles set forth in the Executive Order. It has been determined that this final action, which simultaneously de-designates an existing ocean dredged material disposal site and designates a new site, Site F, is not a significant regulatory action under Executive Order 12866 and is therefore not subject to OMB review.

b. Paperwork Reduction Act

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

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

c. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601, et seq., generally requires federal agencies to prepare a final regulatory flexibility analysis whenever the agency promulgates a final rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's Size Regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant economic impact on small entities because the final action regulates the location of sites to be used for the disposal of dredged materials in ocean waters. After considering the economic impacts of today's final action on small entities, I certify that this

action will not have a significant impact on a substantial number of small entities directly regulated by this action.

d. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ``Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, today's action is not subject to the requirements of sections 202 and 203 of the UMRA.

e. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a ``major rule'' as defined by 5 U.S.C. 804(2). This action will be effective June 12, 2006.

f. Executive Order 13132: Federalism

Executive Order 13132, entitled ``Federalism'' (64 FR 43255, August

10, 1999), requires EPA to develop an accountable process to ensure ``meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ``Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ``substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.'' This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This action addresses the designation and de-designation of sites near the mouth of Coos Bay, Oregon. Thus, Executive Order 13132 does not apply to this action.

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

Executive Order 13175, entitled ``Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure ``meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This action does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045 applies to any rule that: (1) Is determined to be ``economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The action concerns the designation and de-designation of ocean disposal sites and would only have the effect of providing designated locations to use for ocean disposal of dredged material pursuant to section 102(c) of the MPRSA.

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

This action is not subject to Executive Order 13211, ``Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ``significant regulatory action'' as defined under Executive Order 12866.

j. National Technology Transfer and Advancement Act

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

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

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this action addresses ocean disposal site designations (away from inhabited land areas), no significant adverse human health or environmental effects are anticipated. The action is not subject to Executive Order 12898 because there are no anticipated significant adverse human health or environmental effects.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

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

Dated: April 28, 2006.
L. Michael Bogert,
Regional Administrator, Region 10.

• For the reasons set out in the preamble, 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 228.15 is amended by revising paragraphs (n)(4)(i), (ii), (iii), (iv), (v), and (vi) to read as follows:

Sec. 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(4) * * *

(i) Location: 43[deg]22'54.8887'' N, 124[deg]19'28.9905'' W; 43[deg]21'32.8735'' N, 124[deg]20'37.7373'' W; 43[deg]22'51.4004'' N, 124[deg]23'32.4318'' W; 43[deg]23'58.4014'' N, 124[deg]22'35.4308'' W (NAD 83).

(ii) Size: 4.45 kilometers long and 2.45 kilometers wide.

(iii) Depth: Ranges from 6 to 51 meters.

(iv) Primary Use: Dredged material determined to be suitable for ocean disposal.

(v) Period of Use: Continuing Use.

(vi) Restriction: Disposal shall be limited to dredged material determined to be suitable for unconfined disposal; Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP); Monitoring, as specified in the SMMP, is required.

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[FR Doc. 06-4286 Filed 5-10-06; 8:45 am]

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Last updated on Thursday, May 11th, 2006
URL: http://www.epa.gov/fedrgstr/EPA-WATER/2006/May/Day-11/w4286.htm