ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7877–9]

Ocean Dumping; De-designation of Ocean Dredged Material Disposal Sites and Designation of New Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing its proposal to de-designate four existing ocean dredged material disposal sites located off of the mouth of the Columbia River near the states of Oregon and Washington and to designate two new sites, the Shallow Water site (SWS) and the Deep Water site (DWS). The new sites are needed for long-term use by authorized Columbia River navigation projects and may be available for use by others meeting the criteria for ocean disposal of dredged material. EPA published its proposal to designate the two new ocean disposal sites and to de-designate the four existing ocean disposal sites in the **Federal Register** on March 11, 2003 (68 FR 11488). The de-designation of existing sites is necessary to discontinue their use where the impact of disposal has resulted in changed and adverse site conditions. The newly designated sites are 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 from adverse effects to the greatest extent practicable.

DATES: *Effective Date*: This final site designation and de-designation becomes effective on April 1, 2005.

ADDRESSES: The administrative record for this final action is available for inspection at the Region 10 Library, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. For access to the administrative record, contact the Region 10 Library Reference Desk at (206) 553–1289, between 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays, for an appointment. The EPA public information regulations (40 CFR part 2) provide that a reasonable fee may be charged for copying.

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SUPPLEMENTARY INFORMATION:

1. Regulated Entities

Entities 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 1445, (MPRSA). The action would be relevant to entities, including the U.S. Army Corps of Engineers (Corps), seeking to dispose of dredged materials in ocean waters off the mouth of the Columbia River near the states of Oregon and Washington. Potentially affected categories and entities include:

Category	Examples of potentially regulated entities
Federal Government	U.S. Army Corps of Engineers Civil Works Projects, Regulatory Program, 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 entities likely to be affected by this action. For any questions regarding the applicability of this action to a particular entity, please consult the person listed in the section of this action titled **FOR FURTHER INFORMATION CONTACT.**

2. Background

The EPA published a proposal in the **Federal Register** on March 11, 2003, (68 FR 11488), to de-designate four ocean dredged material disposal sites and to designate two new ocean dredged material disposal sites under Section 102(c) of the MPRSA and its implementing regulations at 40 CFR subchapter H. Under the MPRSA, the Administrator of EPA has the authority, which is delegated to the Regional Administrator of the Region in which the sites are located, to designate sites where ocean disposal may be permitted. The sites that are designated in today's action and the sites that are de-designated in today's action are located near the mouth of the Columbia River, within Region 10. Figure 1 displays the de-designated sites. Figure 2 displays the newly designated sites. [Figures 1 and 2 are attached at the end of this document.]

The proposed designations and de-designations were accompanied by a joint EPA and Corps ''Integrated Feasibility Report and Environmental Impact Statement for Channel Improvements,'' August 1999 (1999 IFR/

EIS), and a ''Supplemental Integrated Feasibility Report and Environmental Impact Statement,'' January 28, 2003 (SEIS), consistent with EPA's voluntary Environmental Impact Statement (EIS) policy (63 FR 58054, October 29, 1998). These documents incorporated a Biological Assessment as submitted to the National Marine Fisheries Service (NMFS), now known as NOAA Fisheries, pursuant to Section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1536). The proposal was also accompanied by an Essential Fish Habitat (EFH) evaluation jointly prepared by EPA and the Corps and submitted to NOAA Fisheries pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801, *et seq.*, as amended (MSA). A draft Site Management and Monitoring Plan (SMMP) was prepared as required by section 102(c)(3) of the MPRSA and was made available for review and comment at the time EPA published the proposal in the **Federal Register**. The draft SMMP has been finalized. The ''*Public Comment*'' section of this action discusses changes made to this document. Copies of the Final SMMP are available from EPA and the Corps Portland District. To obtain copies contact the individual listed in the section of this action titled **FOR FURTHER INFORMATION CONTACT**.

The sites proposed for de-designation were sites A, B, E and F as currently codified at 40 CFR 228.15(n)(6), (7), (8) and (9). Sites A, B and F, designated in 1986, experienced adverse mounding after many years of disposal use. In 1993 and again in 1997, EPA and the Corps temporarily expanded the sites and changed the disposal patterns. These efforts were intended to provide short-term capacity while studies were conducted by the EPA and Corps to develop a long-term solution. Formal designation of the expanded sites was considered but found not to be a solution for the long term because of increased mounding at the sites and the use of these sites was curtailed. The past disposal activities at these sites place them in Impact Category II in EPA's evaluation of disposal impacts. See 40 CFR 228.10(c)(2). These sites are de-designated in today's action. With respect to Site E, disposal impacts at the site indicate Site E is under-sized for the dispersive conditions experienced at the site. Site E is de-designated in today's action based on this assessment.

Two sites were proposed for designation in EPA's proposed action. These sites are the Shallow Water Site (SWS), a near-shore dispersive site, and the Deep Water Site (DWS), a deep-water, off-shore, non-dispersive site. These sites were assessed against the statutory and regulatory criteria for ocean site designations. EPA's evaluation of the SWS and DWS against the designation criteria was presented in the 1999 IFR/EIS, Appendix H, and in the SEIS. Both sites meet the general criteria for designation.

The proposed SWS and the DWS were also assessed against the specific criteria for ocean site designations at 40 CFR 228.6. The specific criteria include: geographical position; location relative to breeding, spawning, nursery, feeding or passage areas for adult and juvenile phases for living resources; location relative to beaches and other amenity areas; types and quantities of waste to be disposed of and proposed methods of release, feasibility of surveillance and monitoring; dispersal, horizontal transport and vertical mixing characteristics of the area to be designated including prevailing current direction and velocity; existence and effects of current and previous discharges and dumping in the area; interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean; existing water quality and ecology of the site as determined by available data or by trend assessment or baseline survey; potentiality for the development or recruitment of nuisance species in the disposal site; and proximity to significant natural or cultural features of historical significance. EPA's consideration of the specific criteria for site selection was presented in the 1999 IFR/EIS, Appendix H, and in the SEIS. As considered against the specific criteria, the SWS and the DWS mitigate adverse impact on the environment to the greatest extent practicable.

Today's final action is also supported by several reports that were finalized during or after publication of the proposed designations and de-designations. These include: ''Environmental Studies at Proposed Ocean Disposal Sites off the Mouth of the Columbia River,'' prepared by MEC Analytical Systems, Inc. and Science Applications International Corporation (SAIC), June 2003 (Biological Baseline Study); ''Mouth of the Columbia River Shallow Water Ocean Dredged Material Disposal Site Supplemental Evaluation of Optimized Site Utilization and Assessment of Potential Wave-Related Impacts,'' prepared by the Corps, March 2003 (MCR Optimized Site Utilization Report); ''Estimated Entrainment of Dungeness Crab During Maintenance Dredging of the Mouth of the Columbia River, Summer 2002,'' prepared by Pearson and Skalski, March 2003 (Crab Entrainment Study); and ''Comparison of the Sampling Efficiency of Three Benthic Trawls At the Deep Water Site off the Mouth of the Columbia River,'' (Trawl Comparison Study) prepared by MEC Analytical Systems, Inc., Weston Solutions, Inc. and Science Applications International Corporation, April 2004. EPA considered the data used in the preparation of these reports. The data and the reports themselves confirm EPA's conclusions at the time of the proposal concerning the biology and capacity at the sites proposed.

The Ocean Dumping Regulations at 40 CFR 228.11 govern the withdrawal of designated sites from use by promulgation of an amendment to the disposal site designations. EPA may withdraw designated sites from use based on an evaluation of disposal impacts or changed circumstances concerning the use of the sites.

EPA finds that the de-designation of sites A, B, and F is necessary based on changed circumstances at the sites. Continued disposal at the sites could result in further formation of mounds that would eventually contribute to adverse wave conditions and resultant navigation concerns. The past activities at sites A, B and F placed these sites in Category II impacts (40 CFR 228.10(c)(2)). The sites cannot be modified or expanded without causing conflicts with marine traffic and in their current state they are subject to adverse wave conditions.

The de-designation of site E is based on the need to modify and reconfigure the site. Reconfiguration of the site will allow dredged material disposed at the site to naturally disperse into the littoral zone during the dredging season without the creation of mounding conditions that could contribute to adverse wave conditions at the site.

The proposed action (68 FR 11488) provided an analysis of the EPA's compliance with the site designation criteria of Section 102 of the MPRSA and with 40 CFR part 228. This final action promulgates, without change from the proposal, the amendment of 40 CFR 228.15(n) to de-designate sites A, B and F. The coordinates (North American Datum 1983; NAD 83) of the three EPA-designated sites which this final action de-designates are as follows:

Site A

Corner Coordinates

46°13′03″ N, 124°06′17″ W.
46°12′50″ N, 124°05′55″ W.
46°12′13″ N, 124°06′43″ W.
46°12′26″ N, 124°07′05″ W.

Site B

Corner Coordinates

46°14′37″ N, 124°10′34″ W.
46°13′53″ N, 124°10′01″ W.
46°13′43″ N, 124°10′26″ W.
46°14′28″ N, 124°10′59″ W.

Site F

Corner Coordinates

46°12′12″ N, 124°09′00″ W.
46°12′00″ N, 124°08′42″ W.
46°11′48″ N, 124°09′00″ W.
46°12′00″ N, 124°09′18″ W.

The coordinates (NAD 83) of Site E (original Site E) which this final action de-designates through reconfiguration are as follows:

Site E

Corner Coordinates

46°15′43″ N, 124°05′21″ W.
46°15′36″ N, 124°05′11″ W.
46°15′11″ N, 124°05′53″ W.
46°15′18″ N, 124°06′03″ W.

This action finalizes the designation of the SWS without change from the proposal. The SWS incorporates the footprints of the original Site E and the Corps-selected 103 expanded Site E. It is configured so that the new site is large enough to allow for the temporary storage of placed material as it is naturally dispersed into the littoral zone during the disposal season avoiding the creation of conditions that could interfere with navigation safety. The coordinates for the newly designated sites utilize ''decimal seconds.'' The old coordinates just used ''seconds'' and were slightly less precise. The coordinates (NAD 83) of the newly designated SWS, consisting of a disposal site with defined placement area and drop zone, are as follows:

Shallow Water Placement Area and Disposal Site

Corner Coordinates

46°15′31.64 N, 124°05′09.72 W.
46°14′17.66 N, 124°07′14.54 W.
46°15′02.87 N, 124°08′11.47 W.
46°15′52.77 N, 124°05′42.92 W.

Dimensions

3,100 to 5,600 feet wide by 11,500 feet long. Azimuth (long axis): 229°T, Depth 45 feet to 75 feet, No Buffer.

Shallow Water Drop Zone

Corner Coordinates

46°15′35.36 N, 124°05′15.55 W.
46°14′31.07 N, 124°07′03.25 W.
46°14′58.83 N, 124°07′36.89 W.
46°15′42.38 N, 124°05′26.65 W.

Dimensions

1,054 feet wide to 3,600 feet wide by 10,000. Azimuth (long axis): 229°T, Depth 45 feet to 75 feet.

This action also finalizes the designation of the DWS without change from the proposal. The designation of this site is necessary to provide sufficient capacity for the disposal of dredged materials to meet current and anticipated future ocean disposal needs at the mouth of the Columbia River. The coordinates (NAD 83) of the newly designated DWS, consisting of a disposal site (including buffer and placement area), are as follows:

Deep Water Disposal Site (Including Buffer)

Corner Coordinates

46°11′03.03 N, 124°10′01.30 W.
46°13′09.78 N, 124°12′39.67 W.
46°10′40.88 N, 124°16′46.48 W.
46°08′34.22 N, 124°14′08.07 W.

Dimensions

17,000 feet wide by 23,000 feet long. Depth 190 feet to 300 feet, Buffer 3,000 feet wide.

Deep Water Placement Area

Corner Coordinates

46°11′06.00 N, 124°11′05.99 W.
46°12′28.01 N, 124°12′48.48 W.
46°10′37.96 N, 124°15′50.91 W.
46°09′15.99 N, 124°14′08.40 W.

Dimensions

11,000 feet wide by 17,000 feet long. Depth 190 feet to 290 feet.

The de-designations are shown in Figure 1. The designations are shown in Figure 2.

3. Public Comments

In the preamble to the proposed action, EPA requested that public comments be submitted by no later than April 25, 2003. EPA received approximately fifteen sets of written comments on the proposed action. While many of the comments expressed support for EPA's proposal, the greater number raised issues concerning the proposed designations and de-designations. In developing the final action, EPA reviewed and considered all the written comments. This final action addresses the most significant of the comments received and groups EPA's responses to similar significant comments together. EPA prepared a separate ''Response to Comments'' to respond to every comment received and copies of the complete response to all comments may be obtained by contacting the individual listed in the section of this action titled **FOR FURTHER INFORMATION CONTACT**. The following discussion in this section summarizes and responds to the most significant comments received on the proposed action.

Need for Ocean Dredged Material Disposal Sites under the MPRSA—One commenter stated that EPA must ''specifically find that there are no practicable improvements that will reduce the adverse impacts of the dredged materials on the total environment'' before designating an ocean dredged material disposal site. There is no requirement that EPA make this specific finding. Site designations are governed by the MPRSA and its implementing regulations. The general requirements for the designation of sites are as follows: ''The Administrator shall, in a manner consistent with the criteria established pursuant to subsection (a) of this section, designate sites or time periods for dumping. The Administrator shall designate sites or time periods for dumping that will mitigate adverse impact on the environment to the greatest extent practicable.'' 33 U.S.C. 1412(c)(1); MPRSA 102(c)(1). Sites are to be designated in a manner consistent with the criteria for permitting under the Act. The factors to be considered for site designation include the need for dumping; the effects of such dumping on human health and welfare, on fisheries resources and on marine ecosystems; the persistence and permanence of the effects of dumping; the volumes and concentrations of materials dumped; the appropriate locations for such dumping, including land-based alternatives; and the effect on alternate uses of oceans, and utilization wherever feasible of locations beyond the continental shelf. In assessing the need for ocean dredged material disposal sites, EPA focused on the need for ocean dumping and looked to factors such as relative environmental risks, and impact and cost for ocean dumping as compared to other feasible alternatives. EPA did not find feasible alternatives for the disposal of the millions of cubic yards of sediment dredged annually at the Mouth of the Columbia River. There was no practicable improvement in process technology for such sediments and there were no suitable and reliable estuarine, upland, flow-lane or other alternatives for near-shore disposal or storage that did not present potentially greater adverse environmental impacts than ocean disposal.

Zone of Siting Feasibility—One commenter questioned the justification for the non-feasibility of designating a

site off of the continental shelf based on a 4.5 mile operational limit of the Mouth of the Columbia River project. The MPRSA and its implementing regulations express a preference for designating sites located off of the continental shelf. See Section 102(a)(I) of the MPRSA and 40 CFR 228.5(d). Recent oceanographic research has demonstrated fragile and complex ecosystems in these deep ocean environments throughout the world. In the case of the Mouth of the Columbia River, the 1999 IFR/EIS explained that disposal of dredged materials in an off-shelf location would likely adversely impact the thriving, densely populated benthic and pelagic ecosystems in water depths of 600 feet or greater. Bottom gradients off-shelf are steep, between 5 and 25 percent on the continental slope, and accumulation of disposal materials which are unconsolidated would be likely to result in slumping and off-site impacts. Data from NOAA Fisheries indicate that the nearest off-shelf area, the Astoria Canyon, located 11 miles offshore, is unique habitat. NOAA Fisheries commented to that effect during scoping of site designation studies and again in response to the proposal. In looking at a zone of siting feasibility (ZSF), EPA and the Corps considered that information and those concerns and also considered other factors. Other factors included the authorized depth of the river channel, the availability of dredging equipment, and operational concerns, such as adverse weather conditions and the time needed to dredge material and haul it to disposal sites during the dredging season. The dredging season at the Mouth of the Columbia River is limited to the time period from June to October because of rough seas and adverse weather conditions that are the norm from November to May. Siting feasibility also took into account norms for the heaviest shoaling times at the Mouth of the Columbia River (generally July) and the need to avoid commercial fishing use areas during periods of high use. All of these factors contributed to the identification of the area within an arc 4.5 nautical miles seaward from river mile −1.0 as the extent of the location in which to seek to designate a site for disposal of dredged materials for the Mouth of the Columbia River.

Baseline—EPA received numerous comments on EPA's baseline analysis for the site designations. EPA fully complied with the baseline requirements for site designation set forth in 40 CFR subchapter H, part 228 B ''Criteria for the management of disposal sites for ocean dumping.'' 40 CFR 228.13 ''Guidelines for ocean disposal site baseline or trend assessment surveys under section 102 of the Act,'' provides the following pertinent statements on baseline: ''The purpose of a baseline or trend assessment survey is to determine the physical, chemical, geological, and biological structure of a proposed or existing disposal at the time of the survey. A baseline or trend assessment survey is to be regarded as a comprehensive synoptic and representative picture of existing conditions; each survey is to be planned as part of a continual monitoring program through which changes in conditions at a disposal site can be documented and assessed.''

This regulation also states: ''An initial disposal site evaluation or designation study should provide an immediate baseline appraisal of a particular site, but it should also be regarded as the first of a series of studies to be continued as long as the site is used for waste disposal.''

The baseline studies at the DWS and SWS did provide a comprehensive synoptic and representative picture of the existing conditions at the time the sites were proposed for designation. The baseline appraisal monitoring is an ongoing, continuous process for the life of the site. This ongoing process is addressed through the restrictions on the use of each site in this designation and through the site monitoring and management plan (SMMP). Data contributing to the baseline are contained in the appendices to 1999 IFR/EIS, 2003 SEIS, and MEC's Biological Baseline Study and are supplemented by the Crab Entrainment Study and Trawl Comparison Study. EPA has met baseline data requirements for purposes of designating both the SWS and DWS. Physical, chemical, geological, and biological baseline surveys are considered to be complete for both the SWS and DWS. The SMMP contains a synopsis of the available physical and biological data. For the DWS, EPA believes that special studies may enhance EPA's understanding of the site. The types of special studies EPA requires are described in the final SMMP. Special studies may lead to additional management constraints on the use of the DWS depending on the results of such special studies. Routine monitoring as described in the final SMMP could also lead to additional site use constraints. The final SMMP includes monitoring and reporting to help manage conditions at designated sites through a continuous program of assessing changes in conditions at the sites. Annual use planning and reporting will supplement the information collected by EPA and the Corps through the SMMP.

Commenters expressed the opinion that the baseline biological analysis for the DWS was flawed and that it failed to consider the DWS as an area of importance to flatfish nurseries and crab. The commenters contended that it's location in the shipping and ''tow lane'' makes the DWS usable as a nursery but not as a fishery. The ''tow lane'' referred to is the navigation route depicted on navigation charts as the route to be used by vessels towing other vessels such as barges or ships. EPA notes that the DWS was recommended as a potential disposal site by crab fishermen because the site was generally not fished and was not considered unique or special habitat as a nursery site. The biological baseline shows that the DWS provides some nursery habitat for fish and crab populations but establishes that the DWS is not unique or significant nursery habitat. The biological baseline for the DWS included a detailed assessment of living organisms and complied with the requirement to measure the benthic biota, including a quantitative and qualitative evaluation of benthic communities. These communities included macroinfauna and macroepifauna, meiobenthos, and microbenthos and an appraisal, based on existing information, of the sensitivity of the indigenous species to the dredged sediments proposed to be disposed at the site. In addition, trawl studies, conducted in 2003 further assessed the fish and crab population at the DWS. Refer to the final SMMP for the description of the baseline.

The baseline for ocean dredged material site designation as required by the regulations is intended to present a ''snapshot'' in time of biological conditions at the site so that changes to those existing conditions can be monitored over time.

Site Monitoring and Management Plan (SMMP)—EPA agrees with the recommendations from many commenters to revise the draft SMMP to include an adaptive management strategy and further assessment of biological impacts. The final SMMP specifies ''special studies'' intended to verify predicted material placement and mound configuration development and biological impacts at the DWS by measuring benthic infaunal succession, groundfish and macroinvertebrate (*e.g.*, crab) use, as well as assessing specific placement techniques at the mound that will eventually be created over time at the DWS. The final SMMP has been completed by EPA and the Corps and

becomes effective with this designation. The SMMP and annual use plans will provide for periodic monitoring of the fish and crab population at the DWS in addition to other specific information collection. The annual use plans will be available to the public from EPA upon request. The SMMP and annual use plans will also provide for similar management of the SWS. The final SMMP was modified to enhance information collection related to impact analysis, monitoring and future management actions to sustain the aquatic environment. The information collected will be used to re-assess the nature and severity of the impacts of disposal at the sites and to make changes to how the sites are used, if necessary, and to assess whether the sites need to be changed.

Some commenters expressed a preference for revising the SMMP to change the management of the DWS to confine disposed material at the DWS to as small an area as possible by the use of a ''pinpoint, repetitive dump method'' with an adaptive management approach to evaluate mound height after a single drop point at the DWS reached a mound height of 30 to 40 feet. EPA did not revise the final SMMP to provide for repetitive pinpoint dumping at the DWS because EPA disagrees with the commenters on this point and favors a more minimal impact to the ocean floor over the larger footprint of the site. EPA does not intend to allow for a rapid creation of individual 30 to 40 foot mounds anywhere within the placement area but expects that gradual, uniform mounding at the DWS could reach such heights over fifty years of use or longer. Immediate mounding through repetitive pinpoint dumping would be expected to more severely impact benthic organisms through a rapid and dramatic change in floor height. Spreading the disposal material more widely and causing a slow change in ocean floor height is expected to be less disruptive to adjustment and recolonization efforts of indigenous benthic organisms at the site. However, the routine monitoring and special studies identified in the final SMMP will provide more definitive information on this issue and, if warranted, site use management will be adjusted.

With respect to monitoring the DWS, EPA expects to use the SMMP, which addresses management and monitoring of both the SWS and the DWS, as the basis for annual use planning and reporting by site users. As part of the biological baseline work, four locations outside of the DWS were identified and sampled. Under the SMMP, these locations will be periodically revisited as part of ongoing monitoring and management of the site. EPA expects the buffer zone at the DWS to act as a reference site for monitoring. The four reference locations outside the DWS boundaries provide adequate backup to the buffer. Sloughing or spillover into the buffer is unlikely to occur until after many years of use of the site. However, EPA has decided to include an evaluation of the need for additional reference monitoring at any time the SMMP is reviewed.

Columbia River Plume—EPA received several comments suggesting that site designations near the mouth of the Columbia River would have an impact on the Columbia River plume. The plume dynamics of the Columbia River plume were studied during the site selection process. A discussion in the ''Oceanographic Processes'' Sections 6 and 7 of Exhibit B ''Physical Processes and Geological Resources'' to Appendix H of the 1999 IFR/EIS explains that most of the dynamics of the Columbia River plume are confined to the upper 16 feet of the water column but can extend to a depth of 66 feet. Plume-induced currents are normally observed at or near the plume surface and decrease with depth. In addition to the depth-influenced limitation of the plume, there is significant seasonal change in ocean circulation affecting the plume. For example, the summer/fall (July to October) variation in the plume is influenced by low discharge from the Columbia River and a southerly circulation of the shelf waters.

Because of comments received on the proposed site designations concerning the Columbia River plume, EPA reviewed the study by David Jay, C. Cudaback and T. Chisholm, ''Draft Report: Evaluation of Impacts of Maintenance Dredging at the Mouth of the Columbia River on Plume Salinity,'' June 2004 (Plume Study). The Plume Study identified the Columbia River Plume as a surface-advected plume and looked at the important implications of this plume type. The Plume Study found that ''localized changes in flow depth caused by dredged material disposal will not directly affect the plume, as long as the changes in depth remain small relative to the total depth of the water underlying the plume.'' Significantly, the Plume Study results suggested: ''Changes in entrance depth [at the Mouth of the Columbia River] cannot change the total export of freshwater to the plume. The impacts of MCR maintenance on the plume are quite limited. Also, initial differences in the freshwater fraction produced in the MCR area are largely preserved as water parcels transit the plume near-field.'' Conclusions reached by the Plume Study included the following: ''Because the plume is highly mobile, variations in plume salinity, plume depth, and water parcel trajectories related to changes in coastal winds and currents are far larger than differences related to initial conditions in the MCR region. The effects of river-flow and tidal variability are also larger than those of MCR depth variability.'' And: ''Regardless of plume orientation (and dredging cycle), a continuum of salinities exists within a relatively small area between low initial plume salinities and ocean salinities, which vary only modestly with winds and currents.'' (Plume Study)

Based on available data concerning the Columbia River plume environment, EPA does not expect the designation and use of the DWS or SWS to adversely impact the plume environment. Placement of dredged material within the SWS is not expected to affect circulation of the Columbia River plume within or outside of the site boundaries. Dredged material in the SWS will be spread over the site and limited in height. Dredged material placed in the SWS is expected to be dispersed within 1–3 years, depending upon the volume placed per year and the flow from the Columbia River.

A vertical accumulation of 4–6 feet of dredged material within a water depth of 45–65 feet will affect less than 10 percent of the water column. This is not expected to modify currents influencing the Columbia River plume.

The Deep Water Site is designated on the floor of the mid-continental shelf where water depths vary between 200 and 300 feet. At the top of the water column in the vicinity of the DWS, the surface water from the Columbia River plume is significantly modified by ambient coastal water. At the seafloor and at depth, these surface influences are not experienced although bottom currents are present. Over time, the size of the mound that may result from accumulated dredged material disposed at the DWS (expected to be in the range of 20–40 feet high after many years of use) creates a potential for ocean bottom currents at the DWS to be slightly affected by the deposition of dredged material. Since some portion of the mixing zone for the plume of the Columbia River passes over the DWS, but is expected to remain separated vertically from the highest anticipated elevation of the DWS by at least 100 feet at all times, any change in circulation at the DWS is unlikely to affect the distribution of the Columbia River plume. The plume remains an area of interest and EPA and the Corps intend

to continue to assess the effects, if any, of maintenance of the Mouth of the Columbia River and lower Columbia River channel projects on the plume dynamics.

Sediment Re-suspension and Transport—A commenter questioned whether sediment placed at the DWS remained immobile and questioned whether any movement of sediment might compromise use of the buffer as a reference area. Evaluation of sediment movement in the 1999 IFR/EIS and MCR Optimized Site Utilization Report for the MCR area provided strong evidence that bottom sediment movement is limited on the ocean floor at the DWS and would be unlikely to compromise the buffer as a reference area. However, EPA agrees with the recommendation to assess the movement of sediments at the DWS and has included this element in the SMMP. EPA intends to use the routine site management and monitoring, as described in the final SMMP, to assess potential remobilization of sediments placed at the DWS. The buffer zone at the DWS is an area within the designated boundaries to ensure that the sediment mass remains within the designated site boundaries. Because the buffer zone at the DWS will not be impacted immediately by the placement of dredged material, the buffer zone is considered a suitable reference area for monitoring potential remobilization for the foreseeable future. If routine monitoring reveals unanticipated changes to the sediment regime of the buffer zone, a more focused special study could be required. As part of the biological baseline work, four locations outside of the DWS were identified and sampled. These locations will be periodically revisited as part of routine monitoring. EPA expects the buffer zone at the DWS to act as a reference site for monitoring with the four reference locations outside the DWS boundaries providing adequate backup.

Timing on Use of Sites—Commenters suggested that the time of year designated sites were used might be relevant to various fish life cycles given potential turbidity increases at the time of disposal. One commenter suggested that public notice and an opportunity for comment be allowed prior to disposal. EPA responds that public notice is required before sites can be used. The statute and regulations, as well as the procedural requirements the Corps follows to meet the substantive requirements for site use, all require public notice. EPA anticipates that the primary user of the DWS and SWS will be the Corps. For non-Corps use, ocean dumping cannot occur unless a permit is issued under the MPRSA. In the case of dredged material, the decision to issue a permit is made by the Corps Regulatory Program using EPA's environmental criteria and subject to EPA's concurrence. While the Civil Works and Operations Programs of the Corps do not issue themselves ''permits,'' Section 103(c) of the MPRSA requires that Corps projects apply the same criteria, factors to be evaluated, procedures, and requirements that apply to the issuance of permits. The Corps already has an established and comprehensive public involvement process in place for its Civil Works, maintenance and regulatory programs, including notice and an opportunity for comment. In all cases, specific concurrence is required from EPA.

Timing at the SWS—Commenters asked that the location of the SWS relative to feeding, spawning, and migration areas for adult and juvenile salmonids address fish habitat and life cycle requirements and avoid habitat degradation through appropriate timing and volume of dumping of dredged materials. Commenters also asked that specific timing restrictions be established at the SWS to avoid impacts to soft shell crab. EPA does not conclude that a seasonal deadline for ending disposal use of the SWS is warranted based on existing data for the SWS. An August deadline for ending disposal each year at the SWS had been agreed to by the Corps in 1998 as part of a settlement agreement with the Columbia River Crab Fishermen Association (CRCFA). That agreement terminated by its provisions in mid-2004. Currently, there are no data to suggest that the August deadline bore a significant relationship to actual crab life cycles or fishery needs. Dredging times, and other site use conditions necessary to allow EPA to monitor and manage the site as described in the SMMP, will be established in an annual use plan for the site. Annual use plans will be developed by each site user as a mechanism to implement any conditions or practices necessary for management of the site. The dredge season for the SWS will be based on many factors. Indirectly, a time limit on site use already exists. The natural weather, wind, wave, current and tidal patterns create an optimal window for use of the site. This optimal window normally runs from the beginning of June to early October. These natural processes impact dredge operations and ship movement significantly.

The location of the SWS relative to breeding, spawning, nursery, feeding, or passage areas in adult and juvenile phases was carefully assessed. The Corps has been using designated Site E and Expanded Site E, respectively, for the last 30 years and has disposed of approximately 50 million cubic yards (mcy) of dredged material at those sites within those years. The SWS is located in a highly dynamic area where current and waves allow the sediment to rapidly disperse into the littoral zone. Monitoring of the area over time has shown that the bottom elevations have not been adversely altered by disposal of dredged material. This means the water column available to adult fish for migration into spawning grounds or to juvenile fish for migration into the ocean environment has generally remained a constant. The timing of disposal activities to avoid habitat degradation will be factored into the use and management of the site.

Size of the SWS—Several commenters asked that EPA clarify the size of the SWS. EPA provided the 1983 NAD coordinates for the SWS in section B, above, of this designation and is finalizing the site configuration at those coordinates. It appears from the comments that there was confusion over the description of the SWS in the proposed designation. The coordinates for the ''new Site E'' as presented in the voluntary NEPA documentation became the coordinates for the Shallow Water Drop Zone in the proposed designation. The Drop Zone occupies the *identical* footprint as the Corps 103-selected Expanded Site E, which incorporated the former Site E (de-designated in today's action). The SWS Placement Area represents the outer boundary of the site where dredged material, when released within the Drop Zone, will temporarily accumulate during active disposal, and from which dredged material is expected to erode back into the littoral system. The vertical configuration of the SWS is a trapezoid that is wider at the seabottom (Placement Area) and tapering inward to the surface (Drop Zone). The site, consisting of both the Drop Zone and Placement Area, encompasses 1,198 acres or approximately 1.4 square nautical miles of *seafloor.* See Figure 2. EPA and Corps monitoring of the discharged sediment behavior, augmented by computer modeling, allowed EPA and the Corps to identify the accumulation pattern and specify the Placement Area (*see* MCR Optimized Site Utilization Report). Specification of the Drop Zone ensures that temporarily accumulating material remains within the same footprint affected by the use of the Expanded Site E. The Drop Zone will allow EPA to monitor and manage the dispersion of

disposed material throughout the site and will enable maximum site capacity to be used while avoiding the potential for adverse mounding.

Size of the DWS—Several commenters urged EPA to minimize the bottom footprint of the DWS and to concentrate disposal in the smallest area possible until maximum acceptable mound height is reached at each pinpoint dump spot. EPA has seriously evaluated this concern. In reviewing the site designations at the Mouth of the Columbia River it is clear that the original sites—Sites A, B, E, and F—were each too small to accommodate the disposal needs at the Mouth of the Columbia River or to manage material allocations between the different sites in an effective manner. EPA is finalizing today's designations to plan for the long-term needs for disposal at the Mouth of the Columbia River. By sizing the DWS as proposed, EPA will be able to manage disposal at both the SWS and the DWS to avoid excessive mounding conditions with resultant potential for adverse impacts. The size of the DWS also allows the site to be managed to minimize the impact to the bottom biological environment. Allowing for a larger, rather than smaller, ocean floor footprint at the DWS should enable the biological environment to have the greatest opportunity to adapt to changes to the seafloor resulting from dredged material disposal over time. The larger footprint should also ensure long-term capacity negating the need for additional ocean sites for fifty years or more based on EPA and Corps projections for ocean disposal needs. EPA is finalizing the DWS as proposed. As part of its designation studies, EPA considered numerous locations and configurations of sites to meet the current and long-term needs of dredged material disposal near the MCR and surrounding locale.

One commenter stated that EPA failed to meet MPRSA requirements by failing to justify the size of the DWS and incompletely analyzing the economic impact of the site designation. Ocean dumping regulations require that ocean disposal sites be sized so as to localize for identification and to control any immediate adverse impacts and to permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. See 40 CFR 228.5(d). EPA has met this obligation under the regulations. The DWS is localized for identification and control, and the NAD 83 coordinates are provided to establish the parameters of the site. Clear identification of the site allows for the control of any immediate adverse impacts to the maximum extent practicable. Monitoring and site surveillance are feasible at the DWS. Site designations under section 102 of the MPRSA are generally intended to be long-term as compared to site selections under section 103 of the MPRSA, which have a five-year to maximum ten-year life span. EPA's site designations are intended to minimize conflicts between disposal activities and other activities in the marine environment and are to avoid areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation where practicable. The DWS has been located and sized with significant input from stakeholders, in particular commercial and recreational fishermen, to avoid those areas of existing fisheries that are most significant to those individuals, companies and organizations.

Mounding at the SWS—Some of the commenters stated that mounding was an important issue for the proposed SWS and asked EPA to strictly limit mound-induced wave amplification to 10 percent and to consider the effects of large and long period swells as they interact with the site. These commenters referred to the area as ''the path of the last historic navigation route to the north site fishing grounds.'' EPA and the Corps have been concerned with the potential for mound-induced wave amplification at the SWS and have invested considerable effort in surveying the site and in computer modeling of the site under many scenarios to consider the effects of wind, wave (period, height, steepness, breaking), current and swell. *See* MCR Optimized Site Utilization Report.

EPA and the Corps looked at the potential change in the wind-wave environment as it related to a change in the bathymetry (*i.e.* the seabed topography) when dredged material was disposed at the SWS. The assessment indicated that the complex interaction of forces at the site all had the potential to contribute to wave amplification and that mound-induced wave amplification alone could not account for total wave amplification at the site. The assessment suggests that selective uniform placement of dredged material at the site will eliminate undesirable impacts to the local wave environment by eliminating or significantly decreasing the potential to create mounds at the site. *See* MCR Optimized Site Utilization Report. Careful management of the timing and placement of dredged materials at the SWS should ensure that adverse conditions are not created.

With respect to this area being used as an historic navigation route to northern fishing grounds, EPA notes that the U.S. Coast Guard considers the area near Peacock Spit to be an historically dangerous area that should be avoided by all vessels. Vessels transiting this area have always done so at great risk. No study or investigation of the disposal site in this area has ever found that the site or use of the site contributed to a hazardous situation for any mariner. The natural conditions themselves are very hazardous and there is no evidence to suggest that disposal in this area has increased those risks.

Placement of the DWS—One commenter expressed general support for placement of the DWS in the ''towlane'' at the Columbia River but suggested that ''towlane'' coordinates should be used to ensure that active fishing grounds currently available to the commercial fishing fleet would be avoided. As referenced earlier, the ''tow lane'' referred to is the navigation route depicted on navigation charts as the route to be used by vessels towing other vessels, for example, barges or ships. EPA does not agree that ''towlane'' (or ''towboat lane'') coordinates should be used to define the DWS. The overall position of the DWS is generally in the towboat lane to avoid commercial and recreational fishing areas as much as possible; however, the offset of coordinates between the DWS and the towboat lane is necessary to avoid direct interference with navigation lanes. The potential for conflicts at the DWS with vessels transiting the area can be avoided by careful management and coordination with Columbia River bar pilots, the U.S. Coast Guard and others. Commercial and recreational fishery conflicts can be avoided and minimized through careful management of the site.

Impact on Benthos at the DWS and SWS—One commenter suggested that disposal at the designated sites would have a potential permanent effect on benthic species, particularly crab. EPA does not agree that disposal activities will have a permanent effect on benthic species at either the SWS or the DWS given the adaptability of the species. Although crab are present at the SWS and the DWS, these sites do not differ in any substantive way from the ocean floor outside of the site boundaries available to crab and other benthic species. At the request of fishermen and fishing organizations, EPA avoided traditionally rich fishing grounds as the agency assessed the various alternatives in the 1999 IFR/EIS. Special studies identified in the final SMMP will assess recolonization after disposals and (periodically) benthic populations. Depending on the results of the special studies, a biological component may be

added to the routine monitoring in the SMMP.

One commenter observed that the full potential effects of dumping various volumes at the DWS and SWS had not been sufficiently reviewed and evaluated to include the concentration of the material at the sites. EPA did assess the potential effects of dumping various volumes of material at the DWS and SWS (*see* 1999 IFR/SEIS; *see also* MCR Optimized Site Utilization). EPA and the Corps used computer modeling to provide estimates of the potential volumes the SWS could accommodate under numerous scenarios to ensure that use of the site would not potentially contribute to adverse conditions similar to those experienced at Sites A, B and F. A report was produced from these studies. The MCR Optimized Site Utilization report concludes that while the capacity for the SWS is much higher than originally anticipated, the dispersive conditions are dependent on the placement of sediment at the site. Generally there is seasonal dispersion from the site into the littoral zone but storm conditions can impact the rate and trend of the dispersion. The DWS is sized to handle volumes for the long-term needs for disposal of sediments from dredging operations near the MCR and the channel of the Columbia River. This includes capacity for those times during dredge seasons when the SWS is not available. The full effects have been reviewed as required for site designations. At the DWS, these effects include the anticipated loss of benthic organisms that are directly disposed upon but little to no impact on benthic organisms not directly disposed on. The DWS will be managed to avoid impacting the entire site at one time. This use of the site is expected to provide the best opportunity for benthic organisms at the site to adapt to new conditions and to recolonize those areas that are disposed on directly.

Cumulative Effects—Commenters stated that cumulative effects had not been fully assessed to account for environmental and economic effects including a consideration of the SWS and DWS, the Mouth of the Columbia River maintenance project, the Columbia River channel improvement project, effects of jetties, dams, wetland diking, and other substantial human alterations to the sediment budget and transport of the area, as well as past temporary ocean disposal by the Corps. Cumulative effects were addressed in the 1999 IFR/EIS and 2003 SEIS. One commenter also contended cumulative sediment fate analysis was not adequate to determine sediment movement in and around Columbia River with any degree of certainty. Although EPA did use sediment fate analysis in its analysis, EPA did not rely solely on sediment fate analysis to determine sediment movement. EPA's analysis included an assessment of oceanographic processes, including offshore regional scale circulation, inner shelf circulation, seasonal changes in circulation, long-period waves, offshore rotary currents and littoral sediment supply and transport. Measured oceanographic data included hydrographic survey data, textural characteristics of sediments, seasonal variation of bottom sediments and measured current and seabed change data which provided sufficient data to allow for an adequate analysis of cumulative effects.

Safety at the SWS—Some commenters asked whether potential mounding and wave amplification had been adequately studied at the SWS. The SWS has been studied in detail both via surveys and modeling. Suggestions that mariners historically used this area without any navigational problems prior to dumping are not accurate. Studies done for EPA by the Corps, the Coast Guard, and independent safety teams strongly agree that the area near Peacock Spit is a naturally rough surf-zone area generally to be avoided by vessels at all times. EPA is designating the SWS without changes from the proposed designation but agrees that management of disposal at the SWS needs to include placement of dredged sediments to ensure that mounding conditions are not created that might contribute to adverse conditions at this dynamic site. By nature, the site is not suitable for navigation by small vessels; however, there are no known situations where disposal at Site E or Expanded Site E contributed to the navigational difficulties of this naturally risky area. Recent computer modeling at the site at EPA's request resulted in an optimized use pattern for disposal taking seasonal variation of current and storm conditions into account. This optimized use strategy is included in the SMMP and will be included in annual use plans developed by site users.

Crab Impact at the SWS and DWS—Several commenters addressed the issue of crab impacts from sediment disposal at the SWS. One commenter suggested that past dumping activities at the SWS interfered with fishing and depleted the crab populations. EPA disagrees and has found no data to substantiate such an impact nor has any such data been provided. EPA studied crab as part of the designation studies (1999 IFR/EIS, Appendix H) and biological baseline studies. The biological baseline study using trawls and crab pots provides population estimates, seasonal variation in crab population, and comparisons of crab numbers at the proposed sites to the area generally. The laboratory crab burial studies evaluated the impact of dredged material disposal on soft-shelled crab.

The extremely dynamic SWS showed relatively constant percentages of male crab in pots from July to September 2002. Additionally, crabs were larger in September at the end of the molting season. No pattern of differential site use was detected even though active placement of dredged material was taking place at the site during the 2002 dredging season. The trawls at the SWS exhibited an increase in the number of males from July to October 2002 along with an increase in hard crab. Crab were not found in the DWS in great numbers in the July 2002 survey but were abundant during the September 2002 sampling episode. Increased abundance of crab in the trawls and pots was observed primarily at the shallower portion of the site in September 2002. This is consistent with previous studies. EPA will continue to assess the need to evaluate the crab resource at the SWS and DWS as part of its management and monitoring activities.

Commenters asked about the crab data at the DWS. Some commenters suggested that the data collected showed crab abundance was dense at the DWS in the late summer with recently molted soft-shelled crabs. Field surveys were conducted in 2002 and fish and macroinvertebrate sampling was expanded in 2003 to include both beam trawls and commercial sized otter trawls. Sampling a given population with multiple methods is done to ensure that an adequate assessment of a population structure and composition has been completed. In this case the results obtained indicated that the DWS was typical of most inner to middle continental shelf communities found off Oregon and Washington and did not provide unique habitat or species. Comparing this sampling event with over 20 years of historic data (*see* 1999 IFR/EIS, Appendix H) further substantiates the conclusion that the habitat and community structure of the DWS is typical of most ocean areas offshore of the States of Oregon and Washington. EPA's ongoing management and monitoring should help to ensure that any adverse effects to this species are minimized.

Navigation Maintained—One commenter stated that the designation of the SWS and DWS, with their combination of dispersive and non-dispersive characteristics, met the need for proper channel maintenance

allowing safe passage for all vessels crossing the bar at the Mouth of the Columbia River. This commenter also said that EPA demonstrated responsiveness to local concerns about navigation impacts by proposing to de-designate sites A, B and F and to address local navigation concerns by designating the proposed SWS using material dispersal patterns in the site design. EPA's site designations and de-designations finalized today are intended to best meet the concerns for navigation impacts and management of dredged material. Another commenter stressed the importance of safety for all types and sizes of marine vessels entering and exiting the Mouth of the Columbia River and commented that the proposed actions would provide safe passage for maritime use and preserve the Mouth of the Columbia River's role as a ''gateway to the world for international trade'' and a ''vital part of the nations'' transportation system.'' EPA agrees that providing new designated sites for dredged materials and de-designating existing sites will contribute to safety for vessels of all types and sizes.

Monitoring at the DWS—Commenters expressed concerns about the feasibility of monitoring the site given its size and depth. EPA appreciates this concern and has structured the SMMP to ensure that monitoring activities at the site will be feasible.

DWS Buffer—Several commenters questioned the need for the DWS buffer. EPA is finalizing the DWS with the buffer. The buffer will serve primarily as a reference location. Over time, a 40-foot-high trapezoidal mound will likely be created through disposal activities. EPA has conservatively assumed that the mound will at times be subject to slippage on the edges and that some spillover, over time, must be expected into the DWS buffer. The buffer will act to ensure that sediments placed at the DWS will not move beyond the site boundaries. Data collected at the DWS indicate extremely minimal bottom sediment movement once the sediments have deposited on the bottom. Disposal sequencing into the DWS will be conducted and evaluated to keep any potential spillover minimal. EPA believes that disposal immediately and over time should not impact the buffer's role as a primary reference location. EPA expects that future and routine modeling will detect the potential for sediment encroachment into the buffer well before it might occur. This should allow the adaptive management process in the SMMP to make corrections or to implement contingencies. During the designation studies, four locations outside of the DWS were sampled. These locations could serve as suitable references should any of the stations within the buffer become compromised. These four locations will be periodically re-sampled and reassessed as part of ongoing monitoring at the DWS, either as part of a routine monitoring event or as a special study, but it is not expected that the four stations would be reoccupied each and every year.

DWS as a Contingency Site—Some commenters asked EPA to designate the DWS as a contingency site to be used only when all other options were exhausted. EPA is not designating the DWS specifically as a contingency site. It should be clear from the 1999 IFR/EIS and 2003 SEIS that beneficial uses of the dredged material at near-shore sites are preferred before material is placed in deep water. This preference does not negate the need for the DWS as a necessary site to manage dredged material at the Mouth of the Columbia River and lower Columbia River. The few available near-shore sites do not have the capacity to accommodate the millions of cubic yards of material dredged annually and needing to be disposed of. The DWS provides a location for materials that cannot be otherwise accommodated. This final designation of the DWS will make the site available for use for dredged materials meeting the ocean dredged material disposal requirements.

Sediment Size at the DWS—Commenters expressed concern that the disposal of sediment at the DWS would involve coarser sediment than occurs naturally and that benthic species at the site, especially crab, may be unlikely to recover from burial by the coarser sediments. The difference in sediment size between the grain size currently on the ocean floor at the DWS was identified as a ''Potential Conflict'' during the site assessment phase of the site evaluation study (1999 IFR/EIS, Appendix H). Grain size sampling, as documented in the 1999 IFR/EIS and 2003 SEIS, has shown that the sediments being dredged are generally in the size range of 0.12 mm at the outer shoal at the Mouth of the Columbia River to less than 0.35 mm in the Columbia River channel. The grain size at the DWS, pre-disposal, generally decreases with depth. Grain size observed during the biological baseline also fluctuated with the season. Sediments were finer during the September 2002 sampling compared to the July 2002 sampling event. Finer sediment appears to be deposited during the calmer months and then appears to be winnowed and redistributed during rougher sea conditions. Various studies at the Mouth of the Columbia River found that material placed in depths greater than 80 feet are rapidly (within 6 months to a year) covered by ''native material.'' This has been documented for coarse grained and fine grained dredged material placed offshore of the Mouth of the Columbia River.

The placement of coarser grained material at the DWS is not expected to cause an adverse impact to the environment. Grain size and disposal impacts to the benthic community will be among the parameters monitored at the DWS once the site is used. EPA has explained that species will be impacted by initial burial. Part of site management will involve spreading the sediment load to allow impacted benthic organisms, such as crab, to unbury when possible and to allow other species to recolonize.

One commenter said that EPA failed to adequately characterize the sediments to be disposed at the DWS. EPA did fully characterize the sediments and water quality of dredging and dredged material disposal sites. This information is located in Exhibit C, ''Sediment and Water Quality'' to Appendix H of the 1999 IFR/EIS, 2003 SEIS, Exhibit N, Attachments A, B and C, and the Biological Baseline study. These documents presented sediment data collected from the Mouth of the Columbia River, the Columbia River navigation projects, and the Zone of Siting Feasibility. Periodic reassessment of dredged material will occur. Permitted dredged material and dredged material to be disposed by the Corps needs to be fully tested under the regulations and applicable guidance.

De-designation of Sites A, B, and F—Some commenters recommended against the de-designation of sites A, B, E and F based on a belief that the sites had some capacity to allow for minimal use and that such minimal use would allow EPA to avoid designating a site for deep water disposal which, in turn, would make material available for beach nourishment and beneficial use projects. EPA is finalizing these site de-designations because there is no available capacity at sites A, B or F given the potential for interference with navigation for vessels of all sizes. It is expected that any additional material disposed at these sites would aggravate potentially adverse conditions. Mounding is a concern for small vessels trying to navigate the Mouth of the Columbia River because they are vulnerable to any adverse wave conditions created by the shallower bottom. Larger vessels are at risk for grounding on the shallower bottom in addition to being exposed to the steeper

and earlier breaking waves. Site E, based on disposal impacts, is de-designated so that the old site can be incorporated into the footprint of the SWS. The SWS will allow for increased management options to ensure that materials can be disposed so as not to create the potential for adverse conditions. EPA agrees with commenters that navigation safety is a primary consideration.

Coastal Zone Management Act (CZMA)—Two commenters questioned EPA's consistency analysis under the Coastal Zone Management Act (CZMA) at the time of the proposed designations and de-designations. Subsequent to the publication of the proposed action, EPA provided the states of Oregon and Washington with negative determinations of coastal effects for EPA's proposal to designate and de-designate ocean dredged material disposal sites near the Mouth of the Columbia River near the coastal states of Oregon and Washington, under Section 102 of the MPRSA. EPA notes that it received no adverse comments from the relevant state coastal zone management program offices. In making a negative determination, EPA clarified that the determination was based primarily on a distinction, for purposes of the CZMA, between site designation and site use. Designation of sites, as well as de-designation, provides the public and potential users with locations for allowable disposal of dredged material, but, unlike a lease or sale does not grant conditional property rights of any nature to potential users of the sites. Consequently, no coastal effect is possible merely through the provision of such a location. However, use of an ocean disposal site has the potential to have a coastal effect. Designated sites may not be used until applicants for site use have been granted permission through a permitting process or, in the case of the Corps, have met the substantive permitting process. EPA would expect a CZMA analysis discussing those potential effects to be undertaken by any person desiring to use a disposal site.

EPA, in the alternative, also finds that the ocean site designations and de-designations are consistent to the maximum extent practicable with any enforceable policy of a state's approved coastal zone management program. EPA did not receive any adverse comment from either the State of Oregon or the State of Washington on EPA's negative determinations for the site designations and de-designations. EPA did not receive adverse comment from either State on EPA's interpretation of the enforceable policies of each State's approved coastal zone management program. EPA's negative determinations were limited to EPA's assessment of coastal effects on the designation of the SWS and the DWS and the de-designation of Sites A, B, E, and F. The negative determinations were further limited to EPA's assessment that the applicable enforceable policies of the approved CZMA programs in Oregon and Washington did not apply to the SWS or the DWS. Finally, EPA agrees with the commenters that greater coordination on CZMA issues would be beneficial for the states, EPA and the Corps.

National Environmental Policy Act (NEPA)—Two commenters stated that the proposed action did not comply with NEPA because the 1999 IFR/1999 IFR/EIS covered channel deepening and did not adequately analyze ocean disposal options. The Agency met its voluntary NEPA obligations (63 FR 58045, ''Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents,'' October 29, 1998) by jointly preparing the 1999 IFR/EIS and the 2003 SEIS with the Corps. ''Appendix H, Volume I: Ocean Dredged Material Disposal Sites Main Report and Technical Exhibits'' of the 1999 IFR/EIS provided a comprehensive discussion of the ocean disposal options and considered 10 candidate sites as possible alternatives for ocean disposal. Although four of the 10 candidate sites were eliminated from detailed consideration in the draft EIS, the remaining six candidate sites were retained. Discussions and negotiations among stakeholders, EPA and the Corps after the draft EIS was published and before publication of the 1999 IFR/EIS led to a further reduction of candidate sites. This sequence of events is fully documented in Appendix H to the 1999 IFR/EIS. EPA discussed the alternatives considered, the available alternatives, including the alternatives available to other permitting agencies, and identified the preferred alternative. EPA also analyzed the preferred alternative against the ocean dumping criteria. The analysis of candidate sites against the mandatory ocean dumping site criteria led to the selection of the SWS and DWS as the preferred sites. The NEPA process leads to a preferred alternative which is advanced for consideration after the consequences of the reasonable alternatives have been comprehensively evaluated. This is the process EPA followed to reach the proposed designation of the SWS and DWS. EPA remains hopeful that the numerous stakeholders interested in alternatives to ocean disposal can use the stakeholders forums (particularly the Regional Sediment Management Initiative) created under the Regional Dredging Team (RDT) sponsorship.

Endangered Species Act (ESA)—One commenter commented that the proposed DWS designation did not comply with the Endangered Species Act (ESA) and requested that use of the proposed DWS be delayed until current consultation and close coordination with NOAA Fisheries was completed and conservation measures established. EPA responded to this comment by taking the opportunity to re-examine its ''Determination of No Effect with Respect to the Requirements of the Endangered Species Act for De-Designation of Existing and Designation of New Ocean Dumping Sites Offshore of the Mouth of the Columbia River, OR & WA, for Listed and Candidate Species' (August 3, 1999). EPA re-initiated informal consultation with NOAA Fisheries and with the USFWS for this purpose. Species lists were revisited and updated and EPA prepared an updated determination which concluded that its action was not likely to adversely affect ESA-listed, proposed, or candidate species or their critical habitat.

EPA received letters from the U.S. Fish and Wildlife Service (dated December 27, 2004) and NOAA-Fisheries (dated January 6, 2005) concurring with EPA's determination that the de-designations and designations ''may affect, but were not likely to adversely effect'' ESA-listed and proposed species. The U.S. Fish and Wildlife Service concurred, based on the information provided by EPA, with EPA's ''may affect, but not likely to adversely effect'' determinations for brown pelicans, marbled murrelets and short-tailed albatross. The U.S. Fish and Wildlife Service concluded that the requirements under section 7(a)(2) and 7(c) of the ESA were met, concluding the consultation process.

NOAA Fisheries concurred with EPA's determination that EPA's proposed action is ''not likely to adversely effect'' the listed or proposed wildlife species, including Stellar sea lion, loggerhead sea turtle, leatherback sea turtle, green sea turtle, olive (Pacific) Ridley turtle, blue whale, sei whale, humpback whale, sperm whale, Puget Sound killer whale (proposed for listing as threatened on December 16, 2004), or the following salmonid species: Snake River steelhead, Upper Columbia River steelhead, Middle Columbia River steelhead, Upper Willamette River steelhead, Lower Columbia River steelhead, Snake River spring/summer-run Chinook salmon, Snake River fall-

run Chinook salmon, Upper Columbia River spring-run Chinook salmon, Upper Willamette River Chinook salmon, Lower Columbia River Chinook salmon, Columbia River chum salmon, Snake River sockeye salmon, and Lower Columbia River coho salmon. This concurrence was based on the following rationale: ''(1) While turbidity will be generated from the disposal, project-related turbidity concentrations are well below known salmonid impact levels; (2) for the DWS in particular, it is unlikely that the area currently provides any unique feeding or resting habitat for ESA-listed salmonids or ESA-listed wildlife species; (3) the designation and use of the DWS is unlikely to affect the plume environment; (4) impacts to prey of ESA-listed wildlife species are likely to be limited to the footprint of the DWS site; and (5) habitat at the SWS has already been degraded through use, so continued use is not going to further degrade it beyond its present condition.'' NOAA Fisheries encouraged EPA to share the results of EPA's monitoring plan to allow for a joint evaluation of impacts from disposal. NOAA Fisheries further concurred that none of the disposal sites are located within proposed or designated critical habitat.

Essential Fish Habitat—One comment concerned the evaluation of essential fish habitat (EFH) under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the potential impacts on EFH from the use of the DWS. EPA had concluded that designating the SWS and DWS would not significantly affect EFH for any of the managed species under the MSA, but that use of the sites could result in the potential to impact EFH for some of the ground fish and coastal pelagic species, as well as salmon species. The impact to habitat for all species was expected to be very small relative to the total EFH identified for any of the species evaluated. In no instance did data indicate that the habitat provided by the SWS or the DWS was unique or particularly critical for any EFH species. No species was expected to be significantly adversely affected. EPA and NOAA Fisheries worked through an EFH consultation process and NOAA Fisheries provided EPA with limited conservation recommendations to implement. EPA agreed to implement the conservation recommendations made by NOAA Fisheries. These recommendations included further analysis of the DWS, a revision of the draft SMMP to assess biological impacts of disposal at the DWS, and expanding the monitoring area to assess remobilization of sediments placed at the DWS. EPA's response to the conservation recommendations is included in the administrative record for this action. EPA agreed to additional sampling and analysis at the DWS and collected additional information in 2003. EPA revised the draft SMMP to include reference site monitoring and management of the DWS as well as monitoring of the eventual mound that will be created over time and to add routine site monitoring and management for the DWS.

Mitigation—Several commenters raised the issue of mitigation. Although they did not define the term, their comments suggested that they generally considered ''mitigation'' to mean monetary compensation. Some commented that mitigation is required under NEPA and the CZMA for ongoing and increased impacts to ocean resources. The MPRSA, NEPA and the CZMA do not provide for monetary compensation as a way to mitigate the affects of a Federal action. Mitigation, in particular as that term is used in the MPRSA, means to lessen or moderate the ''adverse impact on the environment to the greatest extent practicable.'' *See* Section 102(c)(1) of the MPRSA. EPA's obligation to lessen or moderate the impact of the action is by avoidance measures and minimization of potential impacts through careful designation of ocean dredged material disposal sites and through the development of a monitoring and management program for the sites as described in EPA's final SMMP.

Loss of Coastal Property—Some commenters expressed the concern that dredging and disposal activities were directly resulting in the loss of coastal property along the Southwest Washington coast. Other commenters recognized that management of dredged material disposal sites could be an essential component in limiting coastal erosion along the Southwest Washington coast. The issue of coastal erosion is not unique to this area of coastline but is a natural dynamic in any coastal environment. All coastal systems are influenced to some extent by wind, wave, current and storm conditions as well as by sediment contribution from inland and ocean sources. No single factor is accountable for coastal erosion in any coastal system. The complexity of this particular coastal system renders it very unlikely that specific dredging and disposal activities could cause the direct loss of coastal property along the southwest Washington coast. No study has suggested that loss of coastal property along the southwest Washington coast would occur as a result of dredging and disposal activities related to projects currently undertaken by the Corps.

Littoral Zone—Several commenters questioned whether disposing of dredged materials at the SWS actually contributed to the littoral zone as discussed by EPA in the proposed designation. The Corps' and EPA's studies at the SWS indicate that the site has the potential for great capacity and for contributing sediment back to the littoral zone. In waters less than 60 feet deep along the Washington and Oregon Coasts, wind- and wave-induced currents dominate the transport of sediment along the seabed. This area is called the littoral (or nearshore) zone. The zone is characterized by abundant dissolved oxygen, sunlight, nutrients, generally high wave energies and water motion. The SWS is located within the littoral zone. No study indicates that disposal into the SWS will directly feed sediment back onto Washington beaches but feeding the littoral zone from the SWS is predicted to be beneficial for overall sediment enrichment of the system. EPA's designation and management of the SWS is directly responsive to the desire and historic requests to use dredged material beneficially by enriching the littoral zone near the southern coast of Washington. All of the available data, computer modeling, and physical surveys show that material placed at the SWS disperses out of the site and into the littoral zone. Enriching the littoral zone is unlikely to directly replenish a particular beach because the processes are too complex. However, the potential benefit, in terms of sediment loading augmenting the littoral system, is that it is likelier that the sediment enriched load will be carried in the direction of prevailing wave and current activity, which in this instance is toward Peacock Spit. This is the reason EPA found that placement of dredged material at the SWS is a beneficial use of dredged material. EPA intends, through its monitoring and management program, as explained in the Final SMMP, to preferentially manage material dredged at the Mouth of the Columbia River and dredged from other lower Columbia River projects so that the dredged material will be considered for placement at the SWS before being considered for placement at the DWS.

Beneficial Use and Land Based Options—Many commenters commented on the proposed action to express support for using the Benson Beach site, North Jetty site, and SWS before using the DWS and for practices that retain sediments in the littoral zone

for the beneficial uses they provide. They also urged EPA to consider land-based alternatives and beneficial use of dredged sediments before disposal into the DWS. Such evaluations were conducted as part of the designation process, and will be revisited as appropriate, during future permitting, site management, and efforts addressing regional sediment issues. EPA intends to continue to explore options through the RDT and will seek additional opportunities to retain sediments in the near-shore zone. The DWS is a necessary option for dredged material management at the Mouth of the Columbia River. EPA is supportive of keeping dredged material in the near-shore littoral zone but, without other immediately available sites on-shore or in the near-shore to accept dredged sediment from this area, finds that designation of the DWS is necessary. EPA does not expect that the need for ocean disposal sites will entirely disappear near the Mouth of the Columbia River given the annual volume of material that must be moved to maintain navigation. Beneficial uses and land-based options, to date, have been controversial, prohibitively expensive and not continuously available.

Some commenters urged EPA to forego designating the proposed 102 sites in favor of 103 Corps-selected temporary sites and to move forward with Benson Beach on-shore beach nourishment. EPA intends to designate 102 sites because there is clear need for long-term sites at the Mouth of the Columbia River. As was shown during the Corps' Mouth of the Columbia River maintenance dredging for 2003, when the local government of Pacific County did not allow on-shore placement of dredged sand at Benson Beach, land-based options can be subject to high degrees of uncertainty.

One commenter stated that land-based alternatives were preferred over ocean dumping and asserted that there was a mandatory preference against ocean dumping of any materials. While it is true that under the regulations such alternatives are to be considered, including ''the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest,'' the statutory preference is for designating sites wherever feasible beyond the edge of the Continental Shelf. Section 102(a)(I) of the MPRSA, 33 U.S.C. 1412(a)(I). EPA, as cooperating agency with the Corps, rejected off-shelf locations because of the unique habitat of the Continental Shelf in this vicinity, but did consider numerous alternatives to possible ocean dumping sites as part of the joint 1999 IFR/EIS and 2003 SEIS. EPA did examine potential estuarine disposal sites and upland disposal sites as well as the continuing use of Benson Beach as an on-shore disposal site. These alternatives were not found to be viable for purposes of this designation given the lack of approvals by state authorities and the public sentiment against using estuarine and upland disposal sites.

Stakeholder Forum—Most commenters expressed a desire for a stakeholder forum to allow for continued information exchange on disposal activities involving disposal on the ocean floor off the Columbia River and for regional sediment management. EPA agrees and intends to focus such a forum through the Regional Sediment Management initiative, sponsored by the recently created RDT. EPA expects that parties heavily involved in this designation process will continue to be involved in discussions of regional dredged material management issues. EPA does not expect that such a forum would be a decision-making body but expects that input from a diverse group of stakeholders will allow significant issues to be addressed. The RDT will provide a focus for a comprehensive Region-wide discussion of management options that could lead to management solutions. EPA supports the use of the RDT as a forum to explore beneficial use opportunities for dredged material disposal. EPA's support for the RDT does not change today's action finalizing the site designations and de-designations.

In a related comment, one commenter stated that there was an ''acute disposal crisis'' in 2003 without the DWS. EPA believes that the 2003 dredging and disposal season, as well as the 2004 dredging and disposal, showed the need for 102 ocean dredged material site designations to ensure that sites with capacity are available for the long-term. For the 2003 dredge and disposal season, the Corps used the Corps-selected 103 Site E and the North Jetty site for disposal. The Corps-selected 103 deep water site was available if needed but was not used for the 2003 season, although it was used for the 2004 season. The commenter also stated that EPA was in part responsible for a ''crisis'' because of its handling of the ocean disposal taskforce. With respect to the ocean disposal taskforce, EPA decided that this forum needed to be changed to include the broader perspective of the Columbia River watershed. The planned stakeholder forum under the sponsorship of the RDT is intended to provide the broader perspective clearly desired by so many to consider long-term sand management needs, land-based disposal alternatives, and maintenance of fisheries in the area along the lower Columbia River and in coastal communities near the Mouth of the Columbia River. Stakeholder input has been of tremendous value in the designation process.

Historical Use Established—One commenter asserted that designation of the DWS would ''constitute *ex post facto* establishment of historical use, and would thereby unfairly influence the ultimate designation process.'' EPA does not agree. The regulatory criteria express a preference for designating sites that have historically been used but were, or are, not yet designated. See 40 CFR 228.5(e).

Economic Protection of the Coastal Community—One commenter asked whether EPA had considered the economic protection of the coastal community. EPA did consider this issue and is interested in the needs of coastal communities, including the protection of their economic base and cultural heritage. However, EPA does not have any evidence to indicate that designating and de-designating sites near the Columbia River will adversely impact the economic base or cultural heritage of any coastal community. EPA's action regulates the location of sites to be used for the disposal of dredged materials in ocean waters. The action does not regulate fishing or activities related to fishing and the associated coastal communities.

Public Trust Doctrine—A commenter stated that basic public trust guidelines must be followed in dredging and disposal to avoid, minimize and mitigate environmental damage and interference with the public's use of the water. The Public Trust Doctrine to which the commenter alludes is a common law legal principal, a doctrine that ''provides that submerged and submersible lands are preserved for public use in navigation, fishing, and recreation.'' See Black's Law Dictionary. The doctrine is carried out through a balancing of interests. EPA has followed the public trust doctrine in its very public, multi-year process, balancing interests in navigation, fishing, recreation, and environmental protection to reach the point of today's final action in designating the DWS and SWS and de-designating sites A, B, E and F. EPA considered the concerns of federal agencies, states and local governments, and private parties and organizations in reviewing alternatives for ocean site designation to avoid, minimize and mitigate environmental damage and to avoid as far as

practicable interfering in the public's use of mouth of the Columbia River. EPA collected and analyzed data on possible ocean disposal sites, including alternatives to ocean disposal; weighed the data and comments received in the preparation of the voluntary NEPA documents and the comments received on the proposed designations and de-designations; and examined the concerns voiced by the interested parties. EPA is locating new sites where environmental damage will be avoided, minimized and mitigated and where the public's use of the ocean waters will not be unduly impinged upon.

Fish Tumors—One commenter suggested that bioaccumulation pathways of contaminants in the lower Columbia River and near the mouth of the river, as evidenced by tumors on bottom fish collected at the DWS, were indicative of carcinogenic uptake at the sediment-water interface and need to be studied. The biological baseline study did identify epidermal tumors in Rex Sole at the DWS and English Sole at the SWS. The tumors identified were consistent with tumors observed throughout fish populations along the northeastern Pacific coast. Statistically, at the DWS and SWS, the fish presenting with tumors represented less than 10 percent of the Rex and English Sole collected at those sites as part of the biological baseline study. Two classes of tumors were identified. The first were epidermal papillomas, which are fairly common among *Pleuronectids* in the northeastern Pacific. These tumors have not been linked to anthropogenic inputs. The second class of tumors was similar to dark colored invasive tumors indicating an invasive squamous cell carcinoma. The cause of these tumors is unknown. Future studies should be directed to better determine the incident rate and intensity of these tumors along the Oregon and Washington coast. Although this is an issue that is not localized to the SWS or the DWS but is occurring all along the Oregon and Washington coasts, additional study of the incidence of fish tumors at the designated sites is an element included in groundfish surveys or studies conducted (*see* final SMMP).

Gear Removal—One commenter asked for greater coordination to allow for gear removal before disposal into designated sites occurred. While this issue is not specifically addressed in the final SMMP, EPA expects site users to plan their activities to allow for gear removal when site users seek permission to use the designated sites. EPA will review site use plans to insure that coordination with local fishermen associations is addressed.

Risk of Oil Spills—A commenter observed that the risk of oil spills at the Mouth of the Columbia River from dredging and dumping had not been assessed. This risk was addressed in the 1999 IFR/EIS and the 2003 SEIS. The risk, which is the possibility of oil spills from vessel groundings and navigation conflicts, is directly related to dredging and dumping operations and channel navigation use and is not a risk inherent to designating or de-designating an ocean dredged material disposal site. Maintenance of adequate navigation depths and aids at the MCR and throughout the Columbia River navigation system helps to reduce risk of oil spills from large vessel groundings and conflicts. Preparation and adherence to annual use plans for the dredging and disposals at EPA-designated sites will further help to avoid or minimize conflicts between the dredge(s) and incoming and outbound vessel traffic.

4. Statutory and Executive Order Reviews

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 the principles set forth in the Executive Order.

This action, which simultaneously de-designates certain sites and designates the SWS and DWS, is not a significant regulatory action under Executive Order 12866.

b. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OPM. Since this action does not establish or modify any information or record-keeping requirements, it is not subject to the provisions of the Paperwork Reduction Act.

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 5 U.S.C. 553 after being required by that section (or by any other statute) to publish a general notice of proposed rulemaking. Section 605(b) provides an exception to this requirement if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The proposed action was certified as an action that would not have a significant economic impact on a substantial number of small entities and, therefore, the Agency did not prepare a regulatory flexibility analysis.

For purposes of assessing the impacts of today's action on small entities, the RFA provides default definitions for each type of small entity directly regulated by the rule. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) 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 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 received comments from the Columbia River Deepening Opposition Group (CDOG) and the Columbia River Crab Fisherman Association (CRCFA) on the RFA certification. EPA did not receive any adverse comments from small businesses or other entities that today's action regulates directly or indirectly. The comments received by EPA discussed impacts to small businesses such as crab fishers, ground fisheries and other fisheries, and coastal

communities involved in fishing. These entities are not directly regulated by this action. EPA's action regulates the location of sites to be used for the disposal of dredged materials in ocean waters. The action does not regulate fishing or activities related to fishing and the associated coastal communities. The action may have economic impacts in many sectors of the environment but the RFA does not require EPA to assess the impacts on all of the nation's small businesses indirectly affected by the action.

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

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Public Law 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.

This 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, the requirements of section 203 of the UMRA do not apply to this action.

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 action 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 April 1, 2005.

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 Columbia River suitable for disposal of dredged materials. Once designated, persons seeking to use the sites must obtain a permit, or, as with the Corps, meet the substantive permit requirements. Thus, Executive Order 13132 does not apply to this action. Although Section 6 of the Executive Order 13132 does not apply to this action, EPA did consult with representatives of State and local governments in developing this action.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, 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.'' One commenter asserted that EPA had not consulted with Indian Tribal Governments during the development of this action and that there were tribal implications because of the potential to affect Columbia River salmon and other resources. The ocean dredged material disposal site designations and de-designations do not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

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 No. 104–113, 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide to Congress, through OMB, explanations when the Agency decides to use ''government-unique'' standards in lieu of 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 Final Site Monitoring and Management Plan (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 no adverse effects are expected for minority and low-income populations.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: February 18, 2005.

Ronald A. Kreizenbeck,

Acting 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 removing and reserving paragraphs (n)(6) and (n)(7), removing paragraph (n)(9), by revising paragraph (n)(8) and by adding a new paragraph (n)(9) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(6) [Reserved]

(7) [Reserved]

(8) Mouth of the Columbia River, OR/WA Dredged Material Shallow Water site.

(i) *Location:* Overall Site Coordinates: 46°15′31.64″ N, 124°05′09.72″ W; 46°14′17.66″ N, 124°07′14.54″ W; 46°10′40.88″ N, 124°16′46.48″ W and 46°15′52.77″ N, 124°05′42.92″ W. Drop Zone: 46°15′35.36″ N, 124°05′15.55″ W; 46°14′31.07″ N, 124°07′03.25″ W; 46°14′58.83″ N, 124°07′36.89″ W and 46°15′42.38″ N, 124°05′26.65″ W (All NAD 83).

(ii) *Size:* 3.05 kilometers long and 0.32 to 1.10 kilometers wide or 1.4 square nautical mile.

(iii) *Depth:* Ranges from 14 to 23 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; Site use shall be consistent with the ability of the site to disperse disposed material into the littoral zone.

(9) Mouth of the Columbia River, OR/WA Dredged Material Deep Water site.

(i) *Location:* Overall Site Coordinates: 46°11′03.03″ N, 124°10′01.30″ W; 46°13′09.78″ N, 124°12′39.67″ W; 46°10′40.88″ N, 124°16′46.48″ W; 46°08′34.22″ N, 124°14′08.07″ W (which includes a 3,000-foot buffer); Site Placement Area: 46°11′06.00″ N, 124°11′05.99″ W; 46°12′28.01″ N, 124°12′48.48″ W; 46°10′37.96″ N, 124°15′50.91″ W; 46°09′15.99″ N, 124°14′08.40″ W (All NAD, 83).

(ii) *Size:* 7.01 kilometers long by 5.18 kilometers wide or 10.5 square nautical mile.

(iii) *Depth:* Ranges from 58 to 91 meters.

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

(v) *Period of Use:* Continuing Use or until placed material has mounded to an average height of 40 feet within the placement area (*see* restriction 4 below).

(vi) *Restrictions:* Disposal shall be limited to dredged material determined to be suitable for unconfined disposal; Site use shall be consistent with the ability of the site to retain disposed material on-site; Direct disposal of dredged material into the identified buffer zone is prohibited; and The Corps and/or EPA shall undertake specific re-evaluation of site capacity once the site is used and an average mound height of 30 feet has accumulated throughout the placement area. This evaluation will either confirm the original 40-foot height restriction, or recommend a more technically appropriate one.

* * * * *

Note: The following Figures will not appear in the Code of Federal Regulations.

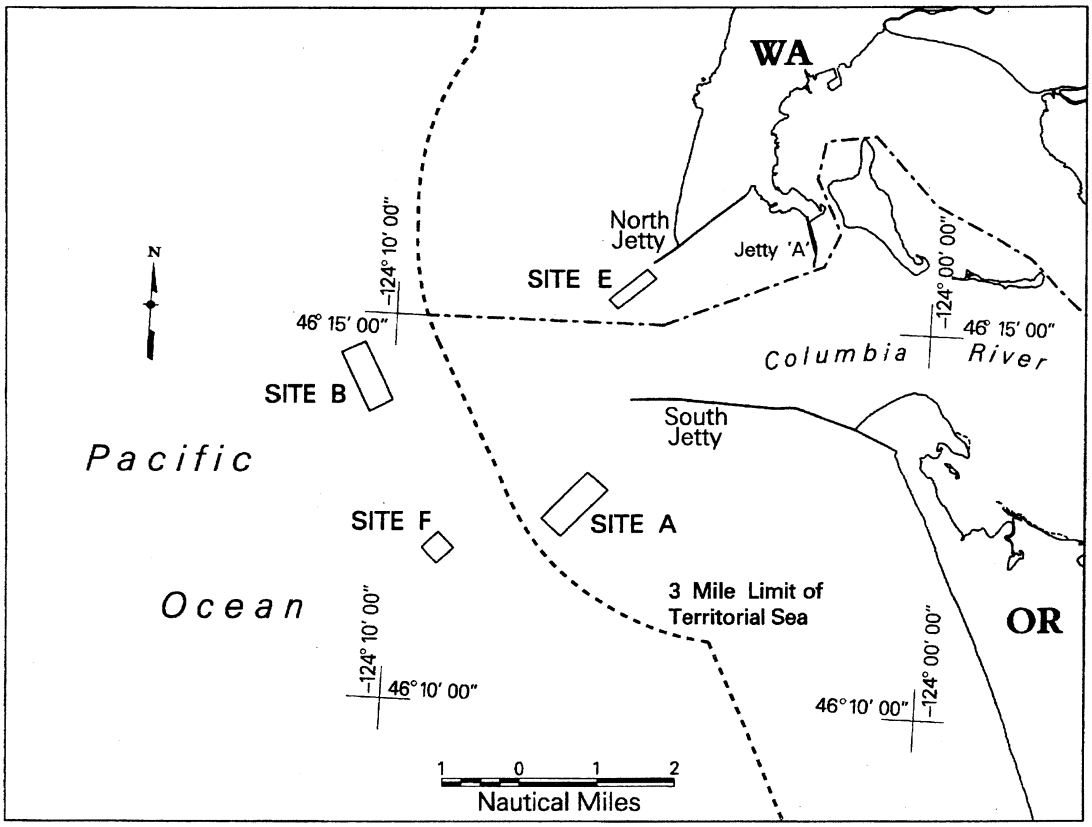

Figure 1: De-designated Ocean Dredged Material Disposal Sites by this Action

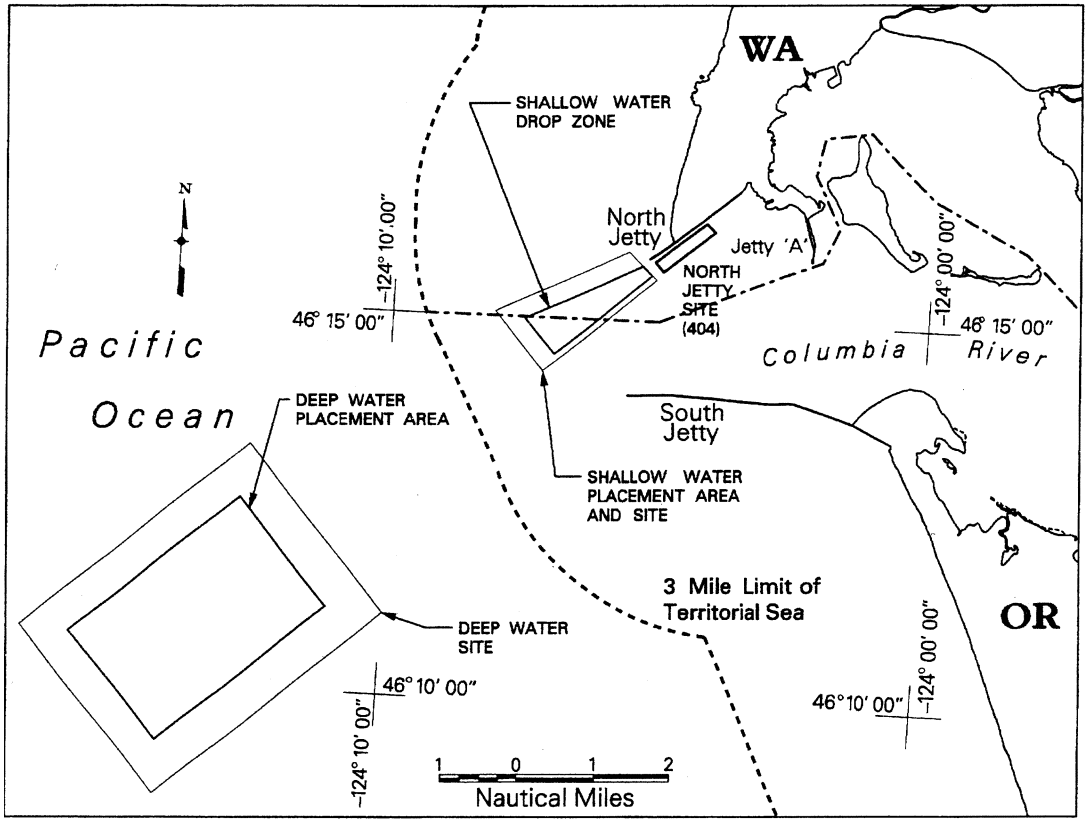

Figure 2: Designated Ocean Dredged Material

Disposal Sites by this Action