

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-6567-7]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

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

DATES: Comments must be received on or before May 15, 2000.

ADDRESSES: Comments on this proposed rule should be sent to: John Malek, Dredging and Ocean Dumping Coordinator, EPA Region 10 MS: ECO-083, 1200 Sixth Avenue, Seattle, WA 98101.

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

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC.
EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

U.S. Army Corps of Engineers, Northwestern Division, U.S. Customs House, 220 Northwest Eighth, Portland, Oregon.

U.S. Army Corps of Engineers, Portland District, Robert Duncan Plaza, 333 S.W. First Avenue, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Malek, Ocean Dumping Coordinator, U.S. Environmental Agency, Region X (ECO-083), 1200 Sixth Avenue, Seattle, WA 98191-1128, telephone (206) 553-1286, e-mail malek.john@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), as amended, 33

U.S.C. 1403 *et seq.*, gives the Administrator the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, subchapter H, section § 228.4) state that ocean dumping sites will be designated by publication in part 228. A list of "Approved and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last updated on July 1, 1999 (40 CFR 228.15(n)(2), (n)(3), and (n)(4)). A total of three ocean dumping sites off of Coos Bay (Site E, Site F, and site H) were designated in 1986 (51 FR 29927 *et seq.*). This proposed rule designates a new Site F which incorporates the 1986-designated Site F but appreciably expands it. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions.

The U.S. Army Corps of Engineers (Corps) has prepared the *Feasibility Report on Navigation Improvements with Environmental Impact Statement (1994)* (Channel Deepening) for Coos Bay, Oregon, with the EPA Region 10 as a cooperating agency in the EIS preparation. The action discussed in the EIS is the designation of a larger Site F for ocean disposal of dredged material. The other two sites (E and H) are not affected by this rule. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal of dredged material. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

Existing Site F was designated in 1986 and in 1989 the area available for disposal of dredged material was doubled by the Corps using its section 103 authority of the MPRSA. The

expansion was to the north to prevent excessive mounding and to reduce potential sediment transport back into the entrance channel. In 1995 Site F was again expanded by the Corps in order to accommodate less than anticipated sediment dispersion and to prevent excessive mounding. The size and location of Site F herein proposed for final designation is the same as that established by the Corps 103 action in 1995.

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

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

C. Proposed Site Description

The center of the proposed site is located approximately 1.6 miles offshore with an east-west site dimension of 14,500 feet and a north-south site dimension of 8,000 feet (Figure 1.) The coordinates of the site are as follows (NAD 83):

43°22'58" N, 124°19'32" W
43°21'50" N, 124°20'29" W
43°22'52" N, 124°23'28" W
43°23'59" N, 124°22'31" W

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

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are

selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate sites can be designated. The general criteria are given in 40 CFR 228.5 of the EPA Ocean Dumping Regulations. Eleven specific criteria, given in 40 CFR 228.6, are used in evaluating a proposed disposal site to assure that the general criteria are met. The evaluations of the general and specific criteria, given below, are based on information published in the site designation EIS, monitoring studies, and the Channel Deepening EIS.

General Criteria (40 CFR 228.5)

1. Minimal Interference With Other Activities

The location of proposed ODMDS F is based on reasonable distance from the Coos Bay entrance, depth of water, biological conditions, historical use, and estimated amount and type of dredged material. Disposal activities are not expected to result in more than minimal interference with the typical marine activities such as navigation and commercial and recreational fishing. Use of the nearshore portion could conflict with crab fishing, but timing of disposal to occur after the season closes minimizes interference.

2. Minimize Changes in Water Quality

The material to be disposed consists of clean sand and silt. As described in the EIS, sediment test results indicate this material is suitable for ocean disposal. Testing and evaluation of material proposed for disposal would occur as necessary to insure suitability.

3. Interim Sites Which Do Not Meet Criteria

Not applicable; the existing Site F was designated on an interim basis in 1977 and received final designation status in 1986. The site did not have sufficient capacity to meet long-term need without mounding, leading to the need for an expanded site.

4. Size of Sites

The size of the designated Site F has proven to be inadequate. By the Corps' Section 103 authority, Site F was twice expanded (1989 and 1995) to its presently proposed dimensions to limit mound development caused by

inadequate sediment dispersion. The enlarged Site F proposed for designation is anticipated to adequately accommodate disposal of current and future maintenance dredging by using a larger placement area and by using the more active nearshore dispersal areas.

5. Sites Off the Continental Shelf

Such sites were eliminated during site evaluation for the 1986 site designation EIS. Conditions have not changed to offer any environmental advantage to the use of a site off the continental shelf. Transportation costs, sampling and testing costs, and post-disposal monitoring costs associated with disposal at a continental shelf site would greatly increase over present costs. In addition, there is greater uncertainty over impacts associated with continental shelf disposal, compared to disposal at existing sites which are known low impact areas. Therefore, disposal at a site off the continental shelf is not considered necessary or practical.

Transporting dredged material off the continental shelf presents potentially significant environmental concerns. Benthic and pelagic ecosystems near the shelf contain important fishery resources and the effects of disposal operations on them are not well understood. Fine-grained sediment and rocky habitats would be directly impacted by disposal. These deep-water areas are stable and generally not disturbed by wave action or sediment movement. Consequently, the benthic invertebrate communities in these deep, offshore environments are adapted to very stable conditions and would be less able to survive disturbance from the immediate impact of disposal and the long-term alteration of substrate type. Little is known of the ecology of benthic communities on the continental slope; however, disposal onto those communities would cause severe and long-term impacts. Bottom gradients can be 5 to 25 percent on the continental slope, making accumulated unconsolidated sediments susceptible to slumping. Deposited sediments could be transported long distances downslope as turbidity currents and offshore by near-bottom currents, potentially affecting organisms outside of any designated site.

The cost for site evaluation necessary to designate a site and subsequent baseline and monitoring, along with unanswered environmental concerns about the effects of disposal in such areas, makes off-shelf disposal undesirable as well as infeasible. Further, disposal off the continental shelf would remove natural sediments

from the nearshore littoral transport system, a system that functions with largely non-renewable quantities of sand.

Specific Criteria (40 CFR 228.6)

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

The proposed site lies in 20 to 160 feet (6 to 51 m) of water, approximately 1.6 miles offshore with an east-west dimension of 14,500 feet and a north-south dimension of 8,000 feet. Coordinates are (NAD 83):

43°22'58" N, 124°19'32" W
43°21'50" N, 124°20'29" W
43°22'52" N, 124°23'28" W
43°23'59" N, 124°22'31" W

In general, bottom contours of the proposed site slope at a rate of 10/1000 feet to the WNW.

Sediments in proposed Site F and adjoining areas are clean fine sands of marine origin with median grain diameters of 0.15 to 0.20 millimeters.

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

Aquatic resources of the proposed Site F are described in detail in the EISs (1986, 1994). The inshore high-dispersive area (depth to 15 meters) are populated by species tolerant of a high energy wave environment that are adapted to continued disturbance. Deeper areas are generally less dispersive and are populated by species generally less adapted to continued disturbance. Most organisms display seasonal changes of abundance typical of coastal Oregon and Pacific Northwest waters.

Based on analyses of benthic samples, proposed Site F and vicinity contains benthic fauna characteristic of oceanic coastal Pacific Northwest environs. By utilizing the more dispersive shallower areas and, when appropriate, deeper areas of the proposed site, the disturbance or burial of benthic organisms would be minimized. Various management options described in the site Management and Monitoring plan (SMMP) over a larger site area would further avoid or minimize these impacts. Most organisms and communities which are adapted to a higher energy environment tend to recolonize quickly following the disposal operation. No unique biological communities would be impacted.

The dominant commercially and recreationally important macroinvertebrate species in the coastal area are shellfish, Dungeness crab and

shrimp. A variety of demersal and pelagic fish species are present. Common demersal fish are flatfish, sole, and smelt. Anadromous salmon, herring, and anchovy are representative of pelagic fishes present in the coastal waters.

The proposed Site F is in an area where numerous species of birds and marine animals occur in the pelagic nearshore and shoreline habitats.

In summary, the proposed ODMDS contains living resources that could be affected by disposal activities. However, evaluation of past disposal activities does not indicate that unacceptable adverse effects to these resources have occurred. Appropriate future management should minimize the potential of adverse impacts and make this proposed site acceptable for final designation.

3. Location in Relation to Beaches and Other Amenity Areas

The nearshore limit of proposed Site F is located within 2000 feet of the shoreline. Sediments disposed near that site boundary would be in an active transport zone and would disperse rapidly both onshore and alongshore. Limited onshore transport would be expected due to the nature of currents and wave transport in that vicinity. Proper management could detect any onshore effects and modify disposal actions accordingly. Placement in the nearshore could help to reduce erosion on the beach near the Coos Bay North Jetty.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any

For purposes of maintaining the existing federal channel, an average of approximately 1.38 million cubic yards (cy) of sediment is annually dredged from the estuary and placed in designated ODMDSs (Sites F and H) offshore of the entrance to Coos Bay. About half is classified as sand and the remainder as fine-grained material (silt). In the recent past the fine-grained material has been disposed at Site H and the sand at Site F although both sites have been designated to receive sand and silt. Since the recent channel deepening, Site H has shown evidence of mounding and its long-term viability to receive significant disposal volumes, without exceeding site boundaries, is being analyzed. Whether expansion of Site H, a shift to greater reliance on proposed Site F, or another management option is appropriate, is presently being studied.

For the present, proposed disposal site F will receive dredged materials transported by either government or private contractor hopper dredges or ocean-going barges. The dredges typically release dredged material while moving slowly through the disposal site. Mounding should be minimized by dispersing the disposal in such a manner and by placing material in both the nearshore and the offshore part of the proposed site, as appropriate.

Small quantities of non-Federal material are annually disposed at site F or H in accordance with Department of the Army permits. These disposals are determined to comply with the ocean dumping criteria.

5. Feasibility of Surveillance and Monitoring

Surveillance of the proposed disposal site can be made from shore facilities or vessels. Approaches to the Coos Bay entrance, including the disposal area, are surveyed annually by the Corps. Surveillance during heavy weather conditions is expected to be unnecessary since heavy sea conditions curtail ocean disposal operations.

The Corps and EPA have developed a site management plan which addresses post-disposal monitoring.

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

Average currents in the region generally flow parallel to the bathymetric contours with downslope components predominating over upslope components near the bottom. Local current strength and direction, however, reflect the variability of local winds. During disposal operations in the summer months the predominant direction of material transport is southward, but with a stronger northward component the remainder of the year. At proposed site F dispersal characteristics range greatly depending on depth; the nearshore areas are very dispersive whereas dispersion in the offshore areas is minimal.

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

Disposal at designated Site F has resulted in significant mounding, as much as 20 feet by 1989, and in the Corps' 103 expanded Site F (1989) as much as 24 feet by 1994. No material from the Federal navigation project has been disposed in the designated Site F and the 1989 expansion area since 1994. Dredged material from other dredging has been placed at the EPA designated

site under Department of the Army permits. Material dredged from the Federal navigation project has been managed since 1995 by placement further offshore, nearshore, and to the north within the area of the presently proposed for designation. Material placed into the nearshore portion of the proposed site has moved out between dredging cycles.

No significant biological impacts have been associated with any disposal at the Coos Bay sites.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean

The only known commercial and recreational uses occurring in the vicinity of proposed Site F are fishing and marine navigation. No significant impact to these activities has occurred in the past or is anticipated for the future. Commercial crabbing occurs in the area, especially in the nearshore portion. Timing of disposal in that portion has been scheduled to occur after the crabbing season has closed to minimize interference.

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

Water and sediment quality analyses conducted in the study area and experience with past disposals in this region have not identified any adverse water quality impacts from ocean disposal of dredged material.

The ecology of the offshore area is a Northeast Pacific mobile sand community. This determination is based mainly on fisheries and benthic data. Neither the pelagic or benthic communities should sustain irreparable harm due to their mobility and widespread occurrence off the Oregon coast.

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

Nuisance species are considered as any undesirable organism not previously existing at the disposal site. They are either transported to or recruited to the site because the disposal of dredged material created an environment where they could establish. The major component of dredged material which might attract nuisance species is the organic material. The only material containing any appreciable amounts of organic material is that dredged between RM 12 and 15. This material has historically been

disposed at Site H. No nuisance species have been observed at this site in more than 10 years of monitoring.

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

The cultural resource most likely to be directly impacted by the proposed project would be submerged shipwrecks at or near proposed Site F. Potential impacts may include exposure and destruction of remnants of shipwrecks if present in the location of areas scheduled for dredging or impacts from disposal at the disposal site. Proposed Site F and vicinity has been investigated and no shipwrecks have been found.

E. Proposed Action

The 1994 EIS concluded that the proposed site may be appropriately designated for use. The proposed site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the larger Coos Bay Site F as approved Ocean Dumping Site is being published as proposed rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region 10.

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

F. Regulatory Assessment

1. Consistency With the Coastal Zone Management Act

The designation of proposed Site F has been determined by the Corps and EPA to be consistent with the acknowledged local comprehensive plans and the State of Oregon Coastal Zone Management Program. The State of Oregon, Department of Land Conservation and Development, reviewed this consistency determination and concurred (1994 EIS).

2. Endangered Species Act Consultation

Federally listed species, under the administration of the National Marine Fishery Service (NMFS), which may occur in or near the proposed disposal site include: gray, fin, humpback, blue, sei, sperm and right whales, Steller sea lions, leatherback, loggerhead and green

sea turtles, Snake River sockeye salmon, Snake River fall and spring/summer chinook salmon and Sacramento River winter-run chinook salmon. They are normally present in offshore waters and occur in limited numbers on a seasonal basis. Biological Assessments have been prepared and concurrence letters from NMFS received.

Five Federally listed species administered by the U.S. Fish and Wildlife Service (USFWS) occur in the coastal area. Species present are the brown pelican, peregrine falcon, bald eagle, western snowy plover, and the marbled murrelet. The peregrine falcon and the bald eagle are proposed for delisting. Biological Assessments have been prepared and concurrence received.

G. Administrative Review

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant", and therefore subject to OMB review and other requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(a) 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;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) 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 proposed rule does not entail "significant regulatory action" as defined. Consequently EPA has determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866.

2. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with

those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13083 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities".

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Tribal governments are not affected in any fashion. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

3. Regulatory Flexibility

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), federal agencies generally are required to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the regulatory action on small entities as part of a proposed rulemaking. However, under section 605(b) of the RFA, if the Administrator for the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, the agency is not required to prepare an IRFA. The Administrator certifies, pursuant to section 605(b) of the RFA, that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, the agency did not prepare an initial regulatory flexibility analysis.

The RFA requires analysis of the impacts of a rule on the small entities subject to the rule's requirements. *See United States Distribution Companies v. FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as described by the RFA. ("No [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule," *United Distribution at 1170*,

quoting *Mid-Tex Elec. Co-op v. FERC*, 773 F. 2d. 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court.) The Agency is thus certifying that today's proposed rule will not have a significant economic impact on substantial number of small entities, within the meaning of the RFA.

4. 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 the proposed Rule does not establish or modify any information or record-keeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

5. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and

adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, the provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule 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 Rule 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 rule.

6. Executive Order 12875

Today's proposed rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of

section 1(a) of the Executive Order do not apply to this Rule.

7. Executive Order 13045

The Executive Order applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

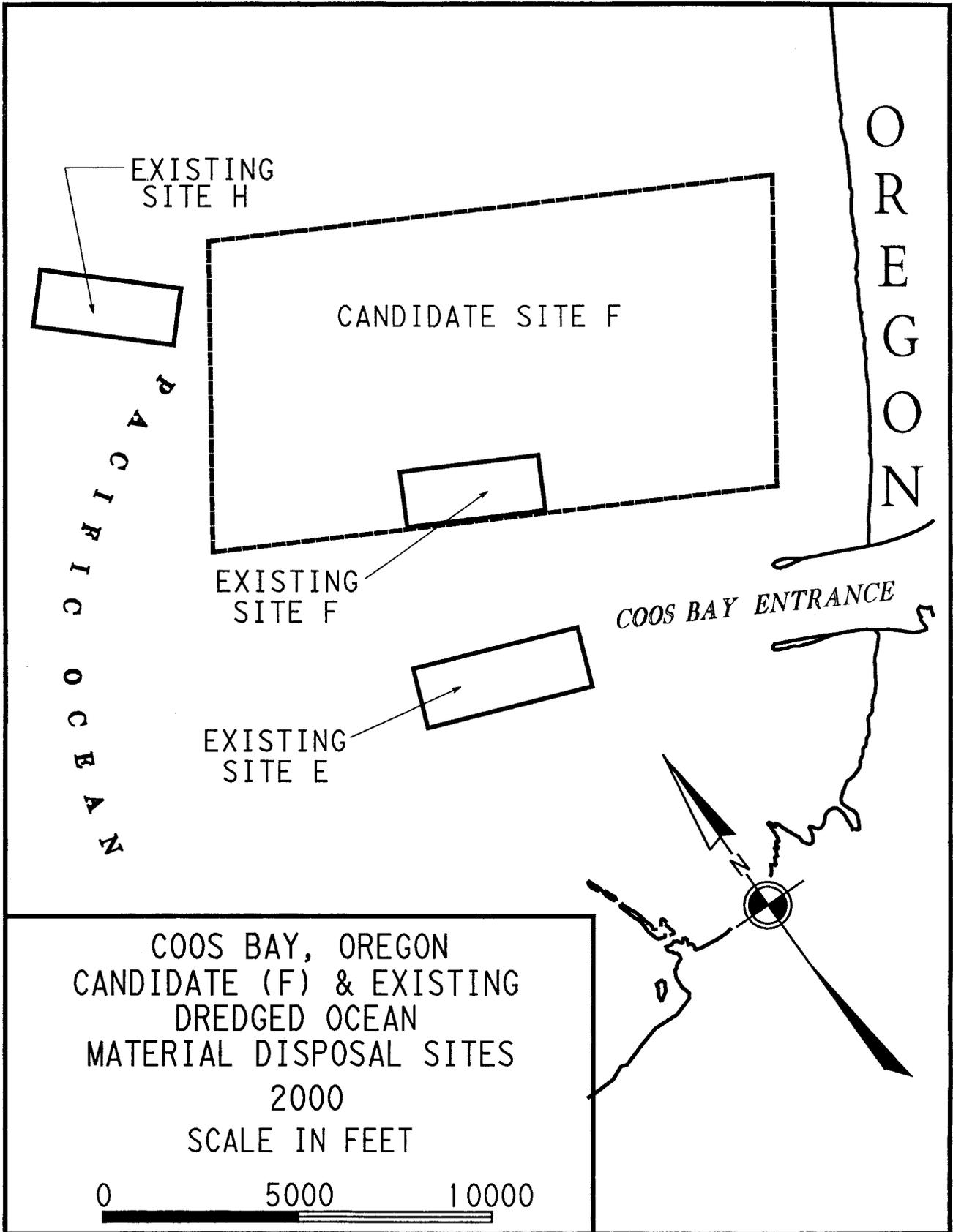
EPA interprets E.O. as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This proposed rule is not subject to E.O. 13045 because it is not economically significant as defined under E.O. 12866 and, further, it does not establish an environmental standard intended to mitigate health or safety risks.

8. Executive Order 12898

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 proposed rule addresses ocean dumping (away from inhabited land areas), with no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

BILLING CODE 6560-50-P



List of Subjects in 40 CFR Part 228.

Environmental protection, Water pollution control.

Dated: March 15, 2000.

Chuck Clarke,

Regional Administrator for Region X.

For the reasons set out in the preamble, Chapter I of title 40 is amended as set forth below:

PART 228—[AMENDED]

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

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

2. Section 228.15 is amended by revising paragraphs (n) (4) (i), (ii), (iii), (iv), (v), and (vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(4) * * *

(i) Location: 43°22'58" N., 124°19'32" W.; 43°21'50" N., 124°20'29" W.; 43°22'52" N., 124°23'28" W.; 43°23'59" N., 124°22'31" W. (NAD 83)

(ii) Size: 4.42 kilometers long and 2.44 kilometers wide.

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

(iv) Primary Use: Dredged material.

(v) Period of Use: Continuing Use.

(vi) Restriction: Disposal shall be limited to dredged material determined to be suitable for unconfined disposal and any other restrictions contained in the then-currently approved site monitoring and management plan.

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[FR Doc. 00-7734 Filed 3-30-00; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 2**

[ET Docket No. 00-47, FCC 00-103]

Inquiry Regarding Software Defined Radios

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This document requests comments on "software defined radio", which the Commission believes could have wide range implications for radio technology and our regulatory policies. Software defined radios have the potential to change the way users can communicate across traditional services and to promote efficient use of

spectrum. The Commission believe's that software defined radios could significantly affect a number of Commission functions, including spectrum allocation, spectrum assignment, and equipment approval. The purpose of this inquiry is to gather information on the state of software defined radio technology, interoperability issues, spectrum efficiency issues, equipment authorization processes, and other relevant issues.

DATES: Comments June 14, 2000; and reply comments July 14, 2000.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 415 12th Street, SW, TW-A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418-7506.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry*, ET Docket 00-47, FCC 00-103, adopted March 17, 2000, and released March 22, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room Cy-A257, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Services, Inc. (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of Notice of Inquiry

1. The Commission initiated this *Notice of Inquiry* ("NOI") to obtain comments from the public on a variety of issues related to software defined radios. Software defined radios could offer tremendous advantages to consumers over currently available wireless equipment. These benefits include lower cost, a greater variety of features, and the ability to adapt to multiple communication standards. They could also offer advantages to manufacturers, such as increased economies of scale in production, increased worldwide market opportunities, and a decrease in the number of devices that must be maintained in inventory. Software defined radios could expand access to broadband communications for all persons and increase competition among telecommunication service providers. Through this inquiry, we seek input to help us evaluate the current state of software defined radio technology, and to determine whether changes to the Commission's rules are

necessary to facilitate the deployment of this technology. Upon review of the responses to this inquiry, we will determine whether to propose any changes to the rules.

2. Software defined radio technology was originally developed for the United States military. The "SPEAKeasy" project was undertaken by the Department of Defense with the goal of developing a multi-band, multi-mode software. The SPEAKeasy project showed that a software defined radio is feasible. Nevertheless, there are many technological hurdles that must be overcome before software defined radios can be widely deployable. For example, there are limitations on the speed and dynamic range of current analog to digital converters, physical limitations on the frequency range over which an antenna can operate, and speed and cost constraints on digital signal processing circuitry. In addition, standards that would allow interoperability between hardware and software produced by different manufacturers are still under development. Therefore, in order to assist us in understanding the current state of software defined radio technology, we seek comment in the following areas.

- What features in a radio are apt to be controlled by software? For example, could the operating frequency, output power, and modulation format be software controlled?
- What are the specific limitations of current software defined radio technology? What are the cost implications?
- What capabilities could software defined radios have that are not found in current radio technology?
- When could software defined radios be deployed commercially, and for what services or purposes?
- What work is being done on software defined radios internationally, and are there any steps the Commission should take to encourage this work?

3. Interoperability. The Commission's rules are divided up into a number of parts that contain the requirements for various licensed radio services. The rules for each service specify the operating frequencies and other technical requirements for radio equipment in that particular service. In some cases there is overlap between these frequencies and other requirements, so equipment can be developed to operate in more than one service. However, in most cases, equipment designed to operate in one service can not communicate with equipment designed to operate in another service, and in some cases can not even communicate with other equipment in the same service due to