## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 228

**[FRL–7464–4]**

## Ocean Dumping; Proposed De-designation of Sites and Proposed Designation of New Sites at the Mouth of the Columbia River, Oregon and Washington

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA today proposes to de-designate four existing ocean dredged material disposal sites located off the mouth of the Columbia River near the states of Oregon and Washington, and to designate two new sites for the ocean disposal of dredged material. The two 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 dumping of dredged material. The designation of new ocean disposal sites by EPA is necessary to provide acceptable sites for current and future dredged material disposal needs. The proposed site designations will be for an indefinite period of time. The sites will be subject to continuing monitoring and management to ensure that unacceptable, adverse environmental impacts do not occur. The de-designation of existing sites is necessary to discontinue the use of designated sites where the impact of disposal has resulted in changed site conditions.

**DATES:** Comments must be received on or before April 25, 2003.

**ADDRESSES:** Written comments on this proposed rule should be sent on or before 5 p.m. of the 45th day from the date of this publication in the **Federal Register** to: John Malek, Dredging and Ocean Dumping Coordinator, EPA Region 10, 1200 Sixth Avenue, ECO–083, Seattle, WA 98101–1128.

The file supporting these proposed designations and de-designations is available for inspection at the following locations:

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 Protection Agency, Region X (ECO–083), 1200 Sixth Avenue, Seattle, WA 98101–1128, 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 (MPRSA) of 1972, as amended, 33 U.S.C. 1401, *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal, also referred to interchangeably as ocean dumping, may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the site is located. The proposed site designations and de-designations, located at the mouth of the Columbia River, are within Region 10 and these actions are being taken pursuant to the Regional Administrator's delegated authority.

The EPA Ocean Dumping Regulations promulgated under the MPRSA require, among other things, that ocean dumping sites be designated by promulgation in 40 CFR part 228. *See* 40 CFR 228.4. Designated ocean dumping sites are codified at 40 CFR 228.14 and 228.15. A total of four ocean dumping sites (Site A, Site B, Site E, and Site F) off of the mouth of the Columbia River were designated in August 1986 (51 FR 29923) (Figure 1) to be used as disposal sites for dredged materials from Columbia River navigation projects. Sites A, B and F have, over time, proven to be inadequate to handle long term disposal of dredged material from the Columbia River navigation projects without the creation of adverse wave conditions at the disposal sites. This rule proposes to de-designate Sites A, B and F. Site E, because its size as currently designated inhibits the ability to minimize interference with other activities in the marine environment, needs to be modified to allow for changed circumstances concerning the use of the site. This rule proposes to designate a new site, the Shallow Water site, which incorporates the 1986-designated Site E but appreciably expands it to provide sufficient space to spread dredged materials so as to avoid the creation of conditions that would interfere with navigation safety. Dredged material disposed of at the proposed site is expected to contribute material to the littoral zone. This rule also proposes a completely new site, the Deep Water site, which would be located approximately 4.5 to 6 nautical miles from the mouth of the Columbia River off the State of Oregon. The Deep Water site would provide capacity for dredged materials from Columbia River navigation projects that cannot be accommodated in the nearshore zone. The Deep Water site would also be available for use by the United States Army Corps of Engineers (Corps) when storm events preclude the use of nearshore disposal locations. In inclement weather, conditions nearer the shore and the nearer to the jetties (*i.e.*, at the Shallow Water and North Jetty sites) are more dangerous than conditions at the Deep Water site. Visibility is impaired and winds and currents can broadside a vessel and push it into shallow water at the North Jetty and Peacock Spit, or onto the jetty itself. Waves also can build up in shallow water and between the jetties during an ebb tide during which time navigation across the entrance bar can be closed by the United States Coast Guard.

The availability of ocean dredged materials disposal sites (ODMDSs) in the vicinity of the mouth of the Columbia River is necessary to provide disposal options for the Corps to maintain deep-draft, international commerce and navigation through authorized federal navigation channels. Three of the existing ODMDSs designated in 1986, Sites A, B and F, have experienced mounding, generating a potentially hazardous navigation safety condition. The developing mounds at Sites A, B, and F threatened to create hazardous conditions for large ships and small craft due to waves refracting from and breaking over the mounds. Commercial shippers, crab fishermen, and the U.S. Coast Guard expressed concern over this situation to both the Corps and EPA. Efforts were undertaken by the federal government to temporarily expand the existing sites in 1993 and 1997 and to manage distribution of the dredged material within the available site capacities while seeking a more permanent management solution. Circumstances at sites A, B and F necessitate de-designation of the sites so that no further use is made of them. Conditions at site E are changed such that modification of the site to withdraw designation of its current configuration to allow for a permanent expansion to a larger site, the Shallow Water site, is proposed. Designating the Shallow Water site and a new Deep Water site is part of the permanent management solution for handling dredged materials from Columbia River navigation projects. These designations are being proposed in accordance with Sec.

228.4(e) of the Ocean Dumping Regulations, which allow EPA to designate ocean disposal sites for dredged materials.

**B. Regulated Entities**

Entities potentially regulated by the proposed rule are persons, organizations, or government bodies seeking to dispose of dredged material in ocean waters at the Mouth of the Columbia River ODMDS, under the MPRSA, 33 U.S.C. 1413, and its implementing regulations. This proposed rule is expected to be primarily of relevance to parties near the Mouth of the Columbia River seeking permits from the Corps to transport dredged material for the purpose of disposal into ocean waters at the MCR ODMDS, as well as the Corps itself. Potentially regulated categories and entities who may seek to use the proposed new ODMDS and would be subject to this Rule may include:

| Category | Examples of potentially regulated entities |
|---|---|
| Federal Government | U.S. Army Corps of Engineers Civil Works Projects, 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 lists the types of entities that could potentially be regulated should the proposed rule become a final rule. EPA notes that nothing in this proposed rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this proposed rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. EPA anticipates that the Corps will be the primary, if not the only, user of the proposed ODMDS which are the subject of this rule.

**C. Evaluation of Alternatives To Propose as New ODMDSs Through Voluntary EIS Development**

Section 102 of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, (NEPA) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities in designating ocean disposal sites under the MPRSA, EPA voluntarily prepared a joint EIS with the Corps. (See 63 FR 58045 (October 29, 1998), ''Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents.'') The *Integrated Feasibility Report and Environmental Impact Statement for Columbia River Channel Improvements,* dated August 1999 (Final IFR/EIS, 1999), considered the environmental aspects of new ODMDS site designations and improvements to the Mouth of the Columbia River (MCR) Project and the Columbia River navigation channel. The Final IFR/EIS (1999) resulted in selection of preferred alternative sites to propose for designation (see below). EPA also voluntarily joined with the Corps to prepare a Supplement to the Final IFR/EIS (SEIS) that was released in 2003. The SEIS addressed proposed changes in the Corp's Columbia River navigation channel improvements project, which could reduce the volume of material going to the ocean for that project, and describes ocean surveys conducted by the Corps and EPA since the Final IFR/EIS. These voluntary analyses have been beneficial in improving coordination with the Corps on related Columbia River navigation issues and in expanding public involvement on issues related to the siting and management of new ODMDS.

The federally authorized navigation projects for the Columbia River include maintenance of the MCR project (*Final Environmental Impact Statement, Navigation Channel Improvements, Columbia River at the Mouth, Oregon and Washington,* dated 1983), maintenance of the existing 40-foot navigation channel (*Final Dredged Material Management Plan and Supplemental Environmental Impact Statement,* dated 1998), and the potential construction and maintenance of the proposed navigation channel improvements as described in the Final IFR/EIS (1999). The navigation channel improvements project has been authorized and funded by the Congress.

The voluntary NEPA process followed by the EPA generally conformed to the guidelines developed by a joint task force of EPA and Corps personnel, the *General Approach to Designation Studies for Ocean Dredged Material Disposal Sites* (1984). A hierarchical framework that initially established the broadest economically and operationally feasible area of consideration for site location was utilized. A step-by-step sequence of activities was then conducted to screen possible sites. Evaluation of alternative sites (candidate sites) was based on factors such as the sensitivity and value of critical resources or uses at risk, and potential for unreasonable adverse impact presented by the dredged material to be disposed. The site-designation criteria, 40 CFR 228.5 and 228.6, were applied to the information assembled in this process, and sites were selected for consideration as preferred alternatives.

The process was structured into three major phases. Phase I included the delineation of the general area under consideration for locating a site and the identification and collection of the necessary information on critical resources, uses and physical and environmental parameters for the areas under consideration. After considering a reasonable distance of haul (the physical distance from the point an operating dredge picks up a load of material to the point where the material is disposed), a preliminary analysis, based on available data, was applied to identify and map areas of critical resources as well as areas of incompatibility for use as a disposal site. Such critical areas and resources included clustered areas of geographically limited habitats, fisheries and shellfisheries, navigation lanes, beaches, and marine sanctuaries. Phase II involved the elimination of sensitive and incompatible areas, the determination of additional data needs, and identification of candidate sites within the area based on the information collected and processed in Phase I. In Phase III the candidate sites were evaluated and sites were selected

as preferred alternatives to propose for site designation. Management strategies were developed for the sites selected as preferred alternatives.

To provide input to the process, the Corps and EPA convened a facilitated Ocean Disposal Site Designation Working Group (Working Group). The purpose of the Working Group was to assist in identifying and evaluating the best long-term ocean option for the MCR and the existing Columbia River channel and proposed channel improvements projects. Representatives from state, local, and federal agencies participated in the Working Group as well as individuals representing the crab fishing industry and other interests. The Working Group assembled for a series of eight meetings between July 1997 and August 1998 and provided information for EPA and the Corps to consider in evaluating preferred alternative ODMDS. The Corps and EPA considered the information gathered by the Working Group, as well as new information gathered during the 5-year feasibility study for channel improvements, and historical information to identify three proposed sites in the Draft IFR/EIS (1998). The configurations of the sites included relatively shallow, high-energy areas deemed well-suited for active sediment movement away from deposition areas and back into coastal beach zones.

Numerous comments were received on the Draft IFR/EIS and the Corps and EPA sought additional input from the Working Group in meetings to discuss further refinements to the alternative site locations. Further discussion and meetings led to an evaluation for designation of a single shallow-water site and a single deep-water site to be used and managed in conjunction with a Clean Water Act Section 404 disposal site (North Jetty) in the area of the mouth of the Columbia River (Figure 2). These discussions were factored into the NEPA process. The NEPA process led to the current proposal that the four ODMDS sites designated in 1986 be proposed for de-designation and that the Shallow Water site and the Deep Water site be proposed for designation.

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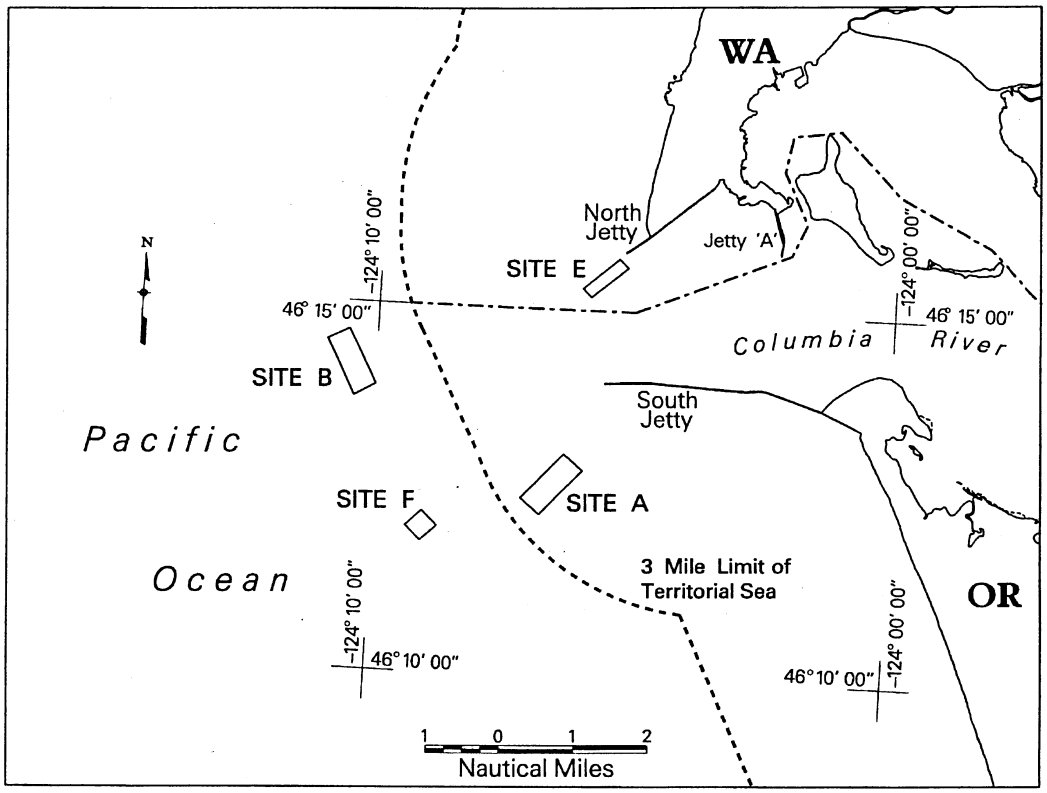


**Figure 1: Currently Designated Ocean Dredged Material Disposal Sites Proposed for De-Designation.**

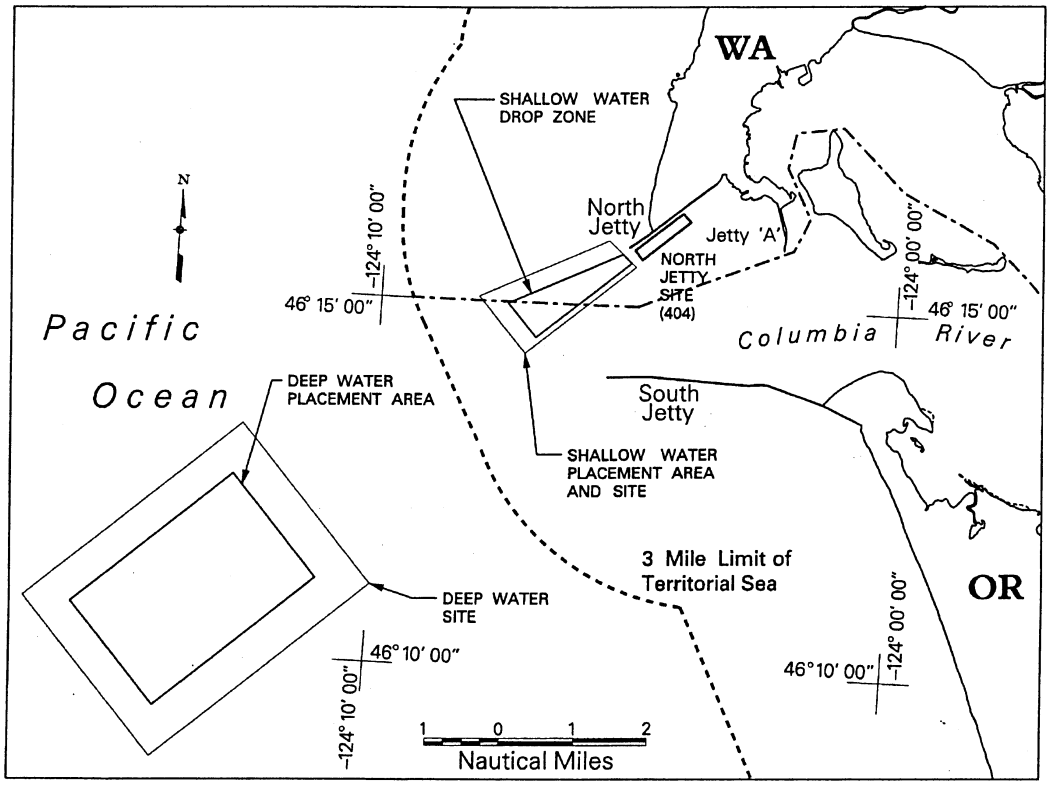


**Figure 2: Ocean Dredged Material Disposal Sites Proposed for Designation.**

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**D. Proposed De-Designated Sites**

Modification in ODMDS use is governed by the Ocean Dumping Regulations at 40 CFR 228.11. Modifications which involve the withdrawal of designated sites from use are made through the promulgation of an amendment to the disposal site designation based on an evaluation of disposal impacts or upon changed circumstances concerning the use of the site. 40 CFR 228.11(a). By 1992, developing mounds created as a result of disposal actions at designated Sites A and B threatened to create hazardous conditions for large and small craft due to waves refracting from and breaking over and around the mounds. Discussions between EPA and the Corps concluded that an interim solution was needed that would allow the Columbia River federal navigation channel to remain open while studies were conducted to ascertain the extent of the problem, to develop and evaluate alternative solutions, and to prepare a longer term response. An interim plan was created, described in an environmental assessment (EA), supporting the temporary expansion of Sites A, B, and F under the Corps' Section 103 MPRSA authority while the Corps and EPA investigated a more permanent solution. In addition, EPA initiated a rulemaking process to modify the three sites and Site E to change the management at each site to restrict site use under Section 102 authority. A proposed rule was published in the **Federal Register** on September 21, 1992, at which time EPA stated: ''While the current situation does not constitute an imminent hazard to life and property which would warrant an emergency response, EPA and the Corps are in agreement that prudent management action is required now in order to prevent such a situation from developing.'' (57 FR 43428, September 21, 1992). EPA did not publish a final rule as changing conditions and new information regarding the sites indicated the need for further study and evaluation. Sites A, B, and F were temporarily expanded using Section 103 effective June 1, 1993, with EPA concurrence.

By 1995, Corps and EPA monitoring of disposal at the expanded Site F confirmed the agencies' suspicions that the site did not possess the capacity hoped for and possibly created new navigation conflicts with ocean vessel traffic. In addition, existing mounds at Sites A and B remained relatively stable rather than continuing to erode. Through 1996, EPA and the Corps re-evaluated the 1992 plan and ultimately developed a new approach that was presented in a 1997 EA. The new approach supported maximizing disposals at an Expanded Site E and a further expansion of Site B. The Corps temporarily expanded Site E and Site B under Section 103 MPRSA authority on June 19, 1997, with the concurrence of EPA. These expansions were immediately challenged by the Columbia River Crab Fishing Association (CRCFA) in a lawsuit which enjoined the use of Expanded Site B and resulted in a settlement agreement in 1998 disallowing the use of Expanded Site B and temporarily limiting the use of Expanded Site E. The limitation of use at Expanded Site E was based on CRCFA concerns that late summer disposal impacted ''soft-shelled'' crab (*i.e.*, individuals that had molted their old shell and were buried up while the new shell hardens) in the westernmost third of the expanded site.

EPA observes that past activities at Sites A, B, and F place the sites in Impact Category II (40 CFR 228.10(c)(2) effects not categorized in impact category I). The size of the three sites renders impracticable the option of continuing even limited use of Sites A, B, and F and permanent expansion of the sites generates problems in terms of adverse wave conditions and conflicts with marine traffic. The determination of whether to terminate the use of a disposal site is based on the impact of disposal at the site itself and the Criteria for the management of disposal sites for ocean dumping. 40 CFR 228.11(d). Based on these factors, EPA proposes to de-designate Sites A, B, and F. Site E is proposed for modification through a de-designation of the existing site and a proposed designation of a new site, the Shallow Water site, which incorporates the existing site into a larger footprint. Site E is also placed in Impact Category II (other) based on its limited size, but not based on adverse wave conditions resulting from disposal or on conflicts with marine traffic.

The coordinates (North American Datum 1927: NAD 27) of the three existing EPA-designated sites proposed for de-designation (Figure 1) 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 27) of the one existing EPA-designated site proposed for modification through new designation is 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

**E. Proposed Sites Descriptions**

Two sites, the Deep Water and Shallow Water sites, are proposed for designation (Figure 2). A draft Site Management and Monitoring Plan (SMMP) has been prepared for the two proposed ODMDS sites and is available for review and comment by the public. (Copies may be obtained by request from the **FURTHER INFORMATION CONTACT** listed in the introductory section to this proposed rule.) Use of newly-designated ODMDS would be subject to any restrictions included in the approved SMMP. Use restrictions will be based on a thorough evaluation of the proposed sites pursuant to the Ocean Dumping Regulations and potential disposal activity as well as consideration of public review and comment.

*Deep Water Site.* The proposed Deep Water site is a non-dispersive site (material placed at the site remains at the site) which consists of an inner ''Placement Area'' and a surrounding buffer. The overall site (Placement Area and buffer) has a rectangular dimension of 17,000 feet by 23,000 feet and occupies approximately 8,976 acres or 10.5 square nautical miles (sq nmi). The Placement Area (the inner box) has a rectangular dimension of 11,000 feet by 17,000 feet, occupying an area of approximately 4,293 acres or 5.0 sq nmi, which is surrounded by a 3,000-foot buffer zone. Direct disposal of dredged material would be allowed only within the Placement Area using ''Drop Zones'' specified in a SMMP. Material placed at the Deep Water site is expected to remain on site, eventually creating a fairly uniform mound approximately 40 feet in height. The coordinates (North American Datum 1983: NAD 83), dimensions, and depth of water of the proposed Section 102 site are as follows:

DEEP WATER DISPOSAL SITE (INCLUDING BUFFER)

| Corner coordinates | Dimensions |
|---|---|
| 46°11′03.03″ N, 124°10′01.30″ W<br>46°13′09.78″ N, 124°12′39.67″ W<br>46°10′40.88″ N, 124°16′46.48″ W<br>46°08′34.22″ N, 124°14′08.07″ W | 17,000 feet wide by 23,000 feet long.<br>Depth 180 feet to 310 feet.<br>Buffer 3,000 feet wide. |

DEEP WATER PLACEMENT AREA

| Corner coordinates | Dimensions |
|---|---|
| 46°11′06.00″ N, 124°11′05.99″ W<br>46°12′28.01″ N, 124°12′48.48″ W<br>46°10′37.96″ N, 124°15′50.91″ W<br>46°09′15.99″N, 124°14′08.40″ W | 11,000 feet wide by 17,000 feet long.<br>Depth 190 feet to 290 feet.<br>[Surrounded by 3,000 ft-wide buffer]. |

*Shallow Water site.* The proposed Shallow Water site is a dispersive site (material placed at the site leaves the site) and consists of a Placement Area on the sea bottom and a smaller, specified ''Drop Zone'' for dredged material disposal. Because the proposed site is dispersive, no buffer zone is specified for the Shallow Water site. The proposed Shallow Water site integrates the existing designated Site E, and expands the width and length of the site as described below. The Shallow Water Drop Zone is proposed to occupy the same location, with the same dimensions, as Expanded Site E and occupies approximately 531 acres or 0.626 sq nmi. The overall site and Placement Area occupies approximately 1,198 acres or 1.4 sq nmi. Site monitoring since 1997 demonstrated that material released within the boundaries of ''Expanded Site E'' temporarily deposited on the sea bottom as a truncated mound that was larger than the release area. While some of the placed material was dispersed out of the site and into the littoral system during direct disposal, the majority was eroded away to the north and northwest following the summer dredging season by the stronger winter waves and currents. Material placed at the Shallow Water site is expected to be transported out of the site during and following the dredging season and dispersed by natural ocean forces to the north and northwest and augment the littoral system. The coordinates (NAD 83), dimensions, and depth of water of the proposed Section 102 site are as follows:

SHALLOW WATER PLACEMENT AREA AND DISPOSAL SITE

| Corner coordinates | Dimensions |
|---|---|
| 46°15′31.64″ N, 124°05′09.72″ W<br>46°14′17.66″ N, 124°07′14.54″ W<br>46°15′02.87″ N, 124°08′11.47″ W<br>46°15′52.77″ N, 124°05′42.92″ W | 3,100 to 5,600 feet width by 11,500 feet long.<br>Azimuth (long axis): 229° T.<br>Depth: 45 feet to 75 feet.<br>No Buffer. |

SHALLOW WATER DROP ZONE

| Corner coordinates | Dimensions |
|---|---|
| 46°15′35.36″ N, 124°05′15.55″ W<br>46°14′31.07″ N, 124°07′03.25″ W<br>46°14′58.83″ N, 124°07′36.89″ W<br>46°15′42.38″ N, 124°05′26.55″ W | 1,054 feet to 3,600 feet width by 10,000 feet long.<br>Depth 45 feet to 75 feet. |

**F. Analysis of Criteria Pursuant to the Ocean Dumping Act Regulatory Requirements**

Five general regulatory criteria are used in the selection and approval of ocean disposal sites for continuing use. *See* 40 CFR 228.5. Sites are selected so as to: minimize interference with other marine activities; keep temporary perturbations in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within the site to be reduced to normal or undetectable concentrations or effects before reaching beaches, shorelines, marine sanctuaries or known geographically limited fisheries or shellfisheries; terminate use as soon as a suitable alternate site can be designated if at any time disposal operations at a site cause unacceptable adverse impacts; limit the size of the site to localize for identification and to control any immediate adverse impacts and permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts; and wherever feasible to designate sites beyond the edge of the continental shelf and other such sites that have been historically used. Eleven specific criteria are used in evaluating a proposed disposal site to assure that the general criteria are met. *See* 40 CFR 228.6. The evaluations of the general and specific criteria, provided below, are based on information published in the 1983 and 1999 EISs and the 2003 Final SEIS, Corps and EPA Environmental Assessments for 103 Site expansions in 1993 and 1997, monitoring studies, data provided by fishery industry groups, crab data collected and evaluated by the Corps and EPA as part of the EIS and SEIS processes, a report produced by the Corps in studying potential wave-related effects at the proposed Shallow

Water site, and supporting documentation.

**General Criteria (40 CFR 228.5)**

*1. Minimal Interference With Other Activities*

The first of the five general criteria requires that a determination be made as to whether the site or its use will minimize interference with other uses of the marine environment. For this proposed rule, a determination was made to overlay individual uses and resources presented in the technical exhibits to the EIS and SEIS onto a base map containing the bathymetry and location of the proposed disposal sites. For purposes of assessing this criterion, EPA assumed that the more interactions between various uses and limited resources, the more critical the area's potential for interference. The overlay process was used to visually determine where maximum and minimum interferences with other uses of the marine environment could be expected to occur. The Shallow Water site and Deep Water site viewed against this criterion showed minimum interference with other activities. Both proposed sites avoid areas intensively utilized by the Dungeness crab fishery.

*2. Minimize Changes in Water Quality*

The second of the five general criteria requires that locations and boundaries of disposal sites be selected so that temporary changes in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within a site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching beaches, shorelines, sanctuaries, or geographically-limited fisheries or shellfisheries. The proposed sites will be used for dredged material disposal of suitable sediments as determined by application of national and regional testing protocols (*e.g.*, then-current *Dredged Material Evaluation Framework).* No significant contaminant or suspended solids releases are expected. Based on previous sediment testing and evaluations at the MCR by the Corps and EPA, disposal of either sandy or fine-grained material would not have any long-term impact on the water quality. No water quality perturbations will occur that could reach any beach, shoreline, marine sanctuary, or known geographically-limited fishery or shellfishery. Bottom movement of material deposited at the Shallow Water site is generally expected to show a net alongshore movement and will contribute to the existing littoral system. Material deposited at the Deep Water site is expected to stay in the Placement Area.

*3. Interim Sites Which Do Not Meet Criteria*

There are no interim sites to be considered under this criterion. Sites A, B, E, and F were designated on a final basis in 1986. The proposed Shallow Water and Deep Water sites are not interim sites as defined under the Ocean Dumping regulations.

*4. Size of Sites*

The fourth general criterion requires that the sizes of ocean disposal sites be limited to localize for identification and control any immediate adverse impacts and to permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. Size, configuration and location is to be determined as part of the disposal site evaluation or designation study. For this proposed rule, the IFR/EIS and SEIS were relied upon to determine size, configuration and location of the ODMDS to propose. The proposed Shallow Water and Deep Water sites have been sized to provide sufficient capacity to accommodate material dredged from the MCR federal project as well as future material from the improved Columbia River navigational channel. The sizing of the proposed sites has factored in the ability to implement effective monitoring and surveillance programs, among other things, to prevent mounding of dredged material which could result in adverse wave conditions as has been experienced at the originally designated sites and to ensure that navigational safety will not be compromised. Bathymetric surveys are planned as an important component of the SMMP. The results will be used to document the fate of the dredged material and provide information for management in the future to prevent adverse long-range impacts.

*5. Sites Off the Continental Shelf*

The fifth general criterion requires EPA, wherever feasible, to designate ocean dumping sites beyond the edge of the continental shelf and other such sites that have historically used. Potential disposal areas located off the continental shelf are at least 20 nautical miles offshore in water depths of 600 feet or greater, with the exception of the Astoria Canyon, which is 11 nautical miles offshore. The haul distance to an ''off-shelf'' disposal site is much greater than the 4.5 nautical mile average operational limit of the MCR project, making an off-shelf site not feasible for maintenance of the MCR project. The proposed Shallow Water site, if designated, will encompass the footprint of the historically used Site E, however, continued disposal in this area is desirable because the dredged materials are place into the nearshore littoral transport system, a system that functions with largely non-renewable quantities of sand in Oregon and Washington.

**Specific Criteria (40 CFR 228.6)**

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

The proposed Shallow Water site would incorporate and appreciably expand the existing EPA-designated Site E and would include the Corps' 1997 selected Section 103 ''Expanded Site E.'' The site is located off the end of the North Jetty and would be 11,500 feet long and expand in width from 3,100 feet to 5,600 feet wide, encompassing a total area of 1,198 acres. The proposed site is located to the north of the Columbia River channel. The bottom topography slopes from the north to the south along the south side of Peacock Spit. Water depths in the proposed site range from 45 to 75 feet. Material placed at the Shallow Water site is expected to erode out, move north and northwest, and feed Peacock Spit.

The proposed Deep Water site would be located about 4.5 miles west of the entrance to the Columbia River navigation channel and extend westerly to about 7 miles west of the entrance. The bottom topography is featureless and gently slopes away from shore. Water depths at the proposed site range from about 180 feet to about 310 feet. Overall site dimensions proposed are 17,000 feet by 23,000 feet as an outer boundary (the Disposal Site including Buffer), that consists of an inner rectangle that measures 11,000 feet by 17,000 feet (the Placement Area) and which is surrounded on all sides by a 3,000-foot Buffer. The proposed site would encompass a total of 8,976 acres or 10.5 sq nmi. Disposal of dredged material would only be allowed within the inner rectangle (Placement Area), which has a total area of 4,293 acres or 5.0 sq nmi. EPA anticipates that material placed at this site would raise a stable mound approximately 40 feet high over the estimated 50 ± year life of the site. No direct disposal of dredged material would be allowed anywhere in the Buffer; however, dredged material sloughing off the developing mound or drifting during placement may extend into the Buffer zone. The Buffer zone

will also serve as the ''reference area'' for site monitoring.

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

Many open-ocean nearshore organisms occur in the water column over the proposed Shallow Water site. These organisms include zooplankton (copepods, euphausiids, pteropods, and chaetognaths) and meroplankton (fish, crab and other invertebrate larvae). These organisms display a normal range of change in abundance by season. The populations at or near the proposed Shallow Water site are not unique to the proposed site. They are present over most of the coast. Overall coastal populations are not dependent on those located near the MCR. Based on zooplankton and larval fish studies, it appears that there will be no impacts to organisms in the water column.

Offshore areas (beyond the 200-foot depth contour) including the proposed Deep Water site, have consistently higher densities and numbers of benthic species (diversity) than nearshore shallower areas such as the proposed Shallow Water site. Therefore, placement of dredged material in the Deep Water site would be expected to have a greater impact to the benthic infaunal community than placement of dredged material in nearshore locations.

The proposed sites are located in an area off the mouth of the Columbia River which supports a variety of pelagic and demersal fish species as well as shellfish including Dungeness crab. Pelagic species include anadromous salmon, steelhead, cutthroat trout, striped bass, lamprey, smelt, herring, sturgeon, and shad that migrate through the estuary to upriver spawning areas. Juveniles of these species are present in the area following their migration out of the river or estuary into the ocean. Some remain in the nearshore area for various periods of time feeding and rearing, while others move directly offshore. Other pelagic species include the Pacific herring, anchovy, surf smelt, and sea perch. Surf smelt are in nearshore areas and in the estuary in large numbers during the summer. Demersal species present in the nearshore area include juvenile flatfish which rear in the area. Resident species occur in the offshore area throughout the year with many using the estuary as a rearing and nursery area. Species present include various flatfish, rockfish and other demersal fish.

Potentially, 30 cetacean species can occur along the coast although their numbers are generally limited. Harbor porpoises and gray whales are prevalent in shelf waters less than 600 feet deep. The larger cetaceans (whales) typically occur as migrants in the spring and fall, such as the California gray whale. Smaller cetaceans, principally dolphins, porpoises, and some small whales are also present. Five species of pinnipeds are known to occur along the coast: northern sea lion, California sea lion, harbor seal, northern elephant seal and northern fur seal. Harbor seals are resident whereas the four other species of pinnipeds are more transient in nature. Harbor seals and California/northern sea lions are the principal species observed in the estuary. All three species are known to forage within the estuary and adjacent ocean waters.

Four species of marine turtles (loggerhead, green, Pacific ridley, and Pacific leatherback) have been recorded from strandings along the coastline since 1982. Marine turtles are unusual in their occurrence along the Pacific Coast as they are typically associated with warmer marine waters.

Pelagic birds are extremely numerous in the offshore area. Studies have found that seabird populations were most densely concentrated over the continental shelf (less than 600 feet in depth). Shearwaters, storm petrels, gulls, common murres and Cassin's auklets numerically dominated the pelagic bird fauna from late spring through late summer. Phalaropes, fulmars, and California gulls are important constituents of the fall pelagic bird flocks. The principal species in the winter are phaloropes, California gulls, fulmars, other gulls, murres, auklets, and kittiwakes. Red-throated, Pacific and common loons occur as spring and fall migrants. Western, red-necked, horned, and eared grebes also occur in the area. Brown pelicans occur from late spring to mid-fall along the coast. This species forages in nearshore waters of the Pacific Ocean and estuarine waters of the Columbia River. Concentrations of up to 1,000 birds have been reported. Three species of cormorants and three species of terns occur and forage in nearshore Pacific Ocean waters and the estuary.

The federally listed threatened and endangered species which may occur within the area of the proposed sites include: listed salmon and steelhead stocks; blue, finback, sei, right, humpbacked and sperm whales; loggerhead, green, Pacific ridley, and Pacific leatherback sea turtles; northern (Steller) sea lion; marbled murrelet; bald eagle; Aleutian Canada goose; peregrine falcon; and brown pelicans. Occurrence of these species varies by season and location in the offshore area.

Disposal at both of the proposed sites is expected to result in the mortality of benthic organisms and some crabs as an immediate result of material burying organisms as it hits the ocean floor. Recolonization near the burial sites is expected. Disposal at the proposed Deep Water site is expected to have a greater, but not unacceptable, negative impact to the benthic community because of its higher benthic infaunal density and diversity relative to the proposed Shallow Water site. The density and diversity of benthic organisms at the proposed Deep Water site is expected to be changed by the point-dump disposals that will ultimately create the 40-foot mound. With respect to the other living resources that use the proposed Shallow Water and Deep Water sites, the sites are not being located in areas that are limited or that are unique breeding, spawning, nursery, feeding, or passage areas.

*3. Location in Relation to Beaches and Other Amenity Areas*

The proposed Shallow Water site would be located on the north side of the entrance channel in 45 feet to 75 feet of water. Most of the dredged material to be placed in the Shallow Water site is expected to move north onto Peacock Spit. Some material can be expected to move toward Benson Beach, or possibly back into the entrance channel. The Shallow Water site, as a dispersive site, has the potential to feed sand into the littoral system that nourishes the beaches. Material placed at the Shallow Water site probably does not directly nourish the beaches. The shoreward edge of the proposed Deep Water site would be located about 4.5 nautical miles off the beaches of Oregon and Washington in about 200 feet of water. Material placed at the Deep Water site is expected to create a mound of material that is not available to the littoral system and is lost to the beaches.

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

The sites that are proposed to be designated will receive dredged materials determined to be suitable for ocean disposal that are transported by either government or private contractor hopper dredges or ocean-going bottom-dump barges towed by tugboat. Both types of equipment release the material at or very near the surface. The majority of material expected to be disposed in the proposed sites is anticipated to come from Corps maintenance dredging of shoals in the MCR entrance channel federal project. These sediments consist

primarily of marine sands transported into the entrance. The material is clean, contains no contaminants of concern in excess levels, is far removed from known sources of contaminants, and is suitable for open-water disposal. In the 1999 IFR/EIS, a smaller volume of material was anticipated to be dredged from the Columbia River navigation channel (RMs 3 to 29) for operation and maintenance purposes and the then-proposed channel improvements project and disposed in the ocean. That material was also evaluated and found suitable for unconfined open-water disposal. These sediments consist of sands with low percent of silts and clays or organic material. Modifications to the channel improvements project (identified and assessed in the SEIS, 2003) propose to beneficially use those sediments for Ecosystem Restoration projects within the estuary for approximately the first 20 years following construction of the improved channel. Should the Ecosystem Restoration projects identified not be built, those sediments would be proposed for ocean disposal. In addition, some fine-grained material from side channels or backwater areas may be placed offshore in the future which will require testing and evaluation and perhaps regulatory permitting.

Material to be disposed at the Shallow Water site is expected to be placed to promote dispersion and subsequent erosion back into the littoral system without generating mounds or other features which could interfere with navigation or reduce navigation safety. Site monitoring and management will be focused on that objective.

Material to be disposed of at the Deep Water site is expected to be point-dumped within Drop Zones so as to concentrate material (individually and cumulatively) from each dump. This placement is expected to help minimize bottom impacts to benthic organisms. However, placement at the Deep Water site is expected to result in the formation of an underwater mound that is different from the flat, gently-sloping bottom that presently exists. When the placement zone of the site is filled to capacity, it is expected to resemble an approximately trapezoidal mound about 40 feet high. Some material is expected to slump into the buffer zone from the created mound.

Current hopper dredges or ocean-going, bottom-dump barges available for use along the west coast dredging have capacities ranging from 800 to 6,000 cubic yards (cy). This would be the likely volume range of dredged material deposited in any one dredging-and-placement cycle. Clamshell dredges placing material into bottom-dump barges for transport to the ocean can work within the estuary and river, but not at the MCR project. Hopper dredges can and do work sections of the existing river navigation channel. The approximately 4.5 million cubic yards (mcy) estimated to be removed annually from the MCR, and 0.6 mcy of the improved Columbia River channel maintenance should channel materials be proposed for ocean disposal, can be placed at the sites in one dredging season by any combination of private and government dredges. The dredges or barges would be under power and moving during disposal, allowing the maintenance of steerage. The slurried dredged material is expected to exit from the hoppers within several minutes and rapidly descend to the seafloor where it will impact with the bottom and spread radially. Dredged material released at the Shallow Water site should reach the bottom within 10 minutes. Material released at the Deep Water site should reach the bottom in about 35 minutes.

*5. Feasibility of Surveillance and Monitoring*

Monitoring and surveillance are expected to be feasible at both proposed sites. The proposed Shallow Water site, in the nearshore zone, is readily accessible for bathymetric surveys. The proposed Deep Water site, 4.5 miles offshore and between 200 and 300 feet deep, has undergone monitoring, including side-scan sonar. If actual field monitoring of the disposal activities is required because of a future concern for habitat changes or limited resources, several research groups are available in the area to perform any required work. Most monitoring work for the proposed Shallow Water site can be performed from small, surface research vessels at a reasonable cost. Monitoring at the Deep Water site may be more complex than monitoring at the proposed Shallow Water site and is likely to require a medium or large vessel at greater cost.

Once the proposed sites are designated, monitoring shall be in accordance with the then-current SMMP. Revisions to the SMMP are expected; revisions will be circulated for public review, coordinated specifically with the affected States, and become final when approved by EPA Region 10. At a minimum, annual bathymetric surveys will be conducted in areas that receive dredged material. More frequent compliance surveys will be conducted during placement at the Shallow Water site to assure uniform placement is occurring. It is expected that off-site monitoring will be necessary at the proposed Shallow Water site, at least in the initial years of use. Routine monitoring for management purposes at the proposed Deep Water site are expected and will likely focus on determining how to concentrate single year disposals in the site and on verification that material is not placed in the buffer zone or escaping outside of the overall site. No routine off-site monitoring is anticipated for the Deep Water site.

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

The ocean entrance at MCR (including Peacock Spit to the north) is characterized by large waves and strong currents and is considered one of the world's most hazardous coastal inlets. The interactions of bathymetry, wind-generated waves, and ocean and river currents, are complex and the transition from coastal regime to oceanic is abrupt. The sea state at the river entrance during storm conditions is characterized by high swell incident from the northwest to southwest combined with locally-generated wind-waves from the south to southwest. During October-April, average wind-wave height is 9 feet and wave period is 12 seconds. During intense winter storms, however, waves can exceed 30 feet. During May-September, average wind-wave height is 5 feet and wave period is 9 seconds. Tides at MCR are mixed semi-diurnal, with a diurnal range of 8.5 feet. Currents, especially during ebb tidal flow cycles, can significantly worsen the hazardous wave climate even during low to moderate wind-wave conditions. At given locations, the velocity of the current has the greatest effect on wave height and wave steepness. This naturally dynamic condition enhances dispersal, horizontal transport and vertical mixing of the sediments as well as the water. This makes the area ideal for a dispersive disposal site, but extremely challenging to dredge and maintain navigation structures and for navigation of all sized vessels and craft.

The Columbia River estuary (from MCR to the Astoria Bridge) is a sink for marine (ocean) sediments, which enter through the mouth of the Columbia River. The estuary also effectively traps virtually all of the coarser fluvial (river) sediments. Finer fluvial sediments held in suspension are passed through the estuary to the ocean. ODMDSs for the MCR dredged material must be located to prevent the dredged material placed at the sites from returning directly into the entrance channel. This requires

knowledge about the direction and rate of longshore transport as well as onshore/offshore transport.

Sediment movement in the marine littoral zone consists of two mechanisms that depend on sediment size. Sediments finer than sand remain in suspension in the water and are removed relatively quickly offshore. The almost total lack of clays and silts within the Columbia River mouth proper and the lower reaches of the Columbia River navigation channel attest to the efficiency of this mechanism. Sediments, sand size or coarser, may occasionally be suspended by wave action near the bottom, and are moved by bottom currents or directly as bedload. Tidal, wind and wave forces contribute to generating bottom currents that act in relation to the sediment grain size and water depth to produce sediment transport. Net transport for sand-sized material along the Oregon and Washington coast is to the north and northwest at a very slow rate. Sand placed in depths less than 60 feet can be mobilized by the combined forces of wave action and current and be transported within the littoral system.

Data available on prevailing current direction indicates that the prevailing current at the MCR is to the north and northwest. Current velocity varies seasonally and is greatest during ebb tide conditions. Sediments placed in the nearshore area, such as at the proposed Shallow Water site, appear to mix into the existing substrate. Movement of this material is expected to be in the direction of the prevailing current, to the north and northwest. This conclusion seems to be verified by monitoring conducted at the proposed Shallow Water site since 1997 and recent Corps' modeling studies.

The proposed Deep Water site is less influenced by the many dynamic interactions at MCR. Located at its closest point 4.5 miles from the entrance, dredged material placed on the sea bottom is at a depth where the prevailing currents are not expected to have any significant effects. Over time, as the mound accumulates, ocean currents, sloughing and consolidation of the material will tend to flatten the mound and distribute some of the placed material into the margins of the buffer. Sediments placed at Deep Water site are lost to the littoral system.

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

The proposed Deep Water site has not been used for disposal of dredged material. Designated Site E and Expanded Site E, which this rule proposes to incorporate into the footprint of the proposed Shallow Water site, have received varying quantities of dredged material, averaging about 3.5 mcy annually. Over the years, crab fishermen have reported some reduced harvest of crabs and loss of equipment at all designated ODMDS, including Site E, and expressed concern that disposal at Expanded Site E could contribute to adverse wave conditions. EPA and the Corps have studied the Site E and Expanded E in considerable detail. Recent computer modeling has not substantiated crab fishermen concerns relative to adverse wave conditions. Crab studies suggest that some crab mortality occurs as a direct result of the inability of a limited number of crabs to dig out from a burial by dredged materials. This effect is minimal relative to the crab resource and fishery at the MCR. Additional sampling of both the Deep Water Site and the Shallow Water Site was done in the late spring/early summer and fall of 2002. Preliminary results from these surveys are supportive of the earlier resource assessments (IFR/EIS 1999).

The historic record for the MCR suggests that between 1905 and 1940 approximately 8 mcy of sediment was dredged from the MCR bar and placed in open water by hopper dredge. Between 1945 and 1955, a total of approximately 13 mcy was dredged; while between 1956 and 1998, a total of 184 mcy has been dredged and placed in-water. The total volume of material dredged from the MCR channel between 1904 and 1998 is approximately 206 mcy. Beginning in 1977, placement of dredged materials from the MCR bar was limited to EPA designated ''interim sites,'' including Site E, which became ''final sites'' in 1986. Disposal was further limited as the final sites were used and effects were observed. The most pronounced cumulative effect of past disposal has been the development of mounds at designated Sites A and B. Mounding altered the bathymetry at these sites to the point that the wave climate in the area was affected.

Monitoring of benthic infauna has generally not shown any long-term effects due to the dredged material disposal. Oceanographic conditions are the driving factor in benthic infaunal productivity and diversity. The exception to this is lowered productivity on the crest of the mound in designated site B. Crab fishermen have also reported lower crab yields in the area of the mound at site B, which may be due to reduced productivity or the more difficult conditions for setting and retrieving crab pots. Crab pots have been buried or lost during dredged material disposal operations. Crab pot loss is not considered a cumulative, or significant, effect of disposal in the area.

*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*

*Commercial and Recreational Fishing.* Major commercial and recreational fishing occur in the offshore area. The predominant commercial fisheries are for salmon, Dungeness crab, bottomfish and pink shrimp. Salmon trolling and crab fishing are done over much of the nearshore area. The actual location and effort, however, varies from year to year depending on the abundance of fish or crabs, and resulting seasonal restrictions.

The principal recreational fishing occurring off the MCR is for salmon and bottom fish. Salmon fishing is done by charter boat and private boat and occurs near the same areas as commercial fishing, but generally closer to shore. Bottom fishing is conducted by charter and private boat for halibut, rockfish, and lingcod, which are generally associated with rocky areas. Other recreational activities include clamming in the bay and along the beach and fishing off the jetties. Dredging operations have not been identified as impacting any of these fishing activities. Crab fishermen have stated that disposal of material at the existing ODMDS, Site E, has affected their fishery by creating mounds which affect small boat navigation, or create a soft bottom condition which lets crab pots sink into the sediments making removal difficult, expensive or impossible. Crab pots have been damaged or lost due to burial when dredged material was placed on them or by the dredges snagging the buoy lines. The Corps has been and will continue to coordinate with the fishermen to minimize this impact. Crab fishermen have also expressed the concern that disposal kills crabs by smothering them or by changing the bottom habitat which may reduce the number of crabs available to catch.

In order to evaluate the impacts to individual crabs by dredged material disposal, the Corps contracted with Battelle NW Laboratories in Sequim, Washington and Scripps Institute of Oceanography in La Jolla, California. Because assessing these impacts during an actual disposal event could not be done in the ocean, it was decided to simulate disposal conditions in the laboratory. The tests at the Battelle Lab were done with recently molted soft-shelled crabs, which have the greatest

potential for mechanical damage during a disposal event. The tests at the Scripps Lab were done using hard shell crab, since soft-shell crabs were not available.

Results of the limited testing are inconclusive. In all the tests done, no crabs appeared to be killed or injured by mechanical damage (all crabs removed from the sand mass were alive). The only mortality occurred when they did not dig out of the sand mass. Whether or not this behavior is typical of what occurs in nature is unknown. It seems unlikely, however, that organisms that live in an environment where they are constantly being buried under sand, such as at the mouth of the Columbia River, would have evolved a behavior that would result in their mortality. It seems more likely that the mortality associated with this behavior is an artifact of the testing and that the tests do not accurately represent the conditions that crabs experience in nature.

Crab population levels are affected by a variety of environmental and human factors, including but not limited to: upwelling patterns, onshore currents, wind and commercial fishing. Any of these conditions can have a devastating effect on population numbers in any year. Changes in oceanographic conditions during the larval stage can dramatically reduce survival and the number of adults. While some mortality of crabs could occur during an individual disposal event, only a small percentage of the population present and habitat available at the MCR would be affected by an individual disposal or repetitive disposal events. These mortalities and changes in habitat would be significantly less than mortalities and habitat changes which occur naturally. Additional sampling of both the Deep Water Site and the Shallow Water Site was done in the late spring/early summer and fall of 2002. Preliminary results from these surveys are supportive of the earlier resource assessments (IFR/EIS 1999).

Bathymetric monitoring will be done at and in the vicinity of the proposed Shallow Water site if it is designated. This information will be used by the Corps and EPA to manage placement of dredged material into the site. The proposed Shallow Water site would be located in an area that is dispersive, so while material will accumulate during active disposal, it is expected to be dispersed out of the site by the next dredging season (see also specific criteria 6). Disposal at the proposed Deep Water site will create a permanent mound; however, a mound height restriction and site monitoring and management will preclude interference with small and large vessel operation. The proposed Deep Water site is primarily within the towboat lane and should receive very limited commercial or recreational fishing use.

Dungeness crab are widely distributed throughout the nearshore area and fishing occurs in most areas north and south of the Columbia River mouth and out into deep ocean water (300+ feet). Throughout the site selection process, the crab fishermen identified specific areas that produce more income for their crab fishing effort. While these areas may not represent the cross-section of all fishermen operating out of the Columbia River, these identified areas were avoided to the extent practicable in the EPA's configuration of the proposed sites.

*Mineral Extraction.* There are known metallic mineral deposits in the area, principally black sands. While commercial extraction has been proposed and attempted in the past there are no known current proposals to mine offshore. There have been no exploratory wells drilled offshore near the mouth of the Columbia River. Clear conflicts with navigation and endangered species make it unlikely that production facilities would be permitted near the river's mouth or at any proposed site.

*Desalination.* There are no desalination plants in the area of the mouth of the Columbia River.

*Fish and Shellfish Culture.* There are no fish or shellfish culture operations in the area of the mouth of the Columbia River that would be affected by disposal of dredged material at any of the proposed sites.

*Shipping and Other Legitimate Uses.* Conflicts with commercial navigation traffic have been reported at the four 102/103 sites. In the past, disposal operations at Site F, where there was the greatest potential for conflict, were closely coordinated with the bar pilots. Similar coordination is expected to occur if the Deep Water site is used. The proposed Deep Water site is located in the towboat lanes and offshore of the Columbia Bar Pilots' exchange point. The potential for conflict with dredges and tug and barges transiting to the site are recognized but can be managed through coordination with the pilots, the Coast Guard, and others. While commercial navigation traffic is not an issue for the proposed Shallow Water site, placement at the site would be managed to avoid the creation of potential adverse wave impacts resulting from disposal operations, which could affect smaller boats transiting through the area. The proposed site would be located in an area immediately adjacent to an area that is subject to shoaling and breaking waves. Navigation in this area is known to be hazardous at all times based on natural conditions. Management at the proposed site would be focussed on not worsening the conditions at this naturally hazardous area.

*Special Scientific Importance.* There are no known transects or other scientific study locations that would be impacted by disposal at any proposed site.

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

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 nearshore and offshore areas is a Northeast Pacific mobile sand community. Neither the pelagic (mobile) or benthic (non-mobile) communities should sustain irreparable harm due to their widespread occurrence off the Oregon and Washington coasts.

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

Nuisance species are considered to be 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 creates an environment where they can establish. It is highly unlikely that any nuisance species could be established at the proposed Shallow Water site given the dynamic energy at the site which is expected to discourage the establishment of species not currently adapted to high-energy conditions. Habitat conditions are expected to change somewhat at the proposed Deep Water site because it is expected that disposal of coarser materials will impact limited sections of the benthic communities currently established at the site. While it can be expected that organisms will become established at the site which were not there previously, it is unlikely that this new community would be regarded as a nuisance, or ''undesirable,'' community.

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

Due to the proximity of the proposed Shallow Water site to the Columbia River channel, the cultural resource that

has the greatest potential for impact would be shipwrecks. The most likely areas for shipwrecks would be in the shallow breaker zone and the mouth of the Columbia River entrance. Wrecks within these areas would likely have been torn apart due to the high-energy climate. At or near the proposed Deep Water site wrecks are less likely; however, the deeper water would buffer the high-energy wave climate and thus make shipwrecks there less prone to damage. Shipwrecks in deeper water would tend to have more cultural value than shipwrecks nearshore. Undiscovered wrecks could occur in the area. Sidescan sonar surveys of the Deep Water Site have been conducted which should have identified any potential shipwrecks. None were identified. As additional sidescan sonar surveys are conducted in the future, and if potential shipwrecks are identified, EPA will require or undertake appropriate follow up action. No natural or cultural features of historical significance have been identified at either site proposed for designation in this rule.

**G. Proposed Action—Proposal to De-Designate Existing ODMDS and Proposal to Designate Ocean Disposal Sites**

The proposed action evaluated through this proposal is the proposed designation under Section 102(c) of the MPRSA of the Shallow Water and Deep Water sites. The primary purpose of the proposed designations is to provide environmentally acceptable locations for ocean disposal of dredged materials from Columbia River navigation projects. The evaluative processes, voluntary NEPA and an analysis of site suitability based on an assessment of the regulatory criteria, provide a thorough and objective evaluation and the information necessary to determine the suitability of an ocean disposal area for site designation. EPA's proposed site designation is being conducted in accordance with the MPRSA, the Ocean Dumping Regulations, and other applicable Federal environmental legislation and policy.

Ocean disposal site designation does not constitute or imply EPA's or the Corps' approval of ocean disposal of dredged material from any project. Before disposal of any dredged material at newly designated ODMDS may occur, EPA and the Corps must evaluate the proposed project according to the ocean dumping regulatory criteria (40 CFR part 227). EPA and the Corps will not allow ocean disposal of dredged material at newly designated ODMDS if either agency determines that the dredged material does not meet the ocean dumping regulatory criteria. The Corps is required to evaluate all proposed dredging projects associated with Columbia River dredged materials in accordance with all applicable Federal law, *e.g.,* the Magnuson-Stevens Fishery Conservation and Management Act, the Coastal Zone Management Act, and the Endangered Species Act.

This proposed action also proposes to de-designate, pursuant to 40 CFR 228.11, three ODMDS, Sites A, B and F, originally designated by EPA in 1986. The sites are proposed for de-designation because use of the sites for disposal of dredged materials resulted in mounding of disposal materials. The resulting mounds threatened to create hazardous conditions for large ships and small craft due to waves refracting from and breaking over the mounds. A fourth ODMDS, Site E, as currently designated, inhibits the ability to minimize interference with other activities in the marine environment. This rule proposes to modify Site E pursuant to 40 CFR 228.11 by designating a new site, the Shallow Water site which would incorporate the 1986-designated Site E and appreciably expand it. This rule does not propose to impact sites selected by the Corps under the authority of Section 103 of the MPRSA. Those sites will terminate based on the requirements of Section 103.

**H. Statutory and Executive Order Reviews**

*1. 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.

It has been determined that this proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*2. 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, it is not subject to the provisions of the Paperwork Reduction Act.

*3. 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 regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant impact on small entities because the proposed ocean disposal site dd-designations and designations will only have the effect of providing environmentally-acceptable and safe for marine traffic disposal options for dredged materials on a continuing basis. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. EPA's proposed ocean disposal site designation considered input from small entities in determining where to propose site locations and in sizing sites to reduce any potential impacts. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*4. 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 proposed 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.

*5. 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'' is 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 proposed rule 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 proposed rule addresses the 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. Thus, Executive Order 13132 does not apply to this rule. Although Section 6 of the Executive Order 13132 does not apply to this proposed rule, EPA did consult with representatives of State and local governments in developing this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

*6. 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.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. The rule proposes to designate ocean disposal sites pursuant to section 102 (c) of the MPRSA for use as dredged material sites and does not establish any regulatory policy with tribal implications. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

*7. 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 proposed rule 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 proposed action present a disproportionate risk to children. The proposed rule concerns the 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.

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

This rule 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.

*9. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTAA''), 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 NTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

*10. 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 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.

**List of Subjects in 40 CFR Part 228**

Environmental Protection, Water Pollution Control.

Dated: March 4, 2003.

**John Iani,**

*Regional Administrator for Region X.*

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be 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), (n)(7), and (n)(9), and revising paragraph (n)(8) to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

* * * * *

(n) * * *

(6) [Reserved]

(7) [Reserved]

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

(A) *Location:* Overall Site Coordinates/Site Placement Area: 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; Site 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; 46°15′42.38″ N, 124°05′26.55″ W (All NAD 83).

(B) *Size:* 3.50 kilometers long and 0.94 to 1.71 kilometers wide; 0.626 square nautical miles.

(C) *Depth:* Ranges from 14 to 23 meters.

(D) *Primary Use:* Dredged Material determined to be suitable for ocean disposal.

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

(F) *Restrictions:* (*i*) Disposal shall be limited to dredged material determined to be suitable for unconfined disposal; (*ii*) Disposal shall be limited by site restrictions and requirements contained in the then currently-approved Site Management and Monitoring Plan (SMMP); (*iii*) An Annual Use Plan (AUP) must be prepared and approved by EPA before disposal may occur in any year.

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

(A) *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 on all sides); 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).

(B) *Size:* 7.01 kilometers long by 5.18 kilometers wide; 5 square nautical miles.

(C) *Depth:* Ranges from 55 to 94 meters.

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

(E) *Period of Use:* Continuing Use (subject to restriction 8) or until placed material has mounded to an average height of 40 feet within the placement area (*see* restriction 6 below).

(F) *Restrictions:* (*i*) Disposal shall be limited to dredged material determined to be suitable for unconfined disposal; (*ii*) Disposal shall be limited by site restrictions and requirements contained in the then currently-approved Site Management and Monitoring Plan (SMMP); (*iii*) An Annual Use Plan (AUP) must be prepared and approved by EPA before disposal may occur in any year; (*iv*) A Drop Zone or Zones will be specified in the AUP for disposal, pursuant to restrictions and requirements contained in the then currently-approved SMMP; (*v*) Direct disposal of dredged material into the identified buffer zone is prohibited; (*vi*) 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; (*vii*) Use of the Deep Water Site during the first three years following final designation is limited as follows subject to completion of baseline and other special studies identified in the 2003 Site Management and Monitoring Plan: (*a*) Drop Zones specified must correspond to locations where 2001–2002 physical and biological characterizations have occurred, and (*b*) Disposals will be required to minimize the spread of material on the sea floor within the placement area; (*viii*) Site use is automatically prohibited at the end of year three following final designation if, for any reason, baseline and other special studies identified in the 2003 SMMP have not been completed and accepted by EPA. Site use will remain prohibited until this condition is satisfied.

(9) [Reserved]

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[FR Doc. 03–5743 Filed 3–10–03; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric dministration

## 50 CFR Part 600

**[Docket No. 030224043–3043–01; I.D. 040202C]**

## Magnuson-Stevens Act Provisions, Subpart H; General Provisions for Domestic Fishing

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.