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### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This regulation establishes a security zone. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under

#### ADDRESSES.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard temporarily amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–210 to read as follows:

#### § 165.T05–210 Security Zone; Potomac and Anacostia Rivers, Washington, DC and Arlington and Fairfax Counties, Virginia.

(a) *Definitions.* For the purposes of this section, *Captain of the Port Baltimore* means the Commander, U.S. Coast Guard Activities Baltimore, Maryland and any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Commander, U.S. Coast Guard Activities Baltimore, Maryland to act as a designated representative on his or her behalf.

(b) *Location.* The following area is a security zone: All waters of the Potomac River, from shoreline to shoreline, bounded by the Woodrow Wilson Memorial Bridge upstream to the Key Bridge, and all waters of the Anacostia River, from shoreline to shoreline, downstream from the Highway 50 Bridge to the confluence with the Potomac River, including the waters of the Georgetown Channel Tidal Basin.

(c) *Regulations.* (1) The general regulations governing security zones found in § 165.33 of this part apply to the security zone described in paragraph (b) of this section.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Except for Public vessels and vessels at berth, mooring or at anchor, all vessels in this zone are to depart the security zone. However, the Captain of the Port may, in his discretion grant waivers or exemptions to this rule, either on a case-by-case basis or categorically to a particular class of vessel that otherwise is subject to adequate control measures.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore. To seek permission to transit the area, the Captain of the Port Baltimore can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, VHF channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(d) *Effective period.* This section will be effective from 4 a.m. local time on January 14, 2005, through 10 p.m. local time on January 25, 2005.

Dated: January 7, 2005.

**Jonathan C. Burton,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, Baltimore, Maryland.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[FRL–7861–7]

### Ocean Dumping; Designation of Sites Offshore Palm Beach Harbor, FL and Offshore Port Everglades Harbor, FL

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

**ACTION:** Final rule.

**SUMMARY:** EPA today designates two Ocean Dredged Material Disposal Sites (ODMDSs) in the Atlantic Ocean offshore Southeast Florida, as EPA-approved ocean dumping sites for the disposal of suitable dredged material. One site is located offshore Palm Beach Harbor, Florida and the other offshore Port Everglades Harbor, Florida. This action is necessary to provide acceptable ocean disposal sites for consideration as an option for dredged material disposal projects in the vicinity of Palm Beach Harbor and Port Everglades Harbor. These site designations are for an indefinite period of time, but the sites will be subject to continued monitoring to insure that unacceptable adverse environmental impacts do not occur. The interim designated ocean disposal sites located offshore Palm Beach Harbor and Port Everglades Harbor are de-designated by this rule.

**DATES:** This rule is effective on February 17, 2005.

**ADDRESSES:** The administrative record for this action is available for public inspection at the following location: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Christopher J. McArthur, Ocean Dumping Program Coordinator, U.S. Environmental Protection Agency, Region 4, Coastal Section, 61 Forsyth Street, SW., Atlanta, GA 30303, telephone: (404)562-9391, e-mail: [mcArthur.christopher@epa.gov](mailto:mcArthur.christopher@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 may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. These designations are being made pursuant to that authority.

A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the Palm Beach Harbor West, Palm Beach Harbor East and Port Everglades Harbor, FL ODMDSs on an interim basis. Due to the proximity of the interim sites to shore, the potential for adverse impacts to

nearby coral reefs and the documented impacts at the Port Everglades Harbor interim ODMDS, these interim sites are no longer being used, were not considered for final designation and are being de-designated by this rule. The Palm Beach Harbor and Port Everglades Harbor ODMDS designations are being published as final rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

**B. Regulated Entities**

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material into ocean waters offshore Port Everglades Harbor and Palm Beach Harbor, Florida, under the MPRSA and its implementing regulations. This final rule is expected to be primarily of relevance to (a) parties seeking permits from the COE to transport dredged material for the purpose of disposal into ocean waters and (b) to the COE itself for its own dredged material disposal projects. Potentially regulated categories and entities that may seek to use the proposed dredged material disposal sites may include:

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

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your organization is affected by this action, you should carefully consider whether your organization is subject to the requirement to obtain an MPRSA permit in accordance with Section 103 of the MPRSA and the applicable regulations at 40 CFR Parts 220 and 225, and whether you wish to use the sites subject to today's action. EPA notes that nothing in this final rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this final rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**C. EIS Development**

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, 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 the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare NEPA documents in connection with ocean disposal site designations. (See 63 FR 58045 [October 29, 1998], "Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents.").

EPA, in cooperation with the COE, has prepared a Final EIS (FEIS) entitled "Final Environmental Impact Statement for Designation of the Palm Beach Harbor Ocean Dredged Material Disposal Site and the Port Everglades Harbor Ocean Dredged Material Disposal Site." On August 27, 2004, the Notice of Availability (NOA) of the FEIS was published in the **Federal Register** (69 FR 52668 [August 27, 2004]). Anyone desiring a copy of the FEIS may obtain one from the addresses given above. The wait period on the FEIS closed on September 27, 2004.

EPA received eight comment letters on the FEIS. Six letters were supportive of the Port Everglades Harbor ODMDS designation based on need for the disposal site. The remaining two letters were from the State of Florida (the State) and the National Marine Fisheries Service (NMFS). The State's comments are discussed in the following paragraph

and the NMFS letter noted that the Essential Fish Habitat (EFH) consultation process was ongoing. No letters were critical of the FEIS.

Pursuant to an Office of Water policy memorandum dated October 23, 1989, EPA has evaluated the proposed site designations for consistency with the State's approved coastal management program. EPA has determined that the designation of the proposed sites is consistent to the maximum extent practicable with the State coastal management program, and submitted this determination to the State for review in accordance with EPA policy. In a letter dated October 22, 2004, the State concurred with this determination. In addition, as part of the NEPA process, EPA has consulted with the State regarding the effects of the dumping at the proposed sites on the State's coastal zone. EPA has taken the State's comments into account in preparing the FEIS for the sites, in determining whether the proposed sites should be designated, and in determining whether restrictions or limitations should be placed on the use of the sites. There were six main concerns raised by the State during consultation: (1) Placement of beach quality sand in the ODMDS; (2) the volume of material to be disposed and number of projects to use the sites; (3) the adequacy and recency of the data on the benthic habitat within and near the ODMDSs; (4) cumulative impacts of activities in the area; (5) potential adverse impacts to essential fish habitat and in particular the habitat of the blue-line tilefish; and (6) the potential of Florida Current spin-off eddies to transport disposed dredged material to important marine habitats. Concerns raised regarding use of suitable material for beach nourishment and other beneficial uses, were addressed in the FEIS. EPA concurs with the State regarding the use of suitable material for beach nourishment and other beneficial uses, in circumstances where this use is practical. The dredging projects currently proposed as well as potential future projects were discussed in more detail in the FEIS including a detailed discussion of anticipated project disposal volumes. Projects in excess of 500,000 cubic yards are not permitted at either ODMDS until additional capacity studies have been completed. The State was provided additional information on the benthic habitats within and adjacent to the ODMDSs including a copy of the video taken at the Port Everglades Harbor ODMDS and quantification of the habitat types within each ODMDS. A pre-disposal high resolution bathymetry requirement was added to

the Site Management and Monitoring Plan (SMMP) to address the State's concerns regarding recency of data. The discussion of cumulative impacts was expanded in the FEIS including discussions of additional activities in the area as requested by the State. EFH concerns were addressed by EPA through the development of an EFH Assessment for each ODMDS. The EFH Assessments were coordinated with the NMFS and the State and were included as part of the FEIS. EPA concluded that the designations will not have a substantial individual or cumulative adverse impact on the EFH of managed species including tilefish. The State's concerns regarding the potential of Florida Current spin-off eddies to transport disposed dredged material to important marine habitats have been addressed through modeling of the disposal plumes by the COE. The State was involved in selecting input parameters for the model and in reviewing the draft results. In addition, EPA has an ongoing effort at the nearby Miami ODMDS to address concerns regarding the potential of Florida Current spin-off eddies to transport disposed dredged material to important near-shore marine habitats.

In a letter dated June 7, 2004, the Florida Department of State agreed that it is unlikely that the proposed designations will affect any archaeological or historic resources listed, or eligible for listing, in the *National Register of Historic Places*, or otherwise of significance in accordance with the National Preservation Act of 1966 (Pub. L. 89-6654), as amended.

The action discussed in the FEIS is the permanent designation for continuing use of ocean disposal sites offshore Palm Beach Harbor and Port Everglades Harbor, Florida. The purpose of the action is to provide an environmentally acceptable option for the ocean disposal of dredged material. The need for the permanent designation of the ODMDSs is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the Palm Beach Harbor and Port Everglades Harbor areas. The need for ocean disposal for these and other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal and a public review process for its own actions. This will include an evaluation of disposal alternatives.

For the ODMDSs, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to

the EPA criteria set forth in the Ocean Dumping Regulations (40 CFR 220-229) and the COE regulations (33 CFR 209.120 and 335-338). The COE issues MPRSA permits to applicants for the transport of dredged material intended for disposal after compliance with regulations is determined. EPA has the right to disapprove any ocean disposal project if, in its judgment, all provisions of MPRSA and the associated implementing regulations have not been met.

The FEIS discusses the need for these site designations and examines ocean disposal site alternatives to the proposed actions. Non-ocean disposal options have also been examined in the Disposal Area Studies for Palm Beach Harbor and Port Everglades Harbor, prepared by the COE and included as appendices to the FEIS. Alternatives to ocean disposal may include upland disposal within the port areas, or utilization of dredged material for beneficial use such as beach nourishment. The studies concluded that upland disposal in the intensively developed port areas is not feasible. Undeveloped areas within cost-effective haul distances are environmentally valuable in their own right. Beach placement is limited to predominately sandy material.

The following ocean disposal alternatives were evaluated in the FEIS:

#### *1. Alternative Sites on the Continental Shelf*

The continental shelf is narrow in the project area with a width of about 0.63 nautical mile (nmi). In the Palm Beach Harbor and Port Everglades Harbor nearshore area, hardgrounds supporting coral and algal communities are concentrated on the continental shelf. Disposal operations on the shelf could adversely impact this reef habitat. Therefore, following discussions with the State, a zone of siting feasibility for alternative ODMDSs was established eliminating from consideration any areas within 3 nmi of shore to avoid impact to natural reefs in the area. Consequently, no alternatives on the continental shelf were considered in the FEIS.

#### *2. Designated Interim Sites*

Two interim sites were designated for Palm Beach Harbor, one of which is located nearshore at the port entrance and the other is located approximately 2.9 nmi (4.5 km) offshore. Following discussions with the State of Florida, a zone of siting feasibility was established, eliminating from consideration any areas within 3 nautical miles of shore to avoid direct

impact to natural reefs in the area. As a result, both Palm Beach Harbor interim sites were not considered further.

The interim site for Port Everglades is located 1.7 nmi (3.2 km) offshore. A 1984 survey conducted by the EPA indicated that some damage to nearby inshore, hard bottom areas may have occurred due to the movement of fine grained material associated with disposed dredged material. In light of the survey findings, disposal at the Port Everglades interim site was discontinued and the site was eliminated from further consideration.

### 3. Alternative Sites Beyond the Continental Shelf

Alternative sites beyond the continental shelf considered for Palm Beach Harbor include the 3 mile site, the 4.5 mile site and the 9 mile site. The 4.5 mile site is approximately one square mile in size and is located within the eastern portion of the 3 mile site. The 3 mile site is four square miles in size. The 3 mile site was dropped from further consideration in favor of the 4.5 mile site as it was determined that a site four square miles in size was not necessary at the depths at this location. The 9 mile site is 4 square miles in size. The deeper depths at the 9 mile site result in a larger disposal footprint, due to greater dispersion, necessitating a larger 4 square mile disposal site. Both the 4.5 mile site and the 9 mile site were considered in the FEIS.

Alternative sites beyond the continental shelf considered for the Port Everglades Harbor include the 4 mile site and the 7 mile site. The 4 mile site is approximately one square mile in size whereas the 7 mile site is two square miles in size. The deeper depths at the 7 mile site result in a larger disposal footprint necessitating a larger 4 square mile disposal site. Both the 4 mile site and the 7 mile site were considered in the FEIS.

### 4. No Action

The No-Action Alternative would not provide acceptable EPA-designated ocean disposal sites for use by the COE or other entities for the disposal of dredged material. Without final-designated disposal sites, the maintenance of the existing Federal Navigation Projects at Palm Beach Harbor and Port Everglades Harbor would be adversely impacted with subsequent effects upon the local and regional economies. Interim designated ODMDSs are not available. Alternative dredged material disposal methods would be required or the dredging and dredged material disposal discontinued.

In the absence of an EPA designated ocean dredged material disposal site, the COE could select an alternative pursuant to section 103 of MPRSA. In such cases, the ocean site selected for disposal would be evaluated according to the criteria specified in section 102(a) of MPRSA and EPA's Ocean Dumping Regulation and Criteria 40 CFR part 228, and EPA concurrence is required. A site so selected can be used for five years without EPA designation, and can continue to be used for another five years under limited conditions. Accordingly, the No-Action alternative would not provide a long-term management option for dredged material disposal.

### 5. Preferred Alternative

The site near Palm Beach Harbor selected for ODMDS designation is an area approximately 1 square nautical mile (nmi<sup>2</sup>) located east northeast of the Lake Worth Inlet and approximately 4.5 nmi offshore. The site at Port Everglades Harbor selected for ODMDS designation is an area approximately 1 nmi<sup>2</sup> located east northeast of Port Everglades and approximately 4 nmi offshore. These sites were found to comply with the criteria for evaluation of ocean disposal sites established in 40 CFR Sections 228.5 and 228.6 of EPA's Ocean Dumping Regulations. No significant impacts to critical resource areas are expected to result from designation of either of these sites. Similar types of impacts are expected from use of these sites as impacts from use of the alternative sites located further offshore. However, use of these sites is expected to result in less area being impacted as a result of their shallower depth. The selected sites would require significantly less consumption of resources and would result in significantly less air emissions than the offshore sites. In addition, monitoring of the selected sites would be less costly to the federal government and less difficult than the offshore sites. Therefore, these sites were selected as the preferred alternatives.

The FEIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation use and is based on a series of disposal site environmental studies. The environmental studies and final designation are being conducted in accordance with the requirements of MPRSA, the Ocean Dumping Regulations, and other applicable Federal statutory provisions.

This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated

by the Council on Environmental Quality for agencies subject to NEPA.

### D. Site Designations

On July 30, 2004, EPA proposed designation of two sites for continuing disposal of dredged materials from Palm Beach Harbor and Port Everglades Harbor, Florida. The public comment period on this proposed action closed on September 13, 2004. Six letters of comment were received. All six letters were supportive of the Port Everglades Harbor ODMDS designation based on the need for alternatives to upland disposal for maintenance and construction dredged material from the port. No comment letters were received for the Palm Beach Harbor ODMDS.

The ODMDS for Palm Beach Harbor is located east of Palm Beach, Florida, the western boundary being 4.3 nmi offshore. The ODMDS occupies an area of about 1 nmi<sup>2</sup>, in the configuration of an approximate 1 nmi by 1 nmi square. Water depths within the area range from 525 to 625 feet. The coordinates of the Palm Beach Harbor ODMDS are as follows:

26°47'30" N	79°57'09" W;
26°47'30" N	79°56'02" W;
26°46'30" N	79°57'09" W;
26°46'30" N	79°56'02" W;

Center coordinates are 26°47'00" N and 79°56'35" W.

The ODMDS for Port Everglades Harbor is located east of Fort Lauderdale, Florida, the western boundary being 3.8 nmi offshore. The ODMDS occupies an area of about 1 nmi<sup>2</sup>, in the configuration of an approximate 1 nmi by 1 nmi square. Water depths within the area range from 640 to 705 feet. The coordinates of the Port Everglades Harbor ODMDS designation are as follows:

26°07'30" N	80°02'00" W;
26°07'30" N	80°01'00" W;
26°06'30" N	80°01'00" W;
26°06'30" N	80°01'00" W;

Center coordinates are 26°07'00" N and 80°01'30" W. All coordinates utilize the North American Datum of 1983 (NAD83).

### E. Analysis of Criteria Pursuant to the Ocean Dumping Act Regulatory Requirements

Five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal 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 and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site can be restricted or terminated by EPA. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a disposal site to assure that the general criteria are met. The sites, as discussed below under the eleven specific factors, are acceptable under the five general criteria.

The characteristics of the sites are reviewed below in terms of these eleven criteria (the FEIS may be consulted for additional information).

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

The ODMDS for Palm Beach Harbor is located east of Palm Beach, Florida, the western boundary being 4.3 nmi offshore. Water depths within the area range from 525 to 625 feet with depth contours parallel to the coastline. The coordinates of the Palm Beach Harbor ODMDS are as follows:

26°47'30" N 79°57'09" W;  
26°47'30" N 79°56'02" W;  
26°46'30" N 79°57'09" W; and  
26°46'30" N 79°56'02" W;

Center coordinates are 26°47'00" N and 79°56'35" W.

The ODMDS for Port Everglades Harbor is located east of Fort Lauderdale, Florida, the western boundary being 3.8 nmi offshore. Water depths within the area range from 640 to 705 feet with depth contours parallel to the coastline. The coordinates of the Port Everglades Harbor ODMDS designation are as follows:

26°07'30" N 80°02'00" W;  
26°06'30" N 80°01'00" W;  
26°06'30" N 80°02'00" W; and  
26°06'30" N 80°01'00" W;

Center coordinates are 26°07'00" N and 80°01'30" W. All coordinates utilize the North American Datum of 1983 (NAD83).

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

The most active breeding and nursery areas are located in inshore waters, along adjacent beaches, or in nearshore reef areas. While breeding, spawning, and feeding activities may take place near the ODMDSs, these activities are not believed to be confined to, or concentrated in, these areas. While

many marine species may pass through the ODMDSs, passage is not geographically restricted to these areas.

EPA initially coordinated with the National Marine Fisheries Service (NMFS) regarding the Endangered Species Act (ESA) on March 24, 2004. At that time, EPA sent NMFS a copy of the Draft EIS, which included two Appendices, each entitled Biological Assessment. Those Assessments evaluated the potential impacts from the site designations to Federally listed threatened and endangered species. In its letter, EPA referenced the Assessments, which concluded that the site designations "will not adversely affect" any listed species or critical habitat. While the letter stated that EPA concluded the action "will not affect" any listed species, EPA informally consulted with NMFS and sought comments from the NMFS on the proposed site designations with the March 2004 letter. In a May 24, 2004 letter of response, NMFS concluded that adverse effects on whales are unlikely to occur from this project and no effects to the shortnose sturgeon or smalltooth sawfish are likely to occur from this project.

On March 24, 2004, EPA also consulted with NMFS pursuant to Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) 16 U.S.C. 1855, and the applicable implementing regulations. At that time, EPA sent NMFS a copy of the Draft EIS which included an Essential Fish Habitat (EFH) Assessment within the body of the document. In a May 6, 2004 letter of response, NMFS requested a stand alone EFH Assessment that specifically addressed potential impacts to deepwater habitats, such as black corals and *Oculina*, and potential impacts to deepwater managed species including tilefish. The EFH Assessments were provided to NMFS on July 15, 2004 and included as appendices to the FEIS. Based on comments received from NMFS, EPA revised the EFH Assessments. Revised EFH Assessments for designation of the Palm Beach Harbor ODMDS and the Port Everglades Harbor ODMDS were provided to NMFS on September 22, 2004 and October 12, 2004, respectively. The Assessments set forth EPA's determination that the site designation of the Palm Beach Harbor ODMDS and Port Everglades Harbor ODMDS will not have a substantial individual or cumulative adverse impact on the EFH of managed species. In letters dated October 19, 2004 and October 20, 2004, NMFS concluded that the fishery conservation requirements of the MSFCMA were completed for the Palm Beach Harbor ODMDS and the

Port Everglades Harbor ODMDS, respectively.

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

The disposal sites for Palm Beach Harbor and Port Everglades Harbor are located approximately 4.5 nmi and 4.0 nmi offshore, respectively. The nearest beaches are located on the shorelines west of the sites. Because of the distance of the sites from the shoreline, the predominate northerly directed current, and the expected localized effects at the disposal sites, it is unlikely that dredged material disposal at either of the sites would adversely affect coastal beaches. Amenity areas in the vicinity of the sites include artificial and natural reefs. Both sites are located at least 2.3 nmi from the nearest artificial reef. From West Palm Beach to the Florida Keys, there are generally three separate series of reefs or hard bottoms. The disposal sites for Palm Beach Harbor and Port Everglades Harbor are located approximately 2.6 nmi and 3.0 nmi from the outer of these reef series, respectively. In addition, colonies of the deepwater coral *Oculina varicosa* extend north from Palm Beach Harbor and parallel the break between the edge of the continental shelf and the Florida-Hatteras slope. The Palm Beach Harbor ODMDS is located approximately 1.7 nmi east of the nearest observed deepwater corals. Currents in the vicinity trend alongshore in a general north-south orientation. Modeling performed by the COE indicates that disposed material will not impact these natural areas.

*4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any (40 CFR 228(a)(4))*

The only material to be placed at the ODMDSs will be dredged material that meets the EPA Ocean Dumping Criteria in 40 CFR Parts 220 through 229. The sites are expected to be used for routine maintenance of the respective harbor projects. Annual average disposal volumes of 30,000 cubic yards of material are expected at each site with disposal occurring every three years. Dredged material from Port Everglades Harbor is expected to have a solids content of 60 to 70 percent solids by weight with a grain size of 38 to 5 percent of the grains finer than sand by weight. Dredged material from Palm Beach Harbor is expected to have solids content of 80 to 85 percent solids by weight with a grain size of 6 percent finer than sand. It has been

demonstrated by the COE that the most cost effective method of dredging is clamshell/barge dredging for Palm Beach Harbor and hopper dredging for Port Everglades Harbor. Additional foreseen use of the Port Everglades Harbor site could be the Federal Port Everglades Deepening Project or use by the U.S. Navy in Port Everglades. The Deepening Project has not yet been authorized and there are no currently planned Navy projects. The disposal of dredge material at the proposed sites will be conducted using a near instantaneous dumping type barge or scow.

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

Surveillance and monitoring of the proposed sites is feasible. Survey vessels, aircraft overflights, or automated Geographic Positioning Systems (GPS) surveillance systems are feasible surveillance methods. The depths at these sites make conventional ODMDS monitoring techniques difficult to utilize. A draft Site Management and Monitoring Plan (SMMP) for each ODMDS was developed and included in an appendix in the FEIS. The SMMPs were finalized by EPA and the COE in November, 2004. The SMMPs establish a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. The SMMPs may be reviewed and revised by EPA.

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

Prevailing currents parallel the coast and are generally oriented along a north-south axis. Northerly flow predominates. Mean surface currents range from 10 to 100 cm/sec depending on direction with maximum velocities up to 530 cm/sec. Current speeds are lower and current reversals more common in near-bottom waters. Mean velocities of 20 cm/sec and maximum velocities of 130 cm/sec have been measured for near-bottom waters in the area. Dredged material dispersion studies conducted by the COE for both short (hours) and long-term (months) transport of material disposed at the Palm Beach Harbor and Port Everglades Harbor sites indicate little possibility of disposed material affecting near-shore reefs or other amenities in the areas of the disposal sites.

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

There are no current or previous discharges within the ODMDSs. There are two interim-designated ODMDSs near Palm Beach Harbor. The disposal of 5.2 million cubic yards of dredged material from Palm Beach Harbor occurred between 1950 and 1983 in the interim sites. The characteristics of the dredged material were poorly graded sand with traces of shell fragments.

An interim-designated ODMDS at Port Everglades Harbor is located approximately 2.5 nmi west-southwest of the Port Everglades Harbor ODMDS. The disposal of 220,000 cubic yards of dredged material occurred in this interim ODMDS between 1952 and 1982. The characteristics of the disposed dredged material were organic silt with some clay. A 1984 survey conducted by EPA indicated that some damage to nearby inshore, hard bottom areas may have occurred because of the movement of fine material associated with the disposal of dredged material at the site. In light of the survey findings, disposal at the Port Everglades interim site was discontinued after 1984.

There are two wastewater ocean outfall discharges in the vicinity of each proposed ODMDS. The nearest outfall to either of the proposed sites is 11 miles. The effluent from wastewater outfalls has undergone secondary treatment and chlorination. Significant adverse impacts to the marine environment have not been documented in association with either of these offshore wastewater outfalls. Any effects from these discharges would be local and predominately in a north-south direction due to prevailing currents. Therefore, these discharges should not have any effect within the 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 (40 CFR 228.6(a)(8))

The infrequent use of the proposed sites should not significantly disrupt either commercial shipping or recreational boating. Commercial and recreational fishing activities are concentrated in inshore and nearshore waters. No mineral extraction, desalination, or mariculture activities occur in the immediate area. Scientific resources present near the Port Everglades Harbor site include the South Florida Ocean Measurement Center (SFOMC, formerly the South

Florida Testing Facility). The SFOMC is located 1.5 nmi south of the ODMDS. Interference with activities at the SFOMC is not expected.

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

Baseline surveys conducted for the Palm Beach Harbor and the Port Everglades Harbor ODMDSs show the water quality and other environmental characteristics of the proposed ODMDSs to be typical of the Atlantic Ocean. Salinity, dissolved oxygen, and transmissivity (water clarity) data indicated water masses over the sites were similar to water masses in open ocean waters and deviated little between sites. Macrofaunal samples were dominated in numbers by annelids and arthropods. Water quality at the proposed ODMDSs is variable and is influenced by frequent Florida Current intrusions of offshore oceanic waters, and periodic up welling of deep ocean waters. The proposed disposal sites lie on the continental slope in an area traversed by the western edge of the Florida Current. The location of the western edge of the current determines to a large extent whether waters at the site are predominantly coastal or oceanic. Frequent intrusions or eddies of the Florida Current transport oceanic waters over the continental shelf in the vicinity of the ODMDSs. Periodic up welling/down welling events associated with wind stress also influence waters in the area.

No critical habitat or unique ecological communities have been identified within or adjacent to the ODMDSs.

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

The disposal of dredged materials should not attract or promote the development of nuisance species. No nuisance species have been reported to occur at previously utilized disposal sites in the vicinity of either ODMDSs.

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

Due to the proximity of ODMDSs to entrance channels, the cultural resource that has the greatest potential for impact would be shipwrecks. Sidescan sonar surveys of the sites were conducted which should have identified any potential shipwrecks. No such features were noted within the disposal sites in the sidescan sonar surveys of the

disposal sites. No natural or cultural features of historical importance have been identified at either site. The Florida Department of State Division of Historical Resources was consulted and they determined that it is unlikely that designation of the ODMDSs would affect archaeological or historical resources eligible for listing in the *National Register of Historic Places*, or otherwise of significance.

#### F. Site Management

Site management of the ODMDSs is the responsibility of EPA in cooperation with the COE. The COE issues permits to private applicants for ocean disposal; however, EPA Region 4 assumes overall responsibility for site management. Development of Site Management Plans is required by the MPRSA prior to final designation. A Site Management and Monitoring Plan (SMMP) for each ODMDS was developed as a part of the process of completing the FEIS. The SMMPs were finalized by EPA and the COE in November, 2004. The plans provide procedures for both site management and for the monitoring of effects of disposal activities. The SMMPs are intended to be flexible and may be reviewed and revised by the EPA.

#### G. Action

The FEIS concludes that the sites may appropriately be designated for use. The sites are also consistent with the five general criteria and eleven specific factors in the Ocean Dumping Regulations used for site evaluation.

The designation of the Palm Beach Harbor and Port Everglades Harbor sites as EPA-approved ODMDSs is being published as final rulemaking. Overall management of these sites is the responsibility of the Regional Administrator of EPA Region 4.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria (40 CFR part 227) and authorize disposal. EPA has the right to disapprove the actual disposal if it determines that environmental concerns under MPRSA have not been met.

#### H. Statutory and Executive Order Reviews

##### 1. Executive Order 12866: Regulatory Planning and Review

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:

(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 entitlement, 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.

EPA has determined that this action does not meet the definition of a "significant regulatory action" under E.O. 12866 as described above 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 collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OPM. Since this 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 Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency 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. For the purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business based on the Small Business Administration's (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county,

town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant economic impact on small entities. The ocean disposal site designations will only have the effect of providing a long term, environmentally acceptable disposal option for dredged material. This action will help to facilitate the maintenance of safe navigation on a continuing basis. After considering the economic impacts of today's final action on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

##### 4. The Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one 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 of why that 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.

EPA has determined that this action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Thus, the requirements of section 202 and section 205 of the UMRA do not apply to this final rule. Similarly, EPA has also determined that this action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this final 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" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final 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 the various levels of government, as specified in Executive Order 13132. This final rule addresses the designation and de-designation of ocean disposal sites for the potential disposal of dredged materials. This action neither creates new obligations nor alters existing authorizations of any State, local or other governmental entities. Thus, Executive Order 13132 does not apply to this rule. However, EPA did consult with State and local government representatives in the development of the FEIS and through solicitation of comments on the Draft and Final EIS. In addition, in the spirit of Executive Order 13132, and EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the 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 6, 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." "Policies that have Tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

This action does not have Tribal implications. This action will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This final rule designates ocean dredged material disposal sites and does not establish any regulatory policy with tribal implications. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) 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 might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and 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 final rule is not an economically significant rule as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045.

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

This final 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 under Executive Order 12866.

#### 9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Although EPA stated that the proposed action did not directly involve technical standards, the proposed action and today's final action include environmental monitoring and measurement as described in EPA's SMMPs. EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the designated sites. Rather, the Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the SMMP.

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

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons

(including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

Because this action addresses ocean disposal site designations (away from inhabited land areas), no significant adverse human health or environmental effects are anticipated. Therefore, no action from this final rule would have a disproportionately high and adverse human health and environmental effect on any particular segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

#### 11. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule as defined in 5 U.S.C. 804(2) cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective February 17, 2005.

#### 12. The Endangered Species Act

Under section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. 1536(a)(2), federal agencies are required to "insure that any action authorized, funded, or carried on by such agency \* \* \* is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species \* \* \*." Under regulations implementing the ESA, a Federal agency is required to consult with either the FWS or the NMFS (depending on the species involved) if the agency's action "may affect" endangered or threatened species or their critical habitat. *See*, 50 CFR 402.14(a).

EPA initially coordinated with the National Marine Fisheries Service (NMFS) regarding the Endangered

Species Act (ESA) on March 24, 2004. At that time, EPA sent NMFS a copy of the Draft EIS, which included two Appendices, each entitled Biological Assessment. Those Assessments evaluated the potential impacts from the site designations to federally listed threatened and endangered species. In its letter, EPA referenced the Assessments, which concluded that the site designations "will not adversely affect" any listed species or critical habitat. While the letter stated that EPA concluded the action "will not affect" any listed species, EPA informally consulted with NMFS and sought comments from the NMFS on the proposed site designations with the March 2004 letter. In a May 24, 2004 letter of response, NMFS concluded that adverse effects on whales are unlikely to occur from this project and no effects to the shortnose sturgeon or smalltooth sawfish are likely to occur from this project.

#### 13. Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA)

The 1996 Sustainable Fisheries Act amendments to the MSFCMA require the designation of EFH for Federally managed species of fish and shellfish. Pursuant to section 305(b)(2) of the MSFCMA, Federal agencies are required to consult with the NMFS regarding any action they authorize, fund, or undertake that may adversely affect EFH. An adverse effect has been defined by the Act as follows: "Any impact which reduces the quality and/or quantity of EFH. Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions."

On March 24, 2004, EPA consulted with NMFS pursuant to Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) 16 U.S.C. 1855, and the applicable implementing regulations. At that time, EPA sent NMFS a copy of the Draft EIS which included an EFH Assessment within the body of the document. In a May 6, 2004 letter of response, NMFS requested a stand alone EFH Assessment that specifically addressed potential impacts to deepwater habitats, such as black corals and Oculina, and potential impacts to deepwater managed species including tilefish. The EFH Assessments were provided to NMFS on July 15, 2004 and included as appendices to the FEIS. Based on comments received from NMFS, EPA revised the EFH

Assessments. Revised EFH Assessments for designation of the Palm Beach Harbor ODMDS and the Port Everglades Harbor ODMDS were provided to NMFS on September 22, 2004 and October 12, 2004, respectively. The Assessments set forth EPA's determination that the site designation of the Palm Beach Harbor ODMDS and Port Everglades Harbor ODMDS will not have a substantial individual or cumulative adverse impact on the EFH of managed species. In letters dated October 19, 2004 and October 20, 2004, NMFS concluded that the fishery conservation requirements of the MSFCMA were completed for the Palm Beach Harbor ODMDS and the Port Everglades Harbor ODMDS, respectively.

#### 14. Executive Order 13089: Coral Reef Protection

Executive Order 13089 (63 FR 32701, June 16, 1998) on Coral Reef Protection recognizes the significant ecological, social, and economic values provided by the Nation's coral reefs and the critical need to ensure that Federal agencies are implementing their authorities to protect these valuable ecosystems. Executive Order 13089 directs Federal agencies, including EPA and the COE whose actions may affect U.S. coral reef ecosystems, to take the following steps: 1. Identify their actions that may affect U.S. coral reef ecosystems; 2. Utilize their programs and authorities to protect and enhance the conditions of such ecosystems; and 3. To the extent permitted by law, ensure that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems. It is the policy of EPA and the COE to apply their authorities under the MPRSA to avoid adverse impacts on coral reefs. Protection of coral reefs has been carefully addressed through the application of the site designation criteria which require consideration of the potential site's location in relation to breeding, spawning, nursery, feeding, and passage areas of living marine resources and amenity areas, interference with recreation and areas of special scientific importance, and existence of any significant natural or cultural features at or in close proximity to the site (*see* E. Analysis of Criteria Pursuant to the Ocean Dumping Act Regulatory Requirements). Based on application of these criteria, the proposed disposal sites should not have adverse effects on coral reefs.

#### 15. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires that each Federal

agency whose actions affect the natural or cultural resources that are protected by an Marine Protected Area (MPA) shall identify such actions and shall avoid harm to the natural and cultural resources that are protected by an MPA. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law."

EPA has reviewed the Marine Managed Areas Inventory maintained by the National Oceanic and Atmospheric Administration and the U.S. Department of Commerce. The nearest MPA to either ODMDS is Biscayne National Park which is located greater than 20 nmi from the Port Everglades Harbor ODMDS and greater than 40 nmi from the Palm Beach Harbor ODMDS. Therefore, EPA has determined that no MPAs will be affected by this action.

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

Environmental protection, Water pollution control.

Dated: January 4, 2005.

J.I. Palmer, Jr.,

Regional Administrator for Region 4.

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

#### PART 228—[AMENDED]

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

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

#### § 228.14 [Amended]

■ 2. Section 228.14 is amended by removing and reserving paragraphs (h)(3), (h)(4), and (h)(5).

■ 3. Section 228.15 is amended by adding paragraphs (h)(21) and (h)(22) to read as follows:

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

\* \* \* \* \*

(h) \* \* \*

(21) Palm Beach Harbor, FL Ocean Dredged Material Disposal Site.

(i) Location (NAD83): 26°47'30" N., 79°57'09" W.; 26°47'30" N., 79°56'02" W.; 26°46'30" N., 79°57'09" W.; 26°46'30" N., 79°56'02" W. Center coordinates are 26°47'00" N and 79°56'35" W.

(ii) Size: Approximately 1 square nautical mile.

(iii) Depth: Ranges from 525 to 625 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(22) Port Everglades Harbor, FL Ocean Dredged Material Disposal Site.

(i) Location (NAD83): 26°07'30" N., 80°02'00" W.; 26°07'30" N., 80°01'00" W.; 26°06'30" N., 80°02'00" W.; 26°06'30" N., 80°01'00" W. Center coordinates are 26°07'00" N and 80°01'30" W.

(ii) Size: Approximately 1 square nautical mile.

(iii) Depth: Ranges from 640 to 705 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

\* \* \* \* \*

[FR Doc. 05-932 Filed 1-14-05; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 64

[Docket No. FEMA-7861]

#### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

**EFFECTIVE DATES:** The effective date of each community's scheduled

suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646-2878.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the