

implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. As described elsewhere in this preamble, today's proposed rule would only have the effect of providing continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13175 does not apply to this proposed rule.

#### 7. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (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 may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA 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 EPA.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have any reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As described elsewhere in this preamble, today's proposed rule would only have the effect of providing continual use of an ocean disposal site pursuant to section 102(c) of MPRSA.

#### 8. Executive Order 13211

This proposed 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 proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### 10. Executive Order 12898

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.

No action from this proposed 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.

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

Environmental protection, Water pollution control.

Dated: February 7, 2005.

**J. I. Palmer, Jr.,**

*Regional Administrator for Region 4.*

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as follows:

#### 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 adding paragraph (h)(23) to read as follows:

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

\* \* \* \* \*

(h) \* \* \*

(23) Port Royal, SC; Ocean Dredged Material Disposal Site.

(i) Location (NAD83): 32°05.00' N., 80°36.47' W.; 32° 05.00' N., 80°35.30'

W.; 32°04.00' N., 80° 35.30' W.; 32°04.00' N., 80°36.47' W.

(ii) Size: Approximately 1.0 square nautical miles.

(iii) Depth: Averages 36 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material from the greater Port Royal, South Carolina vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

\* \* \* \* \*

[FR Doc. 05-3525 Filed 2-23-05; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7874-8]

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent for partial deletion at the Peterson/Puritan, Inc. site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 1 announces its intent to delete a portion of the Peterson/Puritan, Inc. Superfund Site (the Site), owned by Macklands Realty, Inc. and Berkeley Realty, Co. (herein Macklands and Berkeley properties), from the National Priorities List (NPL). EPA requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This partial deletion at Operable Unit Two (OU 2) of the Peterson/Puritan, Inc. Site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List 60 FR 55466 (November 1, 1995).

The Site is made up of two formally designated operable units. This proposal for partial deletion pertains only to a portion of OU 2 consisting of 19.8 acres of the estimated 217 acres contained in OU 2. Macklands Realty, Inc. owns Plat 14, Lot 2 which consists of approximately 10.1 acres proposed for deletion while Berkeley Realty, Co. owns Plat 15, Lot 1 which consists of

approximately 9.7 acres proposed for deletion. These properties are also known locally as the proposed Berkeley Commons and River Run developments, located along the eastern slope of the Blackstone River Valley between State Route 122 and the Blackstone River in Cumberland, Rhode Island. The western extent of the Macklands and Berkeley properties also makes up a portion of the northeastern boundary of OU 2. The remaining portions of OU 2 will stay on the NPL, and the Remedial Investigation and Feasibility Study (RI/FS) will continue as planned at OU 2. EPA bases its intent to delete this portion at OU 2 on the determination by EPA and Rhode Island Department of Environmental Management (RIDEM) that investigations have shown that the area proposed for deletion poses no significant threat to human health or the environment and, therefore, currently warrants that no further response action is required at the Macklands and Berkeley properties.

**DATES:** EPA will accept comments concerning its intent for partial deletion on or before March 28, 2005 and a newspaper of record.

**ADDRESSES:** Comments may be mailed to: Mr. David J. Newton, Remedial Project Manager, Office of Site Remediation and Restoration, U.S. EPA, Region 1, 1 Congress Street, Suite 1100, Boston, MA 02114-2023.

*Information Repositories:*

Comprehensive information on the Peterson/Puritan, Inc. Site as well as an administrative record specific to this proposed partial deletion is available for review at EPA's Region 1 office in Boston, MA, and at the information repositories listed below. The EPA Region 1's Superfund Records Center is located at 1 Congress Street, Boston, MA, 02114-2023. A review of the records can be conducted by appointment by calling (617) 918-1440 between 8:30 a.m. until 4:30 p.m., Monday-Friday.

Other information repositories where the deletion docket and comprehensive site records are available for public review include: Cumberland Public Library at 1464 Diamond Hill Road in Cumberland, Rhode Island, and Lincoln Public Library, Old River Road, Lincoln, Rhode Island.

**FOR FURTHER INFORMATION CONTACT:** David J. Newton, Remedial Project Manager at (617) 918-1243, or Sarah White, Community Involvement Coordinator, U.S. EPA, Region 1, Office of Site Remediation and Restoration, 1 Congress Street, Suite 1100, Boston, MA 02114-2023, Telephone: (617) 918-1026.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Partial Site Deletion

**I. Introduction**

The United States Environmental Protection Agency (EPA) Region 1 announces its intent to delete a portion of Operable Unit Two (OU 2) at the Peterson/Puritan, Inc. Superfund Site, (the Site) located in Cumberland, Rhode Island from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this proposal. This proposal for partial deletion pertains to the properties designated on the town of Cumberland Tax Assessor's Map Plat 14, Lot 2 and Plat 15, Lot 1, known locally as the proposed Berkeley Commons and River Run developments, and owned by Macklands Realty, Inc. and Berkeley Realty, Co. respectively (herein Macklands and Berkeley properties). This partial deletion involves 19.8 acres designated within the OU 2 boundary (see Figure 1; a map showing the areas proposed for deletion; which is located in the Administrative Record (AR) under section 5.4).

*A. Peterson/Puritan Site Description*

The Site consists of two formally designated operable units totaling over two linear miles of mixed industrial/commercial/residential property. The Site is located along the Blackstone River and includes a portion of the Blackstone River Valley National Heritage Corridor. The Site is located in the towns of Cumberland and Lincoln, in the north-central corner of Rhode Island. Land use within and adjacent to the Site is mixed having interspersed industrial, commercial, and residential uses typical of an enduring suburban community with a past textile mill heritage in Providence County. A more residential to rural setting is found immediately west of the river in Lincoln. The Blackstone River forms a shared town boundary between Cumberland and Lincoln.

The OU 2 portion of the Site, which principally contains the J.M. Mills Landfill, is surrounded by industrial, residential and semi-rural properties. Bordering OU 2 to the north is the Hope Global company, located at 88 Martin Street in Cumberland. To the south of OU 2 is the Stop and Shop Market (and strip mall) on Mendon Road. The Pratt Dam across the Blackstone River and the

southern extent of the former transfer station property (also known as the Nunes Parcel) partially forms the southern boundary of OU 2. The eastern boundary of OU 2 includes a portion of the former Mackland Sand and Gravel operations and wetlands known locally as the New River. Finally, the western boundary of OU 2 includes the Blackstone River and the Quinnville wellfield in Lincoln.

OU 2 contains many different parcels totaling an estimated 217 acres. EPA believes that the most contaminated parcel is the privately owned 38 acre J.M. Mills Landfill which accepted mixed municipal and industrial waste from 1954 through 1986. Adjacent to the J.M. Mills Landfill is a privately owned 28 acre unnamed island located in the Blackstone River. EPA recently discovered solid wastes disposed of on this island and believes that the island's soils were used to provide daily cover materials for the landfill and, perhaps, was even used as an additional disposal location during the time the landfill was operating. Down river from the unnamed island is the Pratt Dam, which provides an access point to the island. The Site also includes the 26 acre Lincoln Quinnville wellfield and the Cumberland Lenox Street municipal well. These wells were used by the towns as a municipal water supply until 1979 when they were closed by the Rhode Island Department of Health due to the presence of volatile organic contaminants found in the water. A section of the Providence and Worcester Railroad line runs through OU 2 and forms the eastern extent of the landfill slope while the river forms the landfill's western boundary. A former privately owned transfer station is located on the southern portion of the Site. Other areas of OU 2 include portions of the Blackstone River and an adjacent canal, the Blackstone River Bikeway, and wetlands.

When the northeasterly boundary of OU 2 for the RI/FS was created, it clipped a portion (19.8 acres) of residential and commercially zoned properties in Plats 14 and 15 developed by the Macklands and Berkeley properties. The remaining two thirds of these developments are not included within the OU 2 boundary as drawn. The 19.8 acres included by the OU 2 boundary are the subject of this proposed partial deletion (see Figure 1 contained in the AR).

Preliminary samples taken from suspected source areas within OU 2 (such as the J.M. Mills Landfill and other associated disposal locations and excluding the properties proposed for deletion) indicate the presence of

volatile organic contaminants (including, but not limited to, trichloroethylene, freon 11, 1,2-dichloroethane, 1,1,1-trichloroethane, and benzene), and also chromium, nickel and lead in the groundwater. Contaminants found in the soil and sediment include benzo(a)pyrene, chrysene, indeno(1,2,3+cd)pyrene, bis(2-ethylhexyl)phthalate, polychlorinated biphenyls (PCBs) and asbestos insulation/transite. In addition, preliminary sampling of the soils along the river have been found to be contaminated with PCBs, polyaromatic hydrocarbons and heavy metals.

EPA included the Site on the NPL on September 8, 1983. EPA conducted a removal action at OU 2 in 1992 to construct a fence around the former J.M. Mills Landfill and to remove drums containing contaminated materials from the base of the landfill. In November 1997, a second removal action was conducted at the J.M. Mills Landfill to address recently disposed asbestos-containing material found outside of the fenced-in area. The security fence was also extended to limit further dumping and restrict access to additional portions of the Site.

An investigation into the nature and extent of contamination at the J.M. Mills Landfill and surrounding areas is currently underway. Following the completion of this study, a final cleanup remedy will be selected, a remedial design will be completed and the remedial action will be initiated.

#### *B. Area Proposed for Deletion*

The properties owned by Macklands Realty, Inc. and Berkeley Realty, Co. were historically run as a family owned and operated sand and gravel mining operation. In 1939, a portion of the property was subdivided into residential lots; the remaining portion became a working sand and gravel mining operation from 1939 to the early 1970s. The Macklands and Berkeley properties, with the majority of the property under a single family's ownership for approximately 70 years, has no known history of industrial or manufacturing activities involving hazardous substances. Future development plans for the Macklands and Berkeley properties include: (1) Macklands Realty, Inc., a residential subdivision covering approximately 32 acres with approximately 10.1 acres proposed for deletion; and (2) Berkeley Realty, Co., a mixed use development including duplexes, townhouses, and office/retail buildings covering approximately 30 acres of which 9.7 acres is proposed for deletion from the site. Each of these proposed

developments are located off of Mendon Road in Cumberland, Rhode Island.

The only known use of oil or potentially hazardous materials on portions of the development properties was the application of "MC-2," an oil-based dust suppression material, along haul roads at the height of the sand and gravel mining operations in the 1950s and 1960s.

In June 2003, a Phase 1 Environmental Site Assessment of the Macklands and Berkeley properties revealed no evidence of observed environmental conditions associated with hazardous substances or petroleum products, asbestos-containing material, radon, lead-based paints, or areas of special natural resource concern at the properties. Interviews and review of past records (including old aerial photographs) also provide no evidence of the generation or disposal of hazardous substances or waste on the properties.

Based upon currently available information obtained and submitted for the Agency's review, EPA finds that no further action is necessary to protect human health and the environment in relation to the Macklands and Berkeley properties designated in the town of Cumberland's Tax Assessor's Map as Plat 14, Lot 2 and Plat 15, Lot 1 in Cumberland Rhode Island. The information supporting this finding is contained in an Administrative Record established for this purpose (see Administrative Record Index for the Macklands and Berkeley properties, Peterson/Puritan, Inc. Operable Unit 2, November 2004).

EPA proposes to delete the Macklands and Berkeley properties from the Peterson/Puritan, Inc. Site because all appropriate CERCLA response activities have been completed for these properties. Moreover, focused site investigations have determined that these properties are not currently impacted by, nor are they contributing to, the contamination responsible for Superfund response actions at OU 2. Response obligations at the rest of OU 2 are not yet complete, and the Site will remain on the NPL and is not the subject of this partial deletion. The remaining portions of OU 2 include, but are not limited to, the J.M. Mills Landfill, the unnamed island, the Nunes parcel, and a portion of the Blackstone River and the associated wetlands.

The NPL is a list of sites that EPA has determined present a significant risk to human health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). Pursuant to 40 CFR 300.425(e)

of the NCP, any site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning its intent for partial deletion for thirty (30) days after publication of this notice in the **Federal Register** and a newspaper of record.

#### **II. NPL Deletion Criteria**

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect human health or the environment. In making such a determination pursuant to § 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to human health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a portion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions for the area deleted if future site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities at areas not deleted and remaining on the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts.

#### **III. Deletion Procedures**

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management.

The following procedures were used for the proposed deletion of portions of the Macklands and Berkeley development properties that are included within the defined boundary

of the Peterson/Puritan, Inc. Site as shown on Figure 1 (contained in the AR):

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The State of Rhode Island through the Rhode Island Department of Environmental Management (RIDEM) concurs with this partial deletion.

(3) Concurrent with this Notice of Intent for Partial Deletion, a notice has been published in a newspaper of record and has been distributed to appropriate Federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which commences on the date of publication of this notice in the **Federal Register** and a newspaper of record.

(4) EPA has made all relevant documents available at the information repositories listed previously.

This **Federal Register** notice, and a concurrent notice in a newspaper of record, announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete the Macklands and Berkeley properties (as identified on Figure 1 contained in the AR) from the NPL. All critical documents needed to evaluate EPA's decision are included in the Deletion Docket and are available for review at the EPA Region 1's Superfund Record Center in Boston, Massachusetts, RIDEM, and at the established information repositories for the Site.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously. Members of the public are encouraged to contact EPA Region 1 to obtain a copy of the Responsiveness Summary.

If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a Notice of Partial Deletion in the **Federal Register**. Deletion of the Macklands and Berkeley properties does not actually occur until the Notice of Partial Deletion is published in the **Federal Register**.

#### IV. Basis for Intended Partial Site Deletion

The following provides EPA's rationale for deletion of the Macklands and Berkeley properties from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

##### A. Background

RIDEM classifies the Blackstone River as a Class B1 stream throughout the Site. This classification has an established use goal of "fishable and swimmable," and the State of Rhode Island has an overall objective to "restore impaired sections of the Blackstone River and its tributaries" that do not fully support the river's designated uses. (Source: Draft Blackstone River Action Plan, Rhode Island Department of Environmental Management (RIDEM), September 2001). The B1 classification indicates that while all Class B uses must be supported by water quality, primary contact recreation may be "impacted due to pathogens from approved wastewater discharges" (RI WQR, Rule 8(B)(1)).

Sources of surface water impairments for the Blackstone River, including the area encompassed by the Site and not otherwise found to be in association with disposal practices identified at the Site, are understood to be point and non-point sources such as Combined Sewer Overflows, seepage from failing septic systems, runoff during storm events and other lesser sources. Under the Clean Water Act, permitted discharges under the National Pollution Discharge Elimination System and storm water abatement using Best Management Practices (BMPs) under the implementation of Storm Water Phase II are two examples of regulation geared to manage, control, and mitigate such impairments.

The current groundwater classification at the Site is GAA-NA. The GAA classification, as designated by the Rhode Island Department of Environmental Management Rules and Regulations for Ground Water Quality, is defined as "those ground water resources which the Director has designated to be suitable for public drinking water use without treatment." The "NA" classification is defined as "those areas that have pollutant concentrations greater than the ground water quality standards for the applicable classification." The groundwater at and around the Site remains a viable potential drinking water resource.

On behalf of the owner of the Macklands and Berkeley properties, a limited site investigation was conducted

by EA Engineering, Science and Technology (EA). The purpose of this investigation was to evaluate groundwater, surface water quality, and the hydraulic relationship of the properties to known sources of groundwater contamination to the southwest and northwest. In June of 2003, the owner directed the installation of four (4) monitoring wells strategically placed to monitor groundwater flow (see Figure 2; a map illustrating relevant sampling locations; which is located in the AR under section 5.4). Of the four wells, three were completed in shallow bedrock due the thin, non-water bearing veneer of overburden that was found to be present at these locations. The most southern well was completed in overburden. Groundwater samples were collected from each of the wells using low-flow sampling methods and procedures in accordance with EPA protocols. Duplicate samples were also taken for quality assurance purposes. All samples were analyzed for volatile organic compounds (VOCs) and total metals. The samples were analyzed using EPA approved methods and compared to Project Action Limits (PALs) as approved for use in the Peterson/Puritan, Inc. OU 2 Quality Assurance Project Plan. (See: (1) Phase 1 Environmental Site Assessment, Plat 14 Lot 2, Plat 15 Lot 1, Macklands and Berkeley properties, and (2) Limited Investigation Report, prepared by EA Engineering, Science and Technology, June and August 2003, respectively).

In addition, one surface water sample and one sediment sample was collected from both an intermittent stream and Monastery Brook (see Figure 2 contained in the AR). A duplicate surface water sample was taken from the intermittent stream for quality assurance purposes. Both streams run westerly through the Macklands and Berkeley properties where the confluence of each enters into wetlands located east of the Blackstone River and within OU2. Each sample was analyzed for semi-volatile organic compounds (SVOCs), VOCs and total metals.

In August 2003, these results were presented to EPA and RIDEM in a document entitled, "Limited Investigation [for] Berkeley Commons/River Run Development." The owner of the properties also requested that his properties be deleted from the Site so that ongoing development plans would not be impacted. In addition, the OU 2 remedial investigation (RI) began in the fall of 2003.

##### B. Response Actions

As part of a preliminary screening evaluation for potential ecological

threats, surface water data were compared with the Federal Ambient Water Quality Criteria (AWQC) with appropriate adjustment for site-specific water hardness (calculated using calcium and magnesium concentrations in site water). Calculations and criteria followed EPA AWQC documentation (EPA, 1999). No chemicals exceeded the AWQC chronic values, which are designed to be broadly protective of aquatic life.

Sediment data were evaluated using the Consensus-Based Threshold Effect Concentrations (TECs) from MacDonald *et al.*, 2000 (MacDonald, D.D., C.G. Ingersoll, and T.A. Berger. 2000. Development and evaluation of Consensus-Based Sediment Quality Guidelines for Freshwater Ecosystems. Archives of Environmental Contamination and Toxicology, 39, 20–31. Springer-Verlag, New York Inc.). Chemicals below their respective TECs generally would not be expected to pose a risk to sediment-dwelling organisms, but may warrant further evaluation. Of the detected chemicals found in sediment, only lead exceeded the TEC value in one sample. Sediment taken from sample location WT-02 had a lead concentration of 43.9 mg/Kg. The TEC for lead is 35.8 mg/Kg. It should also be noted that lead at this location is well below the Probable Effect Concentration of 128 mg/Kg, which is the concentration above which adverse effects would be considered likely.

Sampling location WT-02 is located at the end of Monastery Brook. Monastery Brook is known to receive storm water from Mendon Road and the immediate surrounding community. Based on topography and other observations made to date within OU 2 of the Site, it is likely that the presence of lead at WT-02 is associated with storm run-off from Mendon Road and the local surroundings. On the basis of a single detection of lead slightly above the TEC, and no exceedence of surface water quality criteria, there does not appear to be a need for further evaluation of potential source areas on the Macklands and Berkeley properties.

A preliminary screening evaluation of the data for potential human health concerns was also conducted by EPA. For groundwater, surface water and sediment a few metals were detected at levels above EPA Project Action Limits (PALs), which were based on either the risk-based values from EPA Region 9 PRG tables or EPA National Secondary Drinking Water Standards for the OU 2 RI/FS. Among those metals detected, iron, aluminum and copper are considered essential nutrients by EPA and therefore did not warrant further

risk evaluation. However, manganese, arsenic and barium were detected in some samples at levels exceeding the PALs. For chemicals with noncancer health effects, the PALs used were the EPA Region 9 PRG values (based on hazard quotient of 1) divided by 10. A hazard quotient of 1 is considered by EPA a threshold below which noncancer adverse health effects do not likely occur. Therefore, it is EPA Region 1's policy to use hazard quotient of 0.1 to account for the additive effects of multiple chemicals. For manganese and barium, the detected levels were slightly above the PALs at less than 1 order of magnitude. Therefore, the assumed noncancer hazard index from manganese and barium are acceptable and below EPA's noncancer hazard index of 1. For arsenic in sediment, detected levels were slightly above the risk-based PAL, at about 1 order of magnitude, but would result in an excess risk falling within the EPA acceptable risk range. The same conservative assumptions for exposure parameters that were used to develop the risk-based Region 9 values were used to determine this risk evaluation.

In summary, based on the information provided in the EA report, the cancer risks and noncancer hazards from a few detected metals at the Macklands and Berkeley properties would be acceptable for an EPA Superfund site and therefore, there is no need for any further risk evaluation or response action. Therefore, EA's finding that the levels of compounds found at the Macklands Realty, Inc. and Berkeley Realty, Co. properties do not pose any unacceptable risk or hazard to the human health based on EPA standards, is reasonable. EPA Region 1's preliminary screening evaluation of risk also concur with the findings presented by EA.

#### C. Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of this intent for partial deletion of this Site from the NPL are available to the public in the information repositories.

#### D. Current Status

Among other documents, the Phase 1 Environmental Site Assessment of Macklands and Berkeley properties revealed no evidence of recognized environmental conditions associated with hazardous substances or petroleum products, asbestos-containing material, radon, lead-based paints, or areas of special natural resource concern at the

properties. From the Limited Investigation Report of Berkeley Commons/River Run and other corroborating Site information gathered to date, the Macklands and Berkeley properties are not contributing to the VOC contamination of groundwater associated with the Site nor is it apparent that the Macklands and Berkeley properties are being affected currently by the documented release, or releases, associated with the Site. Based on limited testing, groundwater is in compliance with RIDEM's GAA standards at the Macklands and Berkeley properties. It should be noted that groundwater is not intended for direct consumption at the Macklands and Berkeley properties, as the development is scheduled to be serviced by municipal water. EPA may require access to the Macklands and Berkeley properties to monitor groundwater or sample wetlands in association with the Superfund response actions to the immediate south and west of the Macklands and Berkeley properties. Future consideration for the placement of institutional controls (in the form of deed restrictions for the future use, or hydraulic alteration of groundwater) adjacent to, or onto the Macklands and Berkeley properties, are possible once the RI/FS for OU 2 is complete and a remedy has been selected.

While EPA does not believe that any future response actions will be needed on the Macklands and Berkeley properties, if future conditions warrant such action, the proposed deletion areas of OU 2 remain eligible for future response actions. Further, this action does not preclude the State of Rhode Island from taking any response actions under State authority, nor others taking actions governed by other Federal statutes, should future conditions warrant such actions. This intent for partial deletion does not alter the status of the remainder of the Peterson/Puritan, Inc. Superfund Site, which is not proposed for deletion and remains on the NPL.

EPA, with concurrence from the State of Rhode Island, has determined that the release impacting the Site poses no significant threat to human health or the environment at the Macklands and Berkeley properties and therefore warrants no current response action at the properties. Therefore, EPA makes this proposal to delete the properties owned by Macklands Realty, Inc. and Berkeley Realty, Co., designated on the town of Cumberland tax assessor's map as Plat 14, Lot 2 and Plat 15, Lot 1 from the NPL.

Dated: February 1, 2005.

**Robert W. Varney,**

*Regional Administrator, Region 1.*

[FR Doc. 05-3452 Filed 2-23-05; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[I.D. 021705A]

RIN 0648-AS19

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Vermilion Snapper Rebuilding Plan

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

**ACTION:** Notice of availability of Amendment 23 to the Fishery Management Plan (FMP) for Reef Fish Resources of the Gulf of Mexico (Amendment 23); request for comments.

**SUMMARY:** NMFS announces the availability of Amendment 23 prepared by the Gulf of Mexico Fishery Management Council (Council) that would establish a 10-year rebuilding plan for vermilion snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. The rebuilding plan seeks to achieve a 25.5-percent reduction in harvest based on the 2003 predicted landings. Measures to accomplish this reduction equitably for the commercial and recreational sectors of this fishery include increases in minimum size, a decreased recreational bag limit, and a closed commercial season. Amendment 23 would also establish biological reference points and stock status determination criteria for vermilion snapper (i.e., maximum sustainable yield (MSY), optimum yield (OY), maximum fishing mortality threshold (MFMT), and minimum stock size threshold (MSST), consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The intended effect of these measures is to end overfishing and rebuild the vermilion snapper resource consistent with the requirements of the Magnuson-Stevens Act.

**DATES:** Written comments must be received no later than 5 p.m., eastern time, April 25, 2005.

**ADDRESSES:** You may submit comments on Amendment 23 by any of the following methods:

- E-mail: [0648-AS19NOA@noaa.gov](mailto:0648-AS19NOA@noaa.gov).
- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Peter Hood, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.
- Fax: 727-570-5583, Attention: Peter Hood.

Copies of Amendment 23, which includes a Regulatory Impact Review, Initial Regulatory Flexibility Analyses, and a Supplemental Environmental Impact Statement, may be obtained from the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619-2266; telephone: 813-228-2815; fax: 813-225-7015; e-mail: [gulfcouncil@gulfcouncil.org](mailto:gulfcouncil@gulfcouncil.org). Copies of Amendment 23 can also be downloaded from the Council's website at [www.gulfcouncil.org](http://www.gulfcouncil.org).

**FOR FURTHER INFORMATION CONTACT:**

Peter Hood, telephone: 727-570-5305; fax: 727-570-5583; e-mail: [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the EEZ of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

#### Background

In October 2003, NMFS declared the Gulf of Mexico stock of vermilion snapper to be overfished and undergoing overfishing. This determination was based in part on the results of a 2001 NMFS vermilion stock assessment and review by the Council's Reef Fish Stock Assessment Panel that found the stock to be undergoing overfishing. Subsequently, NMFS reexamined the assessment, as well as more recent data that ultimately supported the findings of the assessment, and declared the Gulf of Mexico vermilion snapper stock overfished. Therefore, measures to end overfishing and a rebuilding plan to restore the stock to the biomass needed to allow harvest at maximum sustainable yield (BMSY) in 10 years or less are necessary.

Amendment 23 contains measures for vermilion snapper designed to end overfishing and initiate implementation of the rebuilding plan that allocates the necessary restrictions fairly and

equitably between the recreational and commercial sectors of the fishery, consistent with the requirements of the Magnuson-Stevens Act.

#### Rebuilding Plan

Amendment 23 would establish a 10-year vermilion snapper rebuilding plan, structured in one 4-year interval followed by two 3 year intervals, that would end overfishing and rebuild the stock to  $B_{MSY}$ . In Amendment 23, the rebuilding plan begins in 2004 and continues through 2013. However, due to the time required to complete supporting documentation, implementation of this amendment will not occur until 2005. Therefore, the rebuilding plan has been moved forward one year and will begin in 2005. The intervals are intended to provide short-term stability for the management and operation of the fishery, correlate more closely with the timing of future stock assessments, and provide a more reasonable time period for assessing the impacts of prior management actions. The appropriate parameters for each time interval, consistent with the overall objectives of the rebuilding plan, would be determined based upon the most recent stock assessment.

#### Initial (2005-2008) Implementation of the Rebuilding Plan

Based on the results of the 2001 vermilion snapper stock assessment and updated indices of abundance, the allowable harvest for the first 4-year interval starting in 2005 is 1.475 million lb (0.664 million kg). This equates to a 25.5-percent reduction in harvest based on the 2003 predicted landings. Measures to accomplish this reduction are:

- (1) a minimum size limit for recreationally caught vermilion snapper of 11 inches (27.9 cm) total length (TL);
- (2) a bag limit of 10 fish within the 20-reef fish aggregate bag limit. The increase in the size limit, from 10 inches (25.4 cm) TL to 11 inches (27.9 cm) TL, and the further restriction of the bag limit would achieve approximately a 21.5-percent reduction relative to the predicted 2003 harvest;
- (3) a minimum size limit for commercially caught vermilion snapper of 11 inches (27.9 cm) TL; and
- (4) a closed commercial season from April 22 through May 31 each year. This would achieve a 26.3-percent harvest reduction from the estimated 2003 landings.

The reduction in harvest achieved by these measures is slightly more than the target 25.5 percent needed by the rebuilding plan. Increasing harvest by the commercial sector is believed to