

RULES and REGULATIONS
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-7848-2]

Ocean Disposal; Designation of a Dredged Material Disposal Site in Rhode Island Sound

Thursday, December 16, 2004

AGENCY: Environmental Protection Agency.

***75256** ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today designates the Rhode Island Sound Disposal Site (RISDS) in Rhode Island Sound offshore of Rhode Island. This action is necessary to provide a long-term dredged material disposal site for the current and future disposal of dredged material from Rhode Island, southeastern Massachusetts, and surrounding harbors (hereinafter referred to as the Rhode Island Region, or RIR). The site designation is for an indefinite period of time. The RISDS will be subject to continuing monitoring to ensure that significant unacceptable, adverse environmental impacts do not occur. The action is described in the Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project Final Environmental Impact Statement (FEIS), and the monitoring plan is described in the RISDS Site Management and Monitoring Plan (SMMP). The SMMP is provided as Appendix C of the FEIS. Site designation does not itself actually authorize the disposal of any particular dredged material at a site. Proposals to dispose of dredged material at a designated site are subject to project-specific reviews and authorization and still must satisfy the criteria for ocean dumping.

DATES: This final regulation is effective on January 18, 2005.

ADDRESSES: EPA has established a file supporting this action that includes this rule, the FEIS and its appendices, including the SMMP, and other supporting documents. This information ***75257** is available for review by the public as follows:

1. Electronically. You may review and/or obtain electronic copies of this document and various support documents from the EPA home page at the Federal Register, <http://www.epa.gov/fedrgstr/>, or on the EPA New England Region's homepage at: <http://www.epa.gov/region1/eco/ridredge/index.html>.
2. In person. The Final Rule, the Final Environmental Impact Statement (FEIS) which includes the SMMP (Appendix C), and the complete administrative record for this action are available for inspection at the following locations: A. EPA New England Library, 11th Floor, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114-2023. For access to the documents, call Peg Nelson at (617) 918-1991 between 10 a.m. and 3 p.m. Monday through Thursday, excluding legal holidays, for an appointment. B. EPA Atlantic Ecology Division, Library, 27 Tarzwell Drive, Narragansett, RI 02882. For access to the documents, call Mimi Johnson at (401) 782-3025 between 10 a.m and 3 p.m. Monday through Thursday, excluding legal holidays, for an appointment. The EPA public information regulation (40 CFR part 2) provides

that a reasonable fee may be charged for copying. We also are putting copies of the FEIS in all of the town libraries in the coastal towns in Rhode Island and southeastern Massachusetts.

FOR FURTHER INFORMATION CONTACT: Ms. Olga Guza, U.S. Environmental Protection Agency New England Region, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114-2023, telephone (617) 918-1542, electronic mail: guza.olga @epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Entities potentially regulated by this action are persons, organizations, or government bodies seeking to dispose of dredged material into ocean waters of Rhode Island Sound, under the Marine Protection, Research, and Sanctuaries Act, [33 U.S.C. 1401](#) et seq. (hereinafter referred to as the MPRSA) and its implementing regulations. The rule is expected to be primarily of relevance to: (a) Parties seeking permits from the U.S. Army Corps of Engineers, New England District (Corps) to transport dredged material for the purpose of disposal into the waters of Rhode Island Sound; and (b) to the Corps itself for its own dredged material disposal projects. Potentially regulated categories and entities that may seek to use the RIR dredged material disposal site may include:

Category	Examples of potentially regulated entities
Federal Government Agencies	U.S. Army Corps of Engineers Civil Works Projects, 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. This table lists the types of entities that could potentially be regulated by this action. To determine whether your organization is affected by this action, you should carefully consider whether your organization is required to obtain an MPRSA permit ([40 CFR 220.1](#)), and you wish to use the RISDS. 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.

B. Background

In 1972, the Congress of the United States enacted the MPRSA to address and control the dumping of materials into ocean waters. Title I of the MPRSA authorized EPA and the Corps to regulate dumping in ocean waters. Regulations implementing the MPRSA are set forth at 40 CFR parts 220 through 229. With few exceptions, the MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping except as may be authorized by a permit or authorization (in the case of Corps projects) issued under the MPRSA. The MPRSA divides permitting responsibility between EPA and the Corps. Under Section 102 of the MPRSA, EPA has responsibility for issuing permits for all materials other than dredged material (e.g., vessels, fish wastes, burial at sea). Under Section 103 of the MPRSA, the

Secretary of the Army has the responsibility for issuing permits and authorizations (in the case of Corps projects) for the ocean dumping of dredged material. This permitting authority has been delegated to the District Engineers of the Corps' district offices. Determinations to issue permits and authorizations (in the case of Corps projects) for dredged material are subject to EPA review and concurrence.

Section 102(c) of the MPRSA, as amended, [33 U.S.C. 1401](#) et seq., gives the Administrator of EPA authority to designate sites and times where ocean disposal, also referred to interchangeably as ocean dumping, may be permitted. [Section 103\(b\)](#) further provides that the Corps should use such EPA designated sites to the maximum extent feasible. EPA's ocean dumping regulations provide that EPA's designation of an ocean dumping site is accomplished by promulgation of a site designation in 40 CFR part 228 specifying the site. On October 1, 1986, the Administrator delegated authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the EPA Region in which the sites are located. The RISDS site is located within New England (EPA New England); therefore, this action is being taken pursuant to the Regional Administrator's delegated authority. EPA regulations ([40 CFR 228.4\(e\)\(1\)](#)) promulgated under the MPRSA require, among other things, that EPA designate ocean dredged material disposal sites (ODMDS) by promulgation in 40 CFR part 228. Designated ocean dumping sites are codified at [40 CFR 228.15](#).

On April 30, 2004, EPA published a draft rule and notice of availability of a Draft Environmental Impact Statement (DEIS) proposing the designation of the RISDS as an ODMDS ([69 FR 23706](#)). This final rule designates the site for open water disposal of dredged material. This site is currently being used by the Corps under the site selection authority provided by Section 103 of the MPRSA as Site 69B for disposal of dredged material from the Providence River and Harbor Maintenance Dredging Project. The site is located in ocean waters of Rhode Island Sound approximately nine nautical miles (nmi) south of Point Judith, Rhode Island.

The RISDS will provide a long-term disposal option for the Corps to maintain deep-draft, international commerce and navigation through authorized Federal navigation projects and to ensure safe navigation for public and private entities.

The RISDS will be subject to continuing site management and monitoring to ensure that unacceptable, ***75258** adverse environmental impacts do not occur. The management of the RISDS is further described in the SMMP (Appendix C of the FEIS).

The designation is in accordance with [40 CFR 228.4\(e\)](#) of the Ocean Dumping Regulations, which allows EPA to designate ocean sites for disposal of dredged materials.

C. EIS Development

Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, [42 U.S.C. 4321](#) et seq., requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting environmental quality. The objective of NEPA is to build into agency decisionmaking processes careful consideration of all environmental aspects of proposed actions, including evaluation of reasonable alternatives to the proposed action. While NEPA does not apply to EPA activities in designating ocean disposal sites under the MPRSA, EPA has voluntarily agreed as a matter of policy to conduct a NEPA environmental review in connection with ocean dumping site designations. ([63 FR 58045](#), October 29, 1998, "Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents.") Consistent with this policy, EPA, in cooperation with the Corps, has prepared a FEIS entitled, "Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project," which considers the environmental aspects of site designation in ocean waters of Rhode Island Sound. Anyone wishing to receive a copy of the FEIS may do so in one of the ways described above in the ADDRESSES section.

The purpose of today's action is to designate an ocean disposal site that will meet the long-term dredged material disposal needs in the RIR. The appropriateness of ocean disposal for any specific, individual dredging project is determined on a case-by-case basis under the permit and authorization (in the case of Corps projects) process under MPRSA.

Designation of an ocean disposal site under 40 CFR part 228 is essentially a preliminary, planning measure. The practical effect of such a designation is only to require that if future ocean disposal activity is permitted and/or authorized (in the case of Corps projects) under 40 CFR part 227, then such disposal should normally be consolidated at the designated sites (See [33 U.S.C. 1413\(b\)](#)). Designation of an ocean disposal site does not authorize any actual disposal and does not preclude EPA or the Corps from finding available and environmentally preferable alternative means of managing dredged materials, or from finding that certain dredged material is not suitable for ocean disposal under the applicable regulatory criteria. Nevertheless, EPA has determined that it is appropriate to designate an ocean disposal site for dredged material in the ocean waters of Rhode Island Sound now, because it appears unlikely that feasible alternative means of managing dredged material will be available to accommodate the quantity of dredged material that is projected to be generated in this region in the future.

Proposals for the ocean disposal of dredged materials from individual projects are evaluated by EPA and the Corps on a case-by-case basis, taking into account all the disposal alternatives available at the time of permitting. Beneficial use alternatives will be preferred over ocean disposal whenever they are practicable.

The FEIS describes the purpose and need for the proposed action and evaluates a number of alternatives to this action. EPA's analysis of alternatives considered several different potential ocean disposal sites for dredged material from Rhode Island, southeastern Massachusetts, and surrounding harbors, as well as potential alternative means of managing these dredged materials other than ocean disposal. As described in the FEIS, the initial screening effort was established to consider the most environmentally sound, economically and operationally feasible area for site designation, termed the "zone of siting feasibility" (ZSF). Alternatives evaluated included various marine sites, upland disposal, beneficial uses, and the no action alternative.

In addition to considering reasonable distances to transport dredged material, the ocean disposal analysis considered areas of critical resources as well as areas of incompatibility for use as a disposal site. This included but was not limited to such factors as the sensitivity and value of natural resources, geographically limited habitats, fisheries and shellfisheries, natural resources, shipping and navigation lanes, physical and environmental parameters, and economic and operational feasibility. The analysis was carried out in a tiered process. The final tier involved further analysis of the no action alternative and the following alternative sites: Site E and Site W (now the RISDS). These sites were evaluated and the RISDS was identified as the preferred alternative for potential ocean disposal site designation. Management strategies were developed for the preferred alternative and are described in the SMMP (Appendix C of the FEIS).

In summary, the NEPA process informed EPA's decision to take the current action designating the RISDS as an ODM-DS.

D. Site Description

The RISDS is currently being used by the Corps under its short-term site selection authority as Site 69B. Since 2003, Site 69B has received approximately 4.5 million cubic yards of dredged material from the Providence River and Harbor Maintenance Dredging Project. The RISDS is in the same exact location and is the same size as Site 69B. The site is approximately one nautical mile by one nautical mile, for a size of one square nautical mile (nmi²). The RISDS is located approximately nine nmi south of Point Judith, Rhode Island and approximately 6.5 nmi east of Block Island, Rhode Island, with depths from 115 to 128 feet (35 to 39 m). The sediments at the site range from glacially derived till to soft,

silty sand. The corner coordinates (North American Datum 1983: NAD 83) for the RISDS site, are as follows: 41°14'21" N, 71°23'29" W; 41°14'21" N, 71°22'09" W; 41°13'21" N, 71°23'29" W; 41°13'21" N, 71°22'09" W.

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

Five general criteria are used in evaluating possible dredged material disposal sites for long-term use under the MPRSA ([40 CFR 228.5](#)).

General Criteria ([40 CFR 228.5](#))

1. Minimize interference with other activities, particularly avoiding fishery areas or major navigation areas ([40 CFR 228.5\(a\)](#)). The first of the five general criteria requires that a determination be made as to whether the site or its use will minimize interference with other uses of the marine environment. For this final rule, a determination was made to overlay individual uses and resources over GIS bathymetry and disposal site locations. This process was used to visually determine the maximum and minimum interferences with other uses of the marine environment that could be expected to occur. Areas that would interfere with other activities, particularly fishing and navigation, were eliminated from further consideration. Sites E and W were the only areas left for consideration. The RISDS (Site W) showed minimum interference with other activities and was thus selected for this proposal. The RISDS is not in an area of distinctive ~~*75259~~ lobster, shellfish, or finfish resources and thus will not interfere with lobstering or fishing activities. The RISDS is not located in shipping lanes or major navigation areas, is not in a geographically limited fishery area, and has been selected to minimize interference with fisheries, shellfisheries and regions of commercial and recreational navigation.
2. Minimize Changes in Water Quality. Temporary water quality perturbations (during initial mixing) caused by disposal operations would be reduced to normal ambient levels before reaching areas outside of the disposal site ([40 CFR 228.5\(b\)](#)). The second of the five general criteria requires that locations and boundaries of disposal sites be selected so that temporary changes in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within a site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching beaches, shorelines, sanctuaries, or geographically limited fisheries or shellfisheries. The RISDS will be used only for dredged material disposal of suitable sediments as determined by application of MPRSA criteria. Based on model results and data evaluated as part of the FEIS, disposal of either sandy or fine-grained material would have no long-term impact on water quality at the site. In addition, dredged material deposited at the RISDS will not reach any marine sanctuary, beach, or other important natural resource area. Further, disposal at the RISDS will be managed and monitored in accordance with the SMMP (Appendix C of the FEIS) such that there will be no temporary perturbations in water quality anywhere outside the site or within the site after allowance for initial mixing.
3. Interim Sites Which Do Not Meet Criteria ([40 CFR 228.5 \(c\)](#)). There are no interim sites to be considered under this criterion. The RISDS (formerly known as Site 69B) is not an interim site as defined under the Ocean Dumping regulations.
4. Size of sites ([40 CFR 228.5\(d\)](#)). The fourth general criterion requires that the size of open water disposal sites be limited to localize for identification and control any immediate adverse impacts and to permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation. For this final rule, EPA has determined, based on the information presented in the FEIS, that the RISDS (formerly known as Site 69B) has been sized to provide sufficient capacity to accommodate material dredged from within the RIR and to facilitate effective monitoring and surveillance. The site management and monitoring plan is described in the RISDS SMMP (Appendix C of the FEIS).

5. EPA must, wherever feasible, designate dumping sites beyond the edge of the continental shelf and where historical disposal has occurred (40 CFR 228.5(e)). The fifth criterion requires EPA, wherever feasible, to designate ocean dumping sites beyond the edge of the continental shelf and at other such sites that have historically been used. Sites beyond the edge of the continental shelf are not economically feasible due to the extended travel time and associated expense. In addition, the RISDS encompasses the footprint of Site 69B, currently in use. Thus, the RISDS is consistent with this criterion.

As discussed briefly above, EPA has determined that the RISDS satisfies the five general criteria described in 40 CFR 228.5 of the EPA Ocean Dumping Regulations. More detailed information relevant to these criteria can be found in the FEIS and SMMP.

In addition to the general criteria discussed above, 40 CFR 228.6(a) lists 11 specific factors to be used in evaluating a proposed disposal site under the MPRSA to assure that the five general criteria are met. The RISDS, as discussed below, also is acceptable under each of the 11 specific criteria. The evaluation of the preferred disposal sites relevant to the five general and 11 specific criteria is discussed in substantially more detail in the FEIS and SMMP.

Specific Criteria (40 CFR 228.6)

1. Geographical Position, Depth of Water, Bottom Topography and Distance From Coast (40 CFR 228.6(a)(1)). The RISDS is in the same location and is the same size as Site 69B. The RISDS will replace Site 69B. The site is a square area, approximately one nautical mile by one nautical mile, for a size of one nmi^2 . The RISDS is located approximately nine nmi south of Point Judith, Rhode Island and approximately 6.5 nmi east of Block Island, Rhode Island, with depths from 115 to 128 feet (35 to 39 meters). The sediments at the site range from glacially derived till to soft, silty sand. Water depths in the surrounding areas are between 110 and 118 feet to the north, east, and south of the site. The southeastern portion of the site shoals more rapidly than the northern area. The corner coordinates (North American Datum 1983: NAD 83) of the RISDS site, are as follows: 41°14'21" N, 71°23'29" W; 41°14'21" N, 71°22'09" W; 41°13'21" N, 71°23'29" W; 41°13'21" N, 71°22'09" W.

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 Corps and EPA initiated informal Endangered Species Act (ESA) and Essential Fish Habitat (EFH) consultation in January 2003 and formal consultation with publication of the DEIS in coordination with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS). Additional coordination was conducted with the Commonwealth of Massachusetts and State of Rhode Island. Through these efforts, data has been obtained on current threatened or endangered species in the RIR. The plankton community at the RISDS includes zooplankton (copepods, larval forms of many species of invertebrates and fish, Foraminifera, and Radiolara) and phytoplankton (diatoms and dinoflagellates). These organisms display a range of abundance by season. The populations at or near the site are not unique to the site and are present over most of the RIR. It is expected that although small, short-term entrainment losses may occur immediately following disposal, no long term, adverse impacts to organisms in the water column will occur.

The benthic community at the RISDS is comprised primarily of Annelida, Crustacea, and Mollusca. It is expected that short-term reduction in abundance and diversity at the sites may occur immediately following disposal, but long term, adverse impacts to benthic organisms are not expected to occur. Recovery to levels similar to pre-disposal is expected within a few years after disposal.

The RISDS is located in the ocean waters of Rhode Island Sound, which is utilized by more than 116 fish species. Seven species appear consistently dominant among all trawl surveys. These were scup, butterflyfish, longfin squid, little skate,

winter flounder, silver hake, and red hake. Atlantic herring, Atlantic mackerel, and ocean pout also were very abundant. It is expected that impacts to finfish resources will consist of short-term, local disruptions and the potential loss of some individual fish of certain non-migratory species. Most of the finfish species are migratory. Several commercially harvested species of shellfish occur in the RIR. They are Atlantic surf clams, blue mussels, lobster, northern quahogs, ocean quahogs, sea scallops, razor clams, and *75260 whelks. It is expected that impacts to shellfish within the RISDS will be short-term and associated with disposal, burial, and loss of habitat or food. No impacts to shellfish or finfish resources are anticipated outside of the RISDS.

Many different types of resident, migratory, and coastal birds may potentially use the RIR as a feeding habitat or resting area. Dozens of marine and coastal birds migrate through Rhode Island Sound annually. In addition, the RIR provides limited habitat for most marine mammals and reptiles. The species that are frequent or occasional visitors to the RIR are harbor porpoises, white-sided dolphins, minke whales, seals (harbor, hooded, and harp) and sea turtles (green, Kemp's ridley, loggerhead, leatherback and hawksbill).

There are 16 federally-listed threatened and endangered species and five species of "special concern" which may utilize the area of the RISDS. The threatened and endangered species are: whales (humpback, fin, northern right, sperm, blue and sei), turtles (loggerhead, green, Kemp's ridley, leatherback, and hawksbill), birds (bald eagle, piping plover and roseate tern), and insects (American burying beetle and northeastern beach tiger beetle). The species of "special concern" are: common loon, common tern, arctic tern, least tern, and Leach's storm-petrel. Occurrence of these species varies by season. Use of the site by whales and birds would be incidental. Sea turtles may be present in the RISDS during the summer and fall. It is not expected that disposal activities would have any significant adverse effect on these species or their critical habitat. With respect to endangered and threatened species, informal consultation was conducted with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). In 2001, EPA prepared a Biological Assessment (BA) for selection of Site 69B, which is in the exact same location as the RISDS.

The USFWS and NMFS concurred with EPA's determination that species under its jurisdiction would not likely be adversely affected by the proposed action. The BA concludes that the proposed action is not likely to affect the threatened and endangered species. EPA reinitiated threatened and endangered species consultation with NMFS and USFWS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 and USFWS concurred on April 1, 2004 that there are unlikely to be any effects on threatened or endangered species or their critical habitat as a result of the proposed action. The BA is available upon request by contacting the person listed in the FOR FURTHER INFORMATION CONTACT section.

The RIR provides Essential Fish Habitat (EFH) for 33 finfish and five invertebrate species, mostly for adults and juveniles. All of the species occur along the northeastern Atlantic Coast of the United States and have EFH designated for waters other than those within the RIR. In 2001, an EFH assessment was prepared for the selection of Site 69B. The EFH assessment concludes that the proposed action is not likely to affect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EPA reinitiated EFH consultation with NMFS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 that the proposed action is not likely to effect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EPA has incorporated the NMFS recommendations into the SMMP (appendix C of the FEIS). The EFH assessment is available upon request by contacting the person listed in the FOR FURTHER INFORMATION CONTACT section. The RISDS is not located in areas that provide limited or unique breeding, spawning, nursery, feeding, or passage areas.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)). The RISDS is located approximately 8.3 nmi from the nearest beach or other amenity area. Modeling and sediment transport studies indicate a very low prob-

ability that any dredged material remaining in the water column following disposal would be transported more than one nmi. Plumes would be reduced to background concentrations shortly after disposal. Given the rapid dissipation characteristics of dredged material plumes and that the vast majority of released materials settle to the bottom near the release point, dredged material placed at the RISDS would not adversely affect beaches or similar amenities. As such, it is expected that impacts would not occur to beaches, areas of special concern, parks, natural resources, sanctuaries or refuges since they are either land-based or farther than 8.3 nmi from the proposed disposal site. There also are no marine sanctuaries or limited fisheries or shellfisheries at or near the RISDS. Therefore, EPA has determined that dredged material disposal at the RISDS location should not have any adverse effect on beaches or other amenity areas, including wildlife refuges or other areas of biological or recreational significance.

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 228.6(a)(4)). The RISDS has an estimated capacity of approximately 20 million cubic yards. However, there is no disposal site capacity volume restriction. The composition of dredged material to be disposed at the site is expected to be typical estuarine sediments dredged from channels, berths, and marinas from harbors and federal navigation areas within the RIR. The disposal of this material shall occur at designated buoys or coordinates and would be expected to be placed so as to concentrate material from each disposal. This placement is expected to help minimize bottom impacts to benthic organisms. EPA will make a suitability determination prior to the Corps issuing any MPRSA permit or authorization (in the case of Corps projects) for disposal at the RISDS. The site will receive only dredged material determined to be suitable for ocean disposal that is transported by either government or private contractor hopper dredges or ocean-going, bottom-dump barges towed by tugboat. Both types of equipment release the material at or very near the surface. Dredged material placed at the RISDS would not be containerized or packaged.

Furthermore, it should be emphasized that the RISDS is being designated only to receive dredged material; disposal of other types of material at these sites will not be allowed. It also should be noted that the disposal of certain other types of material is expressly prohibited by the MPRSA and EPA regulations (e.g., industrial waste, sewage sludge, chemical warfare agents). See, e.g., 33 U.S.C. 1414b; 40 CFR 227.5(b). For these reasons, no significant adverse impacts are expected to be associated with the types and quantities of dredged material that may be disposed at the RISDS.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)). Surveillance of the site can be accomplished by boat, plane, helicopter, disposal inspectors aboard barges, scows, and tugboats, or through radar or satellite. This effort would be conducted jointly by the EPA, the Corps, and the U.S. Coast Guard. Based on the various methods that can be utilized it has been determined that monitoring and surveillance are feasible at the RISDS. The site is readily accessible for bathymetric surveys and has undergone monitoring, including side-scan sonar. If field monitoring of the disposal activities is required because of a future concern for habitat changes or limited resources, a management decision will *75261 be made by EPA and the Corps, who share the responsibilities of managing and monitoring the disposal sites. EPA and the Corps have prepared a RISDS SMMP (Appendix C of the FEIS). Monitoring shall be completed in accordance with the SMMP. It is expected that revisions to the SMMP may be made periodically; revisions will be circulated for review, coordinated with the affected states and become final when approved by EPA New England Region in conjunction with the Corps' New England District. See 33 U.S.C. 1413(c)(3).

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)). The RISDS is located within the ocean waters of Rhode Island Sound, a water body that is exposed to wind and wave energy from the northwest Atlantic Ocean. The dominant tidal flow directions are northwest and southeast. The amplitude of the tidal velocity decreases with depth (12.7 cm/s at the surface and 7 cm/s near the bottom). The mean current velocity was 2.5 cm/s directed toward the west at mid-depth and 1.6 cm/s toward the west at the bottom. A modeling study performed as part of the Providence River and Harbor Maintenance

Dredging Project EIS examined the likelihood of erosion and transport of cohesive sediments proposed for placement at Site 69B (now the RISDS), located at a depth of 128 ft. The study concluded that a disposal mound placed at 69B would not be dispersive under any conditions other than the most severe (50-year return period) hurricane; their results, however, were based on an assumption of extremely cohesive material and should therefore be viewed as potentially under-predicting erosion. Areas of the ZSF between 170 and 105 ft, including the north-central portion northeast of Block Island, were depositional areas with some infrequent sorting and reworking by waves and currents. The deepest areas here were the most depositional.

It is expected that peak wave induced bottom orbital velocities are not sufficient to cause significant erosion of dredged material at the RISDS. For these reasons, EPA has determined that the dispersal, transport and mixing characteristics, and current velocities and directions at the RISDS are appropriate to support its designation as a dredged material disposal site.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)). The RISDS is currently being used for disposal activity pursuant to the Corps' short-term site selection authority under Section 103(b) of the MPRSA. 33 U.S.C. 1413(b) as Site 69B. This generally makes the RISDS preferable to more pristine sites that have either not been used or have been used in the more distant past (40 CFR 228.5(e)). Beyond this, however, EPA's evaluation of data and modeling results indicates that these past disposal operations have not resulted in unacceptable or unreasonable environmental degradation, and that there should be no significant adverse cumulative environmental effects from continuing to use the RISDS on a long-term basis.

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)). In evaluating whether disposal activity at the RISDS could interfere with shipping, fishing, recreation, mineral extraction, desalination, areas of scientific importance and other legitimate uses of the ocean, EPA considered both the direct effects from depositing dredged material on the ocean bottom at the proposed sites and the indirect effects associated with increased vessel traffic that will result from transportation of dredged material to the RISDS. Areas that raised concerns with respect to these criteria were removed from consideration early in the screening process for the FEIS. The RISDS is not located in shipping lanes and is not an area of special scientific importance, desalination, fish and shellfish culture or mineral extraction. Accordingly, depositing dredged material at the RISDS will not interfere with any of the activities mentioned in this criterion. Increased vessel traffic involved in the transportation of dredged material to the disposal site should not impact shipping or activities discussed above.

9. The Existing Water Quality and Ecology of the Sites as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9)). Water and sediment quality analyses conducted at the site and experience with past disposal in this region have not identified any adverse water quality or ecological impacts from ocean disposal of dredged material. Baseline data on which this determination is based are further described in the FEIS.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Sites (40 CFR 228.6(a)(10)). Based on the available evidence, dredged material is not a potential source for the development or recruitment of nuisance species at the RISDS. Monitoring results and available data indicate that placement of dredged material at Site 69B (which is in the same exact location as the RISDS) has not extended the range of undesirable living organisms, pathogens, degraded areas, or introduced viable non-indigenous species into the area. Local opportunistic benthic species characteristic of disturbed conditions are expected to be present and abundant at any ocean dredged material disposal site in response to physical deposition of sediments. However, no recruitment of nuisance species or species capable of harming human health or the marine ecosystem is expected to occur at the site.

11. Existence at or in Close Proximity to the Sites of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)). As part of the site selection for Site 69B, the Corps conducted an archaeological assessment entitled, "Archaeological Assessment, Remote Sensing, and Underwater Archaeological Survey for the Providence River and Harbor Maintenance Dredging Project, Rhode Island, April 12, 2001." The archaeological assessment is available upon request by contacting the person listed in the FOR FURTHER INFORMATION CONTACT section. The assessment determined that no significant sites were likely to be found within the areas of interest, but there was a potential for historic resources because of known shipwrecks in the vicinity. Additional remote sensing studies were conducted and no significant cultural resources were identified. Coordination between EPA and the Corps and the Commonwealth of Massachusetts and State of Rhode Island are detailed in the FEIS. The Narragansett Tribe was included as a cooperating agency during the development of the FEIS. The Tribe has not raised any objections to the final choice of location for the RISDS.

F. Public Comments

In the preamble to the proposed rule, EPA requested public comment by June 21, 2004. EPA held two public hearings attended by an estimated total of 50 people.

June 15, 2002, at 1 p.m.: Lighthouse Inn, 307 Great Island Road, Galilee, Rhode Island 02882. (One individual presented testimony.)

June 15, 2002, at 7 p.m.: Lighthouse Inn, 307 Great Island Road, Galilee, Rhode Island 02882. (Three individuals presented testimony.)

***75262** In addition to the testimony and comments provided at the hearings, EPA also received three sets of written comments on the proposed action.

EPA received both supportive and non-supportive comments. In developing the final rule, EPA reviewed and considered all the written comments as well as those received verbally at the two public hearings. Following are summaries of the most significant comments and EPA's responses:

Designation of the RISDS as a Long-Term Disposal Site was Premature When the Currently Selected Site (69B) Would Remain in Effect Until 2013. This project was initiated at the written request on the Governor of Rhode Island in September 2000. There was a concern that the navigational needs of the region were not being met due to the lack of viable disposal options. In addition, there also was a concern that additional disposal sites, other than Site 69B, could be selected for disposal of dredged material. There are several advantages, including environmental reasons, to a designated long-term disposal site, rather than a selected site (i.e., the current Site 69B). The site designation process evaluates the cumulative impacts of placing dredged material from the RIR at the site. In contrast, the site selection process requires only project-specific and individual action review of the environmental consequences at the disposal site associated with its use and not an evaluation of cumulative impacts of all potential projects. An EPA-designated site also must have a Site Monitoring and Management Plan (SMMP), whereas a selected site is not required to have a SMMP. Moreover, the EPA designation process evaluates dredging needs over long planning horizons, while the site selection process evaluates each proposed dredging project on a project-specific basis. Designating a single long-term site would limit the ocean floor footprint that would be disturbed, whereas having additional sites selected would potentially impact more of the ocean bottom.

The DEIS Relies Extensively on Outdated Baseline Data Used by the USACE to Select Site 69B. The commenter incorrectly assumed that this DEIS relied only on surveys conducted as part of the Providence River and Harbor Maintenance

Dredging Project EIS and that no other surveys were conducted. The DEIS contains references and information from numerous baseline studies that were conducted in 2001-2003 in support of the RIR EIS. These surveys included: bathymetry, physical oceanography, water quality, side scan sonar, sediment profile imaging, benthic infauna, sediment chemistry, finfish trawls and chemistry, lobster trawls and chemistry, shellfish tows, and chemistry. A complete listing of surveys conducted is provided in Section 9 of the DEIS. Information from these surveys is used and referenced throughout Sections 3 and 4 of the DEIS to establish a baseline for assessing potential environmental impacts. Survey plans, survey reports, and data reports were prepared for each of the baseline surveys and approved by EPA and the Corps. As part of the public review process, these data reports also were made available to the public at two repositories and were posted on the project Web page: ([http:// www.epa.gov/ne/eco/ridredge/index.html](http://www.epa.gov/ne/eco/ridredge/index.html)). The availability of this information was published in the Project Public Notice of Availability.

The Rulemaking Should Limit the RISDS Capacity to 8.8 Million Cubic Yards or Less. EPA believes the comment was based on the estimated dredging needs derived from a survey of potential users, including the Corps. Based on that survey, the estimated dredging needs would generate approximately 8.8 million cubic yards of dredged material. However, there is a strong likelihood of additional needs in the future, due in part to the fact that only about 40 percent of the potential users responded to the survey. The capacity of the disposal site should not be limited to the current estimate of dredging needs.

The analysis in the DEIS calculated that the preferred alternative has an estimated physical consolidated capacity of 20 million cubic yards. The evaluation of impacts conducted in the DEIS was performed assuming that up to 20 million cubic yards would be disposed of at the proposed site. The current disposal from the Providence River and Harbor Maintenance dredging project (projected to be 5.5 million cubic yards) also was taken into consideration.

The SMMP reflects that the estimated capacity of the site, as designated by the specified boundaries, is approximately 20 million cubic yards. This is just an estimated capacity; there is no capacity restriction on the RISDS.

EPA carefully considered and responded to each comment it received on the FEIS. A complete Response to Comments Document (Appendix D of the FEIS) has been prepared which contains all the comments received and EPA's responses to each of these comments. That document is available for viewing at the locations specified in the ADDRESSES section.

G. Action

The FEIS concludes that the RISDS (currently known as Site 69B) may appropriately be designated for long-term use as a dredged material ocean disposal site. The site is compatible with the general and specific factors used for site evaluation.

EPA is publishing this Final Rule to finalize the designation of the RISDS as an EPA-approved dredged material ocean disposal site. The monitoring and management of requirements that will apply to this site are described in the draft SMMP (Appendix C of the FEIS). Management and monitoring will be carried out by EPA New England in conjunction with the Corps' New England District.

It should be emphasized that an ocean disposal site designation does not constitute or imply Corps or EPA approval of open water disposal of dredged material from any specific project. Before disposal of dredged material at the site may commence, EPA and the Corps must evaluate the proposal according to the ocean dumping regulatory criteria (40 CFR part 227) and authorize disposal. EPA has the right to disapprove of the actual disposal, if it determines that environmental requirements under the MPRSA have not been met.

The information generated for this project and referenced in the FEIS is available for review on line at the address: <http://www.epa.gov/region1/eco/ridredge/index.html>.

H. Supporting Documents

1. EPA Region 1/USACE NED. 2004. Draft Environmental Impact Statement Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project. April, 2004.
2. EPA Region 1/USACE New England District. 2004. Final Environmental Impact Statement Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project. October, 2004.
3. EPA/USACE. 1991. Evaluation of Dredged Material Proposed for Ocean Disposal-Testing Manual. Environmental Protection Agency, Washington, DC, and U.S. Army Corps of Engineers, Washington, DC. EPA-503/8-91/001. February 1991.
4. EPA Region 1/USACE/NED (New England District). 2004. Regional Implementation Manual for the Evaluation of Dredged Material Proposed for Disposal in New England Waters. U.S. Army Corps of Engineers New England District and *75263 Environmental Protection Agency Region 1, Boston, MA. April 2004.
5. Memorandum to the File from Olga Guza. Subject: Small Businesses Applications to Place Dredged Material at Site 69B. September 28, 2004.

I. 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.

After considering the anticipated effects of this action in relation to these criteria, EPA has determined that it is not a “significant regulatory action” under [Executive Order 12866](#) and is therefore not subject to OMB review.

2. Paperwork Reduction Act

Revised in 1995, the PRA is managed by the Office of Management and Budget through its approval of Information Collection Requests (ICRs) submitted by Federal agencies. The statute was written and revised to reduce the information

collection burden on the public.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 ([44 U.S.C. 3501](#), et seq.) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

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 adverse economic impact on small entities because the ocean disposal site designation does not regulate small entities. The site designation 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 rule on small entities, it has been determined that this action will not have a significant adverse economic 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), [Pub. L. 104-4](#), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 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 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 today's 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. Similarly, EPA also has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 and 205 of the UMRA do not apply to this rule.

5. [Executive Order 13132](#): Federalism

[Executive Order 13132](#), entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an ***75264** 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 of an ocean disposal site in Rhode Island Sound for the potential disposal of dredged material. This action neither creates new obligations nor alters existing authorizations of any State, local or governmental entities. Thus, [Executive Order 13132](#) does not apply to this rule. Although [Section 6 of the Executive Order 13132](#) does not apply to this final rule, EPA did consult with representatives of State and local governments in developing this rule. In addition, and consistent with [Executive Order 13132](#) and EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comments on the proposed rule from State and local officials. A summary of the concerns raised during that consultation and EPA's response to those concerns is provided in sections C and D of this preamble.

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 final rule does not have Tribal implications. It 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 an ocean dredged material disposal site and does not establish any regulatory policy with tribal implications. Thus, [Executive Order 13175](#) does not apply to this rule. Although [Executive Order 13175](#) does not apply to this rule, EPA consulted with tribal officials in developing this rule, particularly as it relates to potential impacts to historic or cultural resources. EPA specifically solicited additional comment on the proposed rule from tribal officials but didn't receive any.

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”), [Pub. L. 104-113](#), Section 12(d) ([15 U.S.C. 272](#) note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide 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.

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, national origin, or income level.

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 *75265 the Federal Register. A “major rule” cannot take effect until 60 days after it is published in the Federal Register. This action is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective January 18, 2005.

12. National Environmental Policy Act of 1969

Section 102(c) of the National Environmental Policy Act of 1969, [Section 4321 et seq., \(NEPA\)](#) requires Federal agencies to prepare environmental impact statements (EIS) for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decisionmaking process careful consideration of all environmental aspects of proposed actions. Although EPA ocean dumping program activities have been determined to be “functionally equivalent” to NEPA, it is EPA policy to voluntarily follow NEPA procedures when designating ocean dumping sites ([63 FR 58045](#), October 29, 1998). In addition to the Notice of Intent published in the Federal Register on April 6, 2001 ([66 FR 18244](#)), EPA and the Corps published legal notices in local newspapers and issued a press release inviting the public to participate in DEIS scoping meetings. Formal scoping meetings were conducted on May 17, 2001 and May 22, 2001. In addition EPA and the Corps have held public workshops and several working group meetings. A DEIS entitled, “Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project,” was issued on April 30, 2004. A FEIS entitled, “Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project,” was issued on October 22, 2004. The FEIS includes a Response to Comments Document (Appendix D) and final SMMP (Appendix C).

In addition, EPA submitted a Coastal Zone Consistency Determination to the State of Rhode Island on September 21, 2004. Coordination efforts with NMFS and USFWS for ESA and EFH consultation was completed on April 8 and April 1, respectively, during the DEIS process.

13. The Endangered Species Act

Under Section 7(a)(2) of the Endangered Species Act, [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 Endangered Species Act, a Federal agency is required to consult with either the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (depending on the species involved) if the agency's action “may affect” endangered or threatened species or their critical habitat ([50 CFR 402.14\(a\)](#)).

In 2001, EPA prepared a BA for the selection of Site 69B, which is in the exact same location as the RISDS. EPA reinitiated threatened and endangered species consultation with NMFS and USFWS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 and USFWS concurred on April 1, 2004 that there are unlikely to be any effects on threatened or endangered species or their critical habitat as a result of the proposed action. The USFWS and NMFS concurred with EPA's determination that species under its jurisdiction would not likely be adversely affected by the proposed action. The BA concludes that the proposed action is not likely to affect threatened and endangered species. The BA is available upon request by contacting the person listed in the For Further Information Contact section.

14. Magnuson-Stevens Fishery Conservation and Management Act

The 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) require the designation of essential fish habitat (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 National Marine Fisher-

ies Service (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.” In 2001, an EFH assessment was prepared for the selection of Site 69B (the RISDS). EPA reinitiated EFH consultation with NMFS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 that the designation of the RISDS is not likely to affect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EPA has incorporated NMFS recommendations into the SMMP (appendix C of the FEIS). The EFH assessment concludes that the proposed action is not likely to affect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. The EFH assessment is available upon request by contacting the person listed in the FOR FURTHER INFORMATION CONTACT section.

15. Plain Language Directive

[Executive Order 12866](#) requires each agency to write all rules in plain language. EPA has written this final rule in plain language to make this final rule easier to understand.

16. [Executive Order 13158](#): Marine Protected Areas

Executive Order 13158 ([65 FR 34909](#), May 31, 2000) requires EPA to “expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment.” EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. 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.”

Today's final rule implements Section 103 of the MPRSA, which requires that permits for dredged material are subject to EPA review and concurrence. The final rule will amend [40 CFR 228.15](#) by establishing the RISDS. As such, this final rule will afford additional protection of aquatic organisms at individual, population, community, or ecosystem levels of ecological structures. Therefore, EPA expects today's final rule will advance the objective of the Executive Order to protect marine areas.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: December 8, 2004.

Robert W. Varney,

Regional Administrator, EPA New England.

In consideration of the foregoing, EPA is amending part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

***75266 PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING**¹. The authority citation for part 228 continues to read as follows:

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

40 CFR § 228.15

2. Section 228.15 is amended by adding paragraph (b) (3) to read as follows:

40 CFR § 228.15

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(b) * * *

(3) Rhode Island Sound Disposal Site (RISDS).

(i) Location: Corner Coordinates (NAD 1983): 41°14'21" N, 71°23'29" W; 41°14'21" N, 71°22'09" W; 41°13'21" N, 71°23'29" W; 41°13'21" N, 71°22'09" W.

(ii) Size: One square nautical mile.

(iii) Depth: Ranges from 115 to 128 feet (35 to 39 meters).

(iv) Primary use: Dredged material disposal.

(v) Period of use: Continuing use.

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

* * * * *

[FR Doc. 04-27439 Filed 12-15-04; 8:45 am]

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69 FR 75256-01, 2004 WL 2899942 (F.R.)

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