RULES and REGULATIONS

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-5304-8]

Ocean Dumping; Designation of Site

Thursday, September 28, 1995

***50108** AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA designates an ocean dredged material disposal site, the Humboldt Open Ocean Dredged Site (HOODS), located offshore of Humboldt Bay, California, for the disposal of suitable dredged material removed from the Humboldt Bay region and other nearby harbors or dredging sites. EPA has determined that the site identified in the Final EIS as the environmentally preferred site, and selected in the Final EIS as the preferred site, will be the site designated as the HOODS in this Final Rule. The HOODS is located between approximately 3 and 4 nautical miles (5 and 7 kilometers) west of the Humboldt Bay entrance and occupies an area of 1 square nautical mile (3 square kilometers). Water depths within the area range from 160 to 180 feet (49 to 55 meters). The coordinates of the ***50109** corners of the square site are: 40degrees48'25" North latitude (N) by 124degrees16'22" West longitude (W); 40degrees49'03" N by 124degrees17'22" W; 40degrees47'38" N by 124degrees17'22" N; and 40degrees48'‘17" N by 124degrees18'12" W (North American Datum from 1983). This action is necessary to provide an acceptable ocean dumping site for disposal of suitable dredged material from Northern California dredging sites, including Humboldt Bay and Harbor; the suitability of proposed dredged material will be determined by appropriate sediment testing protocols. The designation of the HOODS is for a period of 50 years. Disposal operations at the site will be prohibited if the site management and monitoring program is not implemented.

EFFECTIVE DATE: Site designation will be effective October 30, 1995.

ADDRESSES: Send questions or comments to: Mr. Allan Ota, Ocean Disposal Coordinator, U.S. Environmental Protection Agency, Region IX (W-3-3), 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744-1980. The supporting document for this designation is the Final Environmental Impact Statement (EIS) for Designation of an Ocean Dredged Material Disposal Site off Humboldt Bay, California, July 1995, which is available for public inspection at the following locations:

A. EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC.

B. EPA Region IX, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California.

C. Humboldt Bay Harbor, Recreation and Conservation District, PO Box 1030, Eureka, California.

D. Humboldt County Library, 421 I Street, Eureka, California.

E. Humboldt State University Library, Arcata, California.

F. Arcata City Library, 500 7th Street, Arcata, California.

FOR FURTHER INFORMATION CONTACT: Mr. Allan Ota, Ocean Disposal Coordinator, U.S. Environmental Protection Agency, Region IX (W-3-3), 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744-1980.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 et seq., gives the Administrator of EPA authority to designate sites where ocean dumping may be permitted. 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 HOODS designation action is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR 228.4) state that ocean dumping sites will be designated by publication pursuant to 40 CFR part 228. This site designation is being published as final rulemaking in accordance with §228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

The HOODS is located between approximately 3 and 4 nautical miles (5 and 7 kilometers) west of the Humboldt Bay entrance and occupies an area of approximately 1 square nautical mile (3 square kilometers). Water depths within the area range from approximately 160 to 180 feet (49 to 55 meters). The coordinates of the corners of the square site are: 40degrees48'25" North latitude (N) by 124degrees16'22" West longitude (W); 40degrees49'03" N by 124degrees17'22" W; 40degrees47'38" N by 124degrees17'22" N; and 40degrees48''17" N by 124degrees18'12" W (North American Datum from 1983). EPA Region IX designates the HOODS as an ocean dredged material disposal site for continued use for a period of 50 years.

Site use is subject to implementation of site management and monitoring requirements contained in the Final EIS, which are now identified as the Site Management and Monitoring Plan (SMMP) for the HOODS. The SMMP incorporates a tiered site monitoring structure and MPRSA Section 103 permit review, and identifies standard conditions that must be included in any permit or authorization for disposal site use.

B. 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 the quality of the human environment. The object of NEPA is to build into the agency decision-making process careful consideration of all environmental aspects of proposed actions, including evaluation of reasonable alternatives to the proposed action.

A Notice of Availability of the Draft EIS was published in the Federal Register on April 21, 1995 discussing EPA's intent to designate an open ocean dredged material disposal site off Humboldt Bay, California (60 FR

19916). The Draft EIS, titled: Draft Environmental Impact Statement (EIS) for Designation of an Ocean Dredged Material Disposal Site off Humboldt Bay, California, evaluated a range of potential alternative disposal sites as summarized below. The comment period closed on June 5, 1995. EPA received 4 comment letters on the Draft EIS and incorporated changes where appropriate to the Final EIS. The Proposed Rule was published in the Federal Register on April 21, 1995 (60 FR 19872). No comments were received regarding the Proposed Rule. On August 4, 1995, a Notice of Availability for public review and comment on the Final EIS was published in the Federal Register (60 FR 39956). The comment period for the Final EIS closed on September 5, 1995. No comments were received following the 30-day comment period.

EIS Alternatives Analysis. On average, over 800,000 cubic yards of dredged material are generated annually as a result of routine federal maintenance dredging operations by the U.S. Army Corps of Engineers (Corps) in Humboldt Bay and Harbor. Historically, most of this dredged material has been disposed at 3 different sites offshore of Humboldt Bay. Although dredged material has been disposed at the sites known as “SF-3” and “NDS” in the past, environmental and navigational safety concerns shifted disposal operations to the HOODS for the last 3 years.

EPA's analysis of alternatives included detailed examination of several potential ocean dumping sites for dredged materials from the Humboldt Bay region and other nearby harbors or dredging sites, including potential alternative means of handling these dredged materials other than disposal at an ocean dump site. Alternatives evaluated in detail in the Final EIS are discussed below. Note that designation of an ocean dumping site does not authorize any actual dumping and does not preclude EPA or the Corps from finding in the future, or for individual projects, that alternative means of managing dredged materials from the Humboldt Bay region are available and environmentally preferable.

EPA has determined that it is necessary to designate an ocean dumping site for dredged materials from Humboldt Bay site now, even if alternatives to ocean dumping should eventually prove to be available, because it is unlikely that alternative means of managing dredged material will accommodate all of the dredged material that will be generated in the future. As discussed in the Final EIS, there are significant limitations at present to the potential alternatives to ***50110** ocean dumping of dredged material in the Humboldt Bay region. However, in all cases, the disposition of dredged materials from individual projects will be evaluated by EPA Region IX and the Corps' San Francisco District on a case-by-case basis, taking into account all the alternatives available at the time of permitting. Beneficial reuse alternatives will be preferred over ocean disposal whenever they are practicable and would cause less adverse impacts than ocean disposal.

The following ocean disposal alternatives were evaluated in the Final EIS:

1. No Action—Failure to designate a permanent ocean disposal site pursuant to section 102 of the MPRSA would have significant negative consequences. First, the continued foreseeable need to have an appropriate site for disposal of suitable sediments from various Humboldt Bay dredging projects would place pressure on the Corps and EPA to approve on a project-by-project basis the use of existing or temporary ocean dumping locations pursuant to MPRSA section 103. This could result in: increased cumulative effects if multiple disposal sites were used over time; projects delays (with potential navigation and human safety consequences); and the inefficient expenditure of limited government resources on multiple site designation actions and monitoring programs over time. Second, the Water Resources Development Act of 1992 prohibits the continued use of ocean dump sites which have not been designated by EPA as section 102 dump sites by January 1, 1997. If EPA fails to designate an ocean dredged material disposal site for the Humboldt Bay area by that date, then ocean disposal

of dredged materials taken from Humboldt Bay projects will be effectively precluded under section 102 of the MPRSA.

2. Upland Disposal—Several upland sites were considered for disposal of dredged materials from Humboldt Bay, including the “Superbowl” site which was originally designed to contain approximately 1 million cubic yards of dredged material. EPA has eliminated the “Superbowl” site from further consideration in the Final EIS because of the nearby presence of an endangered plant species (Erysium menziesii, or Menzie's Wallflower) and the small capacity of the site relative to the needs of harbor maintenance and new work dredging over a 50-year period. Other land disposal sites were also considered, as described in the Final EIS, but were not investigated in detail because of the potential for adverse impacts on wetlands, inadequate capacity, and/or conflicts with other land uses.

3. Beach Nourishment—This disposal alternative was considered because much of the sediment dredged from the Humboldt Bay region is sand. (Sediments dredged from the Bar and Entrance, North Bay Channels, and the Field's Landing Channel in the area north of Buhne Point are predominately medium- to fine-grained sand. However, sediments in the southern reach of the Field's Landing Channel and the Samoa and Eureka Channels have historically been finer-grained material that would not be suitable for beach nourishment.) EPA has eliminated this alternative from further consideration for these areas because the dredging and disposal operations are not expected to be practicable for all of the material generated in the region. Stationary dredging plants cannot be used in the entrance and main channel areas because of exposure to rough sea conditions. Use of a hopper dredge would require rehandling which would result in adverse localized (in-bay) environmental impacts. The dredged sediments would be deposited at a sheltered in-bay site by hopper dredge (effects on in-bay biota), and hydraulically re-dredged for transport by slurry pipeline to the North or South Spit beach sites. Dredging and nearshore disposal directly via hopper dredge without rehandling is discussed below. This alternative would have greater overall adverse impacts than the preferred alternative (HOODS). (Note that EPA and the Corps may still determine that beach nourishment is the preferable alternative for individual projects on a case-by-case basis.)

4. Disposal off the Continental Shelf—The EPA Ocean Dumping Regulations (40 CFR 228.5(e)) state that the EPA will, whenever feasible, designate ocean dumping sites beyond the edge of the continental shelf and/or at sites that have been historically used (to minimize cumulative effects). Disposal off the continental shelf would require use of a site located 10 nautical miles (19 kilometers) or farther from Humboldt Bay. The Corps has determined that the Zone of Siting Feasibility (ZSF—the radius limit for economically feasible disposal operations for the Humboldt Bay area) is 4 nautical miles from the entrance to Humboldt Bay. EPA has therefore eliminated alternatives off the continental shelf because they would be outside the ZSF, and because historical disposal sites exist on the continental shelf within the ZSF.

5. Nearshore Disposal Site (NDS)—This alternative site is located approximately 2 nautical miles (4 kilometers) southwest of the Humboldt Harbor mouth. Two disposal episodes occurred at this site as part of a study to determine whether sediments discharged at the NDS would remain in the littoral zone and promote beach nourishment. The study indicated some shoaling and some evidence of shoreward transport. EPA has eliminated this alternative from further consideration because, while it provides a potential beneficial reuse of sandy sediments, there has been strong objection by local fishermen's groups to the use of this site based on adverse impacts on navigational safety in the vicinity of the southern approach to the Humboldt Harbor entrance channel and on commercial fishery resources that inhabit the nearshore area. These resources include egg-brooding Dungeness crab, juvenile Dungeness crab, and juvenile English sole. This alternative would have greater overall adverse

impacts than the preferred alternative (HOODS).

6. Disposal Site SF-3—This alternative disposal site is located approximately 1 nautical mile (2 kilometers) southwest of the Humboldt Harbor mouth. This site has been used previously by the Corps for disposal of dredged material from Humboldt Bay. This site was de-designated as an interim site on December 31, 1988, although it had been used subsequently under authority of the provisions of section 103 of the MPRSA. EPA has eliminated this alternative from further consideration because of concerns about adverse impacts on safe navigation and on commercial and recreational fisheries. This site would have greater overall adverse impacts than the preferred alternative (HOODS).

7. Humboldt Open Ocean Disposal Site (HOODS)—The Final EIS identified this alternative site as the preferred alternative based on comparison to the alternative sites listed above, and to the specific selection criteria listed in 40 CFR 228.6(a). The HOODS is located furthest from the coast (between approximately 3 and 4 nautical miles west of the Humboldt Bay entrance) and in the deepest depth range (approximately 160 to 180 feet, or 49 to 55 meters). The 1 square nautical mile (3 square kilometer) site represents an extremely small area relative to the extent of similar habitat in the surrounding region. Bathymetric and sediment surveys indicate the HOODS is located in a depositional area which is likely to retain dredged material deposited on the sea floor. No significant impacts to other resources or amenity areas are expected to result ***50111** from the designation of the HOODS. Existing and potential fisheries resources within the HOODS are minimal relative to the other ocean or nearshore alternatives and the site is removed from more important fishing grounds located closer to or within the other alternative sites. Studies have shown that abundances and biomass of demersal fishes and megafaunal invertebrates, as well as abundances and diversity of infaunal invertebrates, at the HOODS are lower than those at the other alternative sites. Water column impacts resulting from disposal of dredged material are expected to be temporary and localized within the site. Therefore, potential impacts to surface and mid-water dwelling organisms, such as seabirds, marine mammals, and midwater fishes, are expected to be insignificant.

EPA has determined that the HOODS represents the environmentally preferred alternative for designation of an open ocean dredged material disposal site for the Humboldt Bay area. Its selection, along with the general and specific restrictions on site use, avoids and minimizes environmental harm from ocean disposal of suitable dredged material to the maximum extent practicable. A Record of Decision (ROD) will not be issued as a separate document; instead this Final Rule will serve as the ROD for designation of the HOODS.

C. Regulatory Requirements

Consistency with the Coastal Zone Management Act. EPA prepared a Coastal Consistency Determination (CCD) document based on the evaluations presented in the Final EIS. The CCD evaluated whether the action—designation of the HOODS as described in the Final EIS as an ocean disposal site for up to 50 years, for dredged material meeting ocean disposal criteria—would be consistent with the provisions of the Coastal Zone Management Act. The CCD was formally presented to the California Coastal Commission at a public hearing on September 13, 1995. The Commissioners voted unanimously to approve EPA's CCD for the HOODS.

Endangered Species Act Consultation. EPA initiated consultations with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) pursuant to provisions of the Endangered Species Act, regarding the potential for designation and use of any of the alternative ocean disposal sites under study to jeopardize the continued existence of any federally listed threatened or endangered species. This consultation process is fully documented in the Final EIS. No negative comments were received from these agencies.

Compliance with Ocean Dumping Criteria. Five general criteria are used in the selection and approval of ocean disposal sites for continuing use (40 CFR 228.5). First, sites must be selected to minimize interference with other activities, particularly avoiding fishery areas or major navigation areas. Second, sites must be situated such that temporary (during initial mixing) water quality perturbations caused by disposal operations would be reduced to normal ambient levels before reaching any beach, shoreline, sanctuary, or geographically limited fishery area. Third, if site designation studies show that any interim disposal site does not meet the site selection criteria, use of such site shall be terminated as soon as an alternate site can be designated. Fourth, disposal site size must be limited in order to localize for identification and control any immediate adverse impacts, and to facilitate effective monitoring for long-range effects. Fifth, EPA must, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and/or where historical disposal has occurred.

As described in the Final EIS, the HOODS was specifically selected to comply with these general criteria. First, as discussed further below in discussing the 11 specific site selection criteria, EPA has determined that the HOODS is not a significant fishery area, is not a major navigation area and otherwise has no geographically limited resource values that are not abundant in other parts of this coastal region. Second, as also discussed further below, dredged material deposited at the site is not expected to reach any significant area such as a marine sanctuary, beach, or other important natural resource area. Third, although it is a historically used site, the HOODS is not an interim disposal site. Fourth, the site has an appropriately limited size and has been selected to allow for effective monitoring. Fifth, although the site is not located beyond the continental shelf, it is located in an area historically used for dumping.

In addition to the 5 general criteria, 11 specific site selection criteria are listed in 40 CFR 228.6(a) of the EPA Ocean Dumping Regulations for evaluation of all candidate disposal sites. The 5 general criteria and the 11 specific factors overlap to a great degree. The HOODS site, as discussed below, is also acceptable under each of the 11 specific criteria.

1. Geographical position, depth of water, bottom topography and distance from coast (40 CFR 228.6(a)(1)). The HOODS is located between approximately 3 and 4 nautical miles (5 and 7 kilometers) west of the Humboldt Bay entrance and occupies an area of 1 square nautical mile (3 kilometers). Water depths within the area range from 160 to 180 feet (49 to 55 meters). Bathymetric and sediment surveys indicate that the site is located in a depositional area. The site's depositional nature and natural topography is expected to minimize the extent of potential impacts to the benthos, and is expected to facilitate long-term containment of deposited material as well as site monitoring activities.

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 HOODS provides feeding and breeding areas for common resident benthic species. Floating larvae and eggs of various species are expected to be found at and near the water surface at the site as well as the alternative sites evaluated. However, the designation of the site is not expected to affect any geographically limited (i.e., unique) habitats, breeding sites, or critical areas that are essential to rare or endangered species. In comparison to the other alternative sites evaluated, the HOODS has the least potential for adverse impact to commercially important species.

3. Location in relation to beaches and other amenity areas (40 CFR 228.6(a)(3)). The HOODS is located between approximately 3 and 4 nautical miles (5 and 7 kilometers) west of the Humboldt Bay entrance and approximately 4 to 7 nautical miles from the closest nearshore resources, beaches, and other coastal amenity areas. Ocean currents in the vicinity of the HOODS flow predominately to the northwest and offshore in the winter and

predominately to the southwest and offshore in the summer. Current speeds are usually on the order of 0.5 knot (25 centimeters per second) at the surface and less at depth. These flows may be strongly influenced by local winds and tides. Any residual suspended solids from disposal operations at the HOODS are expected to move primarily to the northwest or southwest depending on the oceanographic season during any one year and generally in the offshore direction throughout the year. Because of the relatively deep depths and slow current speeds, it is predicted that the vast bulk of the disposed material will remain within the disposal site. For the ***50112** above reasons, EPA has determined that aesthetic impacts of plumes, transport of dredged material to any shoreline, and alteration of any habitat of special biological significance or marine sanctuary is not expected to occur if this site is designated.

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)). Over 800,000 cubic yards of dredged material are generated annually as a result of federal maintenance dredging operations by the Corps in Humboldt and Harbor. In addition, larger volumes of dredged material (e.g., from deepening projects) may also be generated periodically. Typical composition of dredged material disposed at the site is expected to range between two types: “predominantly sand” (grain size greater than 0.075 millimeters) versus “predominantly silt-clay” (grain size less than 0.075 millimeters). These material types are based on data from historical projects from the Humboldt Bay region. The expected typical disposal method would involve hopper dredges (hydraulic dredging), with a maximum capacity of up to 5,000 cubic yards but typically carrying loads of approximately 2,000-3,000 cubic yards of dredged material per trip. Dredged material would not be packaged. All dredged material proposed for disposal at the site must be suitable for ocean disposal. This determination will be made by EPA Region IX and the Corps' San Francisco District based upon the results of an evaluation of information developed in accordance with the 1991 EPA/Corps “Green Book” (e.g., physical, chemical and biological tests) before a MPRSA Section 103 permit can be issued. Dumping of prohibited materials or other industrial or municipal wastes will not be permitted at the site (40 CFR 227.5 and 227.6(a)).

Existing information suggests that it is appropriate to dispose, via hopper dredge or bottom-dump barge, of the type of dredged material that will be removed from the Humboldt Bay region at the HOODS. Because of the site's depths and slow current speeds, the dredged material is expected to settle rapidly to the ocean bottom within the boundaries of the site and not to create plumes which will reach significant areas such as marine sanctuaries, recreational areas, or geographically limited habitats at greater than background concentrations. Disposing dredged material at the site which meets regulatory criteria for ocean dumping is expected to create some limited alteration of benthic habitat within site boundaries, but should not create substantial adverse impacts extending beyond site boundaries. 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 site.

5. Feasibility of surveillance and monitoring (40 CFR 228.6(a)(5)). EPA Region IX and the Corps' San Francisco District share the responsibilities of managing and monitoring the disposal site, and, with the on-site assistance of the U.S. Coast Guard (USCG), to enforce permit conditions within the limits of their jurisdiction. The HOODS is located between approximately 3 and 4 nautical miles (5 and 7 kilometers) offshore and occupies an area ranging in depth from 160 to 180 feet (49 to 55 meters). Standardized equipment and techniques would be used for surveillance and monitoring activities during transit to and at the site, as described in the SMMP included in the Final EIS. Based on previous experience at other ocean dredged material disposal sites located farther offshore and in deeper waters, EPA has determined that the surveillance and monitoring activities are fully feasible to implement at the HOODS.

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)). Ocean currents in the vicinity of the HOODS flow predominantly to the northwest and offshore in the winter and predominantly to the southwest and offshore in the summer. Current speeds are usually on the order of 0.5 knot (25 centimeters per second) at the surface and less at depth. These flows may be strongly influenced by local winds and tides. Any residual suspended solids from disposal operations at the HOODS are expected to move primarily to the northwest or southwest depending on the oceanographic season during any one year and generally in the offshore direction throughout the year. Because of the relatively deep depths and slow current speeds, it is predicted that the vast bulk of the disposed material will remain within the disposal site. For these reasons, EPA has determined that the dispersal, transport and mixing characteristics of the site, and its current velocities and directions, are appropriate for 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)). Under an MPRSA Section 103 permit, the Corps has been discharging on average over 800,000 cubic yards of dredged material at the HOODS. The NDS has been used for two disposal episodes, totaling over 1.4 million cubic yards. The SF-3 site has been used for dredged material from maintenance dredging operations since the 1940's. It is estimated that a total of 20 to 25 million cubic yards of dredged material from the Humboldt Bay federal navigation channels has been disposed at the SF-3 site. No other documented disposal of dredged material has occurred within or in the vicinity of the site.

In addition, no other discharges occur in the immediate vicinity of the HOODS. The Simpson Paper Company presently discharges freshwater through an outfall into ocean waters adjacent to the Samoa Peninsula, although historically it discharged bleached kraft pulp effluent. The outfall is approximately 3 nautical miles (5.5 kilometers) east of the HOODS, 3 nautical miles (5.5 kilometers) north of the SF-3 site, and 3.5 nautical miles (6.5 kilometers) north of the NDS. The Louisiana Pacific Corporation owns and operates a market bleached kraft pulp mill located on the Samoa Peninsula. The discharge from this outfall consists of: process wastewater from kraft pulping, pulp bleaching, and pulp drying; solids from its water treatment plant; power boiler effluent; and stormwater. As authorized under its National Pollutant Discharge Elimination System (NPDES) Permit, the Louisiana Pacific Corporation is prohibited from discharging waste water in violation of effluent standards or prohibitions established under Section 307(a) of the Clean Water Act, and it is prohibited from discharging sewage sludge. The outfall is located approximately 3.5 nautical miles (6.5 kilometers) east of the HOODS, 3.5 nautical miles (6.5 kilometers) north of the SF-3 site, and 4 nautical miles (7.5 kilometers) north of the NDS. Prevailing nearshore currents would direct discharge plumes from both outfalls up or down the coast, depending of the seasonal current regime, not offshore towards the HOODS. The effects of discharges are expected to be limited to local areas near the outfalls and to not extend to the vicinity of the ocean dredged material disposal site (HOODS).

For the above reasons, EPA has determined that there are no expected adverse cumulative or synergistic impacts from the use of the HOODS and discharges from the outfalls described above.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance ***50113** and other legitimate uses of the ocean (40 CFR 288.6(a)(8)). In evaluating whether dumping activity at the site 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 within the HOODS boundaries and the indirect effects associated with vessel traffic that will result from transportation of dredged material to the dump

site. Existing information indicates that the site is not a significant fisheries area, is not a significant recreational area, is not a significant area for harvestable minerals, is not a potential staging ground or intake area for desalination activity, is not scientifically important in itself, and otherwise has no geographically limited resource values that are not abundant in other parts of this coastal region. Accordingly, depositing dredged material at the site will not interfere with these activities. Finally, vessel traffic involved in transportation of dredged material to the HOODS should also cause no substantial interference with any of the activities discussed above.

9. The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys (40 CFR 228.6(a)(9)). Existing information and regional studies described in the Final EIS provide the following determinations: Water quality at the HOODS is indistinguishable from the water quality of nearby areas. Sediments contain background levels or low concentrations of trace metal and organic contaminants. The demersal fish community within the HOODS has lower numbers of species and lower abundances than the other alternative sites. The HOODS contains moderate numbers of megafaunal invertebrate species (Dungeness crab) but lower overall abundances compared to the other alternative sites. Infaunal invertebrates (polychaetes, amphipods, and mollusks) within the HOODS show higher diversity and abundance compared to the other alternative sites; however, these infaunal invertebrate trends are similar to the general depth-related trends of the surrounding region. Seabirds, marine mammals, and mid-water organisms including juvenile rockfishes are seasonally abundant; however, the HOODS is not considered to have geographically limited resource values that are not also abundant in other alternative sites or other parts of this coastal region. Based on these Final EIS conclusions, EPA has determined that, compared to the alternative sites evaluated, the HOODS is the environmentally preferred location for ocean disposal site designation.

10. Potentiality for the development or recruitment of nuisance species in the disposal site (40 CFR 228.6(a)(10)). 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. Opportunistic polychaetes, such as Capitella, may colonize the disposal site. However, these worms can become food items for local bottom-feeding fish and are not directly harmful to other species. No recruitment of species capable of harming human health or the marine ecosystem is expected to occur at the site. Previous studies of the benthic fauna present at the SF-3 site and at the NDS support the expectation that disposal of dredged material from the Humboldt Bay region will not promote the development of nuisance species.

11. Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance (40 CFR 228.6(a)(11)). The ocean waters in the vicinity of Humboldt Bay contain sites of numerous vessel accidents and sinkings. Based on previous evaluations for and issuance of MPRSA Section 103 permits, no significant national or cultural features of historical importance have been identified in the vicinity of the HOODS. The California State Historic Preservation Office (SHPO) was contacted for an examination of their inventory and whether there are any known historic shipwrecks or any known aboriginal artifacts at the HOODS or in the vicinity. No negative comments have been received from the SHPO.

D. Site Management and Monitoring of the Hoods

Implementation of site management and monitoring activities for the HOODS is a requirement for site use. These activities must be performed in accordance with the Site Management and Monitoring Plan (SMMP) included in the Final EIS. Failure to implement the monitoring described in the SMMP precludes use of the site for disposal of dredged material until such time when monitoring can be resumed.

The SMMP, jointly administered by EPA Region IX and the Corps San Francisco District, embodies management and monitoring activities. Management activities consists of: Evaluating the suitability of sediments proposed for disposal at the HOODS for each project; evaluating the adequacy of permit conditions for ocean disposal relative to the performance of the site (e.g., dredged material footprint and overall environmental conditions) as indicated by results of periodic site monitoring; and conducting surveillance and enforcement of permits issued for use of the HOODS. Site monitoring activities are built upon a tiered monitoring approach. These monitoring activities are designed to ensure that the area of acceptable impact is primarily restricted to the disposal site and that unacceptable environmental impacts do not occur beyond the site boundaries. Management decisions at each tier are defined for sediment fate and effects, body burdens of chemicals of concern, or benthic biological community effects. Each tier will require a management decision based on the information gathered. If the null hypothesis for a particular tier is rejected, then a change in site management practices may be instituted, or a more complex set of tests are invoked at the next higher tier to determine the extent of impacts.

Physical monitoring (Tier 1) is expected to occur on an annual basis to determine changes in bathymetry and extent of the dredged material deposit (footprint) relative to the site boundaries. If the footprint extends beyond the site boundary and exceeds 10 centimeters of thickness outside of the site boundary, then an evaluation will be made to determine the potential of adverse physical impacts due to smothering of the benthic resources by the disposed sediments (Tier 2). If EPA determines that the extent of physical impact outside of the site boundary is unacceptable, a change in site management practices will be instituted. If the extent of the footprint is not unacceptable, but the adverse impacts to the benthic resources cannot be clearly attributed only to physical factors (i.e., burial), then an evaluation will be made to determine the potential for adverse impacts to the benthic resources due to elevated chemical contaminants and bioaccumulation (Tier 3).

This monitoring program is designed to facilitate detection of any potential unacceptable adverse impacts due to dredged material disposal, so that decisions about the need for changes in management practices may be made in a timely manner. Depending on the results of the periodic (e.g., annual) monitoring, EPA may at any tier determine that one or more of the following types of site management actions is required: Continue existing site use; implement higher tier monitoring; modify some or all site use ***50114** restrictions; or discontinue disposal activities. EPA expects that the SMMP will be revised and updated from time to time based on monitoring results, scientific advancements, and experience gained. EPA is committed to considering public comments prior to implementing substantive updates to the SMMP. To ensure that interested parties have the opportunity to comment, proposed substantive updates to the SMMP will distributed in draft form via a Public Notice or similar means.

E. Action

EPA Region IX has determined that there is a need for an ocean dredged material disposal site in the vicinity of Humboldt Bay, California. Based on evaluation of alternatives, EPA Region IX has tentatively determined that the HOODS may appropriately be designated for use over a period of 50 years. The designation of the HOODS complies with the general and specific criteria used for site evaluation. EPA, therefore, designates the HOODS as an EPA-approved Ocean Dumping Site in this final rulemaking. Management of this site will be the responsibility of the Regional Administrator of EPA Region IX in cooperation with the Corps' South Pacific Division Engineer and the San Francisco District Engineer, based on requirements defined in the Final EIS and Final Rule. The required management and monitoring activities is described in a SMMP prepared by EPA and incorporated in the Final EIS. Subsequent substantive revisions of the SMMP will be published and subjected to public review.

It is emphasized that ocean dumping site designation does not constitute or imply EPA Region IX's or the Corps San Francisco District's approval of actual ocean disposal of dredged materials. Before ocean dumping of dredged material at the site may begin, EPA Region IX and the Corps San Francisco District must evaluate permit applications according to EPA's Ocean Dumping Criteria. Permits cannot be issued if either EPA Region IX or the Corps San Francisco District determines that the Ocean Dumping Criteria of MPRSA would not be met. The requirement for compliance with the Ocean Dumping Criteria of the MPRSA may not be superseded by the provisions of any future comprehensive regional management plan for dredged material.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all Rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on a substantial number of small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this Final Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a major Rule. Consequently, this Final Rule does not necessitate preparation of a Regulatory Impact Analysis.

G. Comments on the Site Designation Proposed Rule and the Final EIS

The 45-day comment period for the Proposed Rule ended on June 6, 1995. The Final EIS was available for a 30-day public review which ended on September 5, 1995. No comments were received by EPA Region IX regarding the Proposed Rule or Final EIS.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: September 19, 1995.

Felicia A. Marcus,

Regional Administrator, EPA Region IX.

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

PART 228—[AMENDED]1. The authority citation for Part 228 continues to read as follows:

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

40 CFR § 228.15

2. Section 228.15 is amended by adding paragraph (l)(10) to read as follows:

40 CFR § 228.15

§228.15 Dumping sites designated on a final basis.

* * * * *

(l) * * *

(10) Humboldt Open Ocean Disposal Site (HOODS) Ocean Dredged Material Disposal Site—Region IX.

(i) Location: The coordinates of the corners of the square site are: 40degrees48'25" North latitude (N) by 124degrees16'22" West longitude (W); 40degrees49'03" N by 124degrees17'22" W; 40degrees47'38" N by 124degrees17' ‘22" N; and 40degrees48'17" N by 124degrees18'12" W (North American Datum from 1983).

(ii) Size: 1 square nautical mile (3 square kilometers).

(iii) Depth: Water depths within the area range between approximately 160 to 180 feet (49 to 55 meters).

(iv) Use Restricted to Disposal of: Dredged materials.

(v) Period of Use: Continuing use over 50 years from date of site designation, subject to restrictions and provisions set forth in paragraph (l)(10)(vi) of this section.

(vi) Restrictions/Provisions: Site management and monitoring activities shall be implemented during the period of site use and in accordance with the Site Management and Monitoring Plan (SMMP) for the HOODS as incorporated in the Final EIS, and summarized in Section D of this final rule. All disposal activities shall be terminated if monitoring, as described in the SMMP, is not implemented. The SMMP may be periodically revised as necessary; proposed substantive revisions to the SMMP shall be made following opportunity for public review and comment.

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