6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA-R06-OW-2013-0221; FRL-9814-7]

Ocean Dumping; Atchafalaya-West Ocean Dredged Material Disposal Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to re-designate the existing Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA) Section 103(b) Atchafalaya-West Ocean Disposal Site (ODMDS-West) as a permanent MPRSA Section 102(c) ocean dredged material disposal site (ODMDS) located adjacent to and west of the Atchafalaya River Bar Channel (ARBC) of Louisiana. The approval for the ODMDS-West use expired in August 2012; therefore, the site can no longer accept shoal material dredged from the ARBC unless it is re-designated as a MPRSA Section 102(c) site by EPA. Studies have shown that use of the ODMDS-West reduces the amount and rate of shoal material runback into the ARBC, and thus, decreases the overall annual maintenance dredging effort needed for the ARBC while providing vessels with a longer period of safe navigation access prior to a maintenance dredging event. Therefore, there is a need to designate a permanent ODMDS on the west side of the ARBC. Approximately 10.8 million cubic yards will be placed every 7 months and must be conducted in accordance with the Site Management and Monitoring Plan. The proposed ODMDS will be monitored periodically to ensure that the site operates as expected.

DATES: *Comments*. Comments on this proposed rule and draft Environmental Impact Statement must be received on or before **[Insert date 45 days from date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket No. **EPA-R06-OW-2013-0221**, by one of the following methods:

- Federal e-Rulemaking Portal: http://www.regulations.gov; follow the online instruction for submitting comments.
- E-mail: Dr. Jessica Franks at franks.jessica@epa.gov
- Fax: Dr. Jessica Franks, Marine and Coastal Section (6WQ-EC) at fax number 214-665-6689.
- Mail: Dr. Jessica Franks, Marine and Coastal Section (6WQ-EC), Environmental Protection Agency, Mailcode: (6WQ-EC), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket No.**EPA-R06-OW-2013-0221**. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If

you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Marine and Coastal Section (6WQ-EC), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Jessica Franks, PhD, Marine and Coastal Section (6WQ-EC), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-8335, fax number (214) 665-6689; e-mail address franks.jessica@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents:

3. Regulatory flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

4. Unfunded Mandates

5. Executive Order 13132: Federalism

6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

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

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, distribution, or Use Compliance with Administrative Procedure Act

9. National Technology Transfer Advancement Act

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

The supporting document for this site designation is the draft Environmental Impact Statement (EIS) for the Designation of the Atchafalaya River Bar Channel Ocean Dredged Material Disposal Site Pursuant to Section 102(c) of the Marine Protection, Research, and Sanctuaries, Act of 1972; St. Mary Parish, Louisiana dated March 2013 prepared by the EPA and U.S. Army Corps of Engineers. This document is available for public inspection at the following locations:

1. Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733

2. EPA Web site: http://www.epa.gov/region6/water/ecopro/current_action.html

3. Federal e-Rulemaking Portal: http://www.regulations.gov; follow the online instruction

for submitting comments.

A. Potentially Affected Entities

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material in ocean waters at the ODMDS-West, under the Marine Protection Research and Sanctuaries Act, **33 U.S.C. 1401** *et seq*. This Rule would be primarily of relevance to parties seeking permits from the USACE to transport dredged material for the purpose of disposal into ocean waters at the ODMDS-West, as well as the USACE itself (when proposing to dispose of dredged material at the ODMDS-West). Potentially affected categories and entities seeking to use the Atchafalaya ODMDS-West and thus subject to this Rule include:

Category	Examples of potentially regulated persons
Federal government	USACE Civil Works and O & M projects; other Federal agencies, including the Department of Defense.
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. EPA notes, however, that nothing in this Rule alters

in any way, the jurisdiction of EPA, or the types of entities regulated under the Marine Protection Research and Sanctuaries Act. To determine if you or your organization may be potentially affected by this action, you should carefully consider whether you expect to propose ocean disposal of dredged material, in accordance with the Purpose and Scope provisions of **40 CFR 220.1**, and if you wish to use the ODMDS-West. For any questions regarding the applicability of this action to a particular entity, please refer to the contact person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

B. Background

Ocean disposal of dredged materials is regulated under Title I of the Marine Protection, Research and Sanctuaries Act (MPRSA; **33 U.S.C. 1401** *et seq.*). The EPA and the USACE share responsibility for the management of ocean disposal of dredged material. Under Section 102 of MPRSA; EPA is responsible for designating an acceptable location for the ODMDS. With concurrence from EPA, the USACE issues permits under MPRSA Section 103 for ocean disposal of dredged material deemed suitable according to EPA criteria in MPRSA Section 102 and EPA regulations in Title 40 of the Code of Federal Regulations Part 227 (**40 CFR 227**). In lieu of the permit procedure for a federal project involving dredged material, the USACE may issue and abide by regulations using the same criteria, other factors to be evaluated, same procedures and same requirements that apply to the issuance of permits.

Pursuant to its voluntary NEPA policy, published at **63 FR 58045** (October 29, 1998), EPA typically relies on the EIS process to enhance public participation on the proposed designation of an ODMDS. A site designation EIS evaluates alternative sites and examines the potential environmental impacts associated with disposal of dredged material at various locations. Such an

EIS first demonstrates the need for the ODMDS designation action (**40 CFR 6.203**(a) and **40 CFR 1502.13**) by describing available or potential aquatic and non-aquatic (*i.e.,* land-based) alternatives and the consequences of not designating a site—the No Action Alternative. Once the need for an ocean disposal site is established, potential sites are screened for feasibility through a "Zone of Siting Feasibility" (ZSF) process. Potential alternative sites are then evaluated using EPA's ocean disposal criteria at 40 CFR Part 228 and compared in the EIS. Of the sites that satisfy these criteria, the site that best complies is selected as the preferred alternative for designation through a rulemaking proposal published in the Federal Register (FR), as here.

Formal designation of an ODMDS in the Federal Register and codification in the Code of Federal Regulations does not constitute approval of dredged material for ocean disposal. Site designation merely identifies a suitable ocean location in the event that dredged material is later approved for ocean disposal. Designation of an ODMDS provides an ocean disposal alternative for consideration in the review of each proposed dredging project. Before any ocean disposal may take place, the dredging project proponent must demonstrate a need for ocean disposal, including consideration of alternatives. Alternatives to ocean disposal, including the option for beneficial re-use of dredged material, are evaluated for each dredging project that may result in the ocean disposal of dredged materials from such project. Ocean disposal of dredged material is only allowed after both EPA and USACE determine that the proposed activity is environmentally acceptable under criteria codified at **40 CFR Part 227** and **33 CFR Part 336**, respectively. In addition, ongoing management of these ODMDSs would be subject to Site Management and Monitoring Plans (SMMPs) required by MPRSA section 102(c)(3)(F) and (c)(4), which are discussed more fully below. Decisions to allow ocean disposal are made on a

case-by-case basis through the MPRSA Section 103 permitting process, resulting in a USACE permit or its equivalent process for USACE's Civil Works projects. Material proposed for disposal at a designated ODMDS must conform to EPA's permitting criteria for acceptable quality (**40 CFR Parts 225** and **227**), as determined from physical, chemical, and bioassay/bioaccumulation tests prescribed by national sediment testing protocols (EPA and USACE 1991). Only clean non-toxic dredged material is acceptable for ocean disposal. The proposed ODMDS will be subject to ongoing monitoring and management to ensure continued protection of the marine environment. This ocean disposal site designation is based on EPA's general and specific criteria as evaluated in the March 2013 "Draft Environmental Impact Statement, Designation of the Atchafalaya River Bar Channel Ocean Dredged Material Disposal Site Pursuant to Section 102(c) of the Marine Protection, Research and Sanctuaries Act of 1972, St. Mary Parish, Louisiana" (Draft EIS).

The Atchafalaya River and Bayous Chene, Boeuf, and Black, Louisiana (Figure 1-1), project was authorized by the Rivers and Harbors Act of 1968 (Public Law 90-483). Historically, the Atchafalaya River and Bayous Chene, Boeuf, and Black, Louisiana, navigation channel has been dredged to 24 feet Mean Low Gulf (MLG) which includes 20 feet for the authorized channel dimension plus 2 feet advanced maintenance and 2 feet of allowable overdepth. Material removed from the ARBC suitable for beneficial use (i.e., between ARBC Stations 475+00 and 650+00) has been placed in one of two adjacent Bird Island disposal sites, pursuant to Section 404 of the Clean Water Act (CWA) of 1977. Material that could not be used beneficially (i.e., between ARBC Stations 650+00 and 1340+00) has been placed (prior to 2002) at the existing Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA) Section 102(c) Ocean

Dredged Material Disposal Site (ODMDS) on the east side of the channel. This ODMDS is referred to as ODMDS-East. Since 2002, however, material not suitable for beneficial use has been placed at a temporary (i.e., 5-year) ODMDS on the west side of the channel under the authority of MPRSA Section 103(b) (the ODMDS-West). In 2007, the U.S. Army Corps of Engineers, New Orleans District (MVN) requested, and received, from the U.S. Environmental Protection Agency, Region 6 (EPA), a 5-year extension for the continued use of the MPRSA Section 103(b) ODMDS-West. The approval for the ODMDS-West use expired in August 2012; therefore, the site can no longer accommodate shoal material dredged from the ARBC unless it is re-designated as a MPRSA Section 102(c) site by EPA.

EPA has determined that the ODMDS-West alternative identified in the draft EIS is the environmentally preferred site, and this action proposes to designate the ODMDS-West as an ocean dredged material disposal site, located in Atchafalaya Bay, approximately 19 miles from the mainland coast and the mouth of the Atchafalaya River. The proposed ODMDS-West is rectangular, approximately 3 miles wide by 16 miles long, located west of and parallel to the ARBC. The depth of the site ranges from 4 to 23 feet MLG, and the total area is approximately 48 square miles. The action provides for adequate, environmentally-acceptable ocean disposal site capacity for suitable dredged material generated from dredging projects in and along the ARBC by formally designating the Atchafalaya ODMDS-West.

C. Disposal Volume Limit

The proposed action would formally designate the Atchafalaya ODMDS-West for placement of approximately 10.8 cubic yards (cy) of maintenance material from the ARBC on an annual basis.

The need for ongoing ocean disposal capacity is based on average historical dredging volumes from the ARBC navigational channel since 2002.

D. Site Management and Monitoring Plan

Continuing use of the site requires verification that significant impacts do not occur outside of the disposal site boundaries through implementation of the Site Management and Monitoring Plan (SMMP) developed as part of the proposed action and included as Appendix A to the draft EIS developed for the proposed designation of the ODMDS-West. The main purpose of the SMMP is to provide a structured framework to ensure that dredged material disposal activities will not unreasonably degrade or endanger human health, welfare, the marine environment, or economic potentialities (**MPRSA** Section 103(a)). Two main objectives for management of the Atchafalaya ODMDS-West are: (1) to ensure that only dredged material that satisfies the criteria set forth in **40 CFR Part 227** Subparts B, C, D, E, and G and Part 228.4(e) and is suitable for unrestricted placement at the ODMDS and; (2) avoidance of excessive mounding, either within the site boundaries or in areas adjacent to the site, as a direct result of placement operations.

The EPA and USACE New Orleans District personnel would achieve these SMMP objectives by jointly administering the following activities: (1) regulation and administration of ocean dumping permits; (2) development and maintenance of a site monitoring program; (3) evaluation of permit compliance and monitoring results.

The SMMP includes periodic physical monitoring to confirm that disposal material is deposited within the seafloor disposal boundary, as well as bathymetric surveys to confirm that there is no

excessive mounding or short-term transport of material beyond the limits of the ODMDS-West. Physical and chemical sediment and biological monitoring requirements are described in the SMMP and are required to be conducted based on the Evaluation of Dredged Material Proposed for Ocean Disposal Testing Manual, EPA 503/8-91/001 and the Joint EPA-USACE Regional Implementation Agreement (RIA) procedures. Results will be used to confirm that dredged material actually disposed at the site satisfies the criteria set forth in **40 CFR Part 227** Subparts B, C, D, E, and G and Part 228.4(e) and is suitable for unrestricted ocean disposal. Other activities implemented through the SMMP to achieve these objectives include: (1) regulating quantities and types of material to be disposed, including the time, rates, and methods of disposal; and (2) recommending changes to site use requirements, including disposal amounts or timing, based on periodic evaluation of site monitoring results.

E. Ocean Dumping Site Designation Criteria

Five general criteria and 11 specific site selection criteria are used in the selection and approval of ocean disposal sites for continued use (**40 CFR 228.5** and **40 CFR 228.6**(a)).

General Selection Criteria

1. The dumping of materials into the ocean will be permitted only at sites or in areas selected to minimize the interference of disposal activities with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation.

The Atchafalaya ODMDS-West is located adjacent to and parallel to the ARBC. This location reduces the distance that the maintenance-dredged material must be transported, minimizing

interference with other activities in the marine environment. There may be some short-term interference with fishing activities during placement operations. No interference with these or other marine activities is expected outside the brief periods of placement operations. There have been no impacts to existing oyster leases located northeast of the ODMDS area near Point au Fer from the use of the existing ODMDS-East, or ODMDS-West (which has been used since 2002), and no impact is expected to occur in the future as a result of using the proposed ODMDS-West.

2. Locations and boundaries of disposal sites will be so chosen that temporary perturbations in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within the site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.

Placement of maintenance-dredged material will produce a turbidity plume. This plume will disperse to the point where it would be indistinguishable from the turbidity naturally occurring in the area. Turbidity resulting from maintenance-dredged material placement is not expected to be distinguishable from the natural turbidity occurring in the vicinity of North Point and in Atchafalaya Bay, except temporarily. There are no marine sanctuaries in the immediate vicinity of the ODMDS (USFWS 1981). Fishnet Bank, the nearest protected Area of Biological Significance, is approximately 104 miles south of the ODMDS. Any impacts from placement of dredged material are expected to be minor. Based on the current regime noted in Section 3.1.3.2, the transport of suspended materials from the ODMDS would mainly be parallel to the coastline,

and concentrations of suspended materials produced during dredging operations are expected to be within background levels within a few miles or so of the ODMDS (May 1973). There are no Public Oyster Areas within the ODMDS-East or ODMDS-West, and the nearest oyster leases are approximately 4 miles east of the ARBC and ODMDSs, near Point au Fer (LDNR 2012). The potential impact on oyster beds in nearby Atchafalaya Bay is expected to be minimal. These organisms, as well as others in the region, are naturally subjected to periodic episodes of high, suspended-solids concentrations from wave-induced resuspension of nearshore sediments and from the waters of the Atchafalaya River.

3. If at any time during or after disposal site evaluation studies, it is determined that existing disposal sites presently approved on an interim basis for ocean dumping do not meet the criteria for site selection set forth in Sections 228.5 through 228.6, the use of such sites will be terminated as soon as suitable alternate disposal sites can be designated.

This criterion does not apply to the proposed ODMDS-West since it is not an existing site approved on an interim basis. However, studies to date indicate that the proposed ODMDS-West meets the requirements of the MPRSA. Surveys of the site and vicinity indicated that water quality, sediments, and biological life were generally similar to surrounding areas. An existing designated ODMDS (the ODMDS-East) is located immediately across the navigation channel from the proposed site. No adverse environmental effects were detected outside the site boundaries during site investigation surveys (IEC 1983; Dettmann and Tracey 1990; Flemer et al. 1994; Trulli 1996) of ODMDS-West.

4. The sizes of the ocean disposal sites will be limited in order to localize for identification and control any immediate adverse impacts and permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. The size, configuration, and location of any disposal site will be determined as a part of the disposal site evaluation or designation study.

The size of the ODMDS-West has been identified to cover an area as small as possible to reasonably meet the criteria stated at **40 CFR 228.6**(a) for the ARBC project and for efficient placement of material dredged from the ARBC. The size and location of the proposed ODMDS-West also minimizes the return of dredged material from the ODMDS to the channel. This consideration led to the establishment of a long site parallel to the channel with an area of 54 square miles. The site lends itself to surveillance of individual dredged material placement operations and long-term monitoring. The configuration of the ODMDS-West limits its overall area to a dimension of 18.0 miles long by 3.0 miles wide. The width of 3.0 miles is typically the pumping distance at which a hydraulic pipeline cutterhead suction dredge may no longer be cost effective without a booster pump, depending on the size of the dredge. Teeter (2003) recommended westward disposal at the greatest practicable distance from the channel to minimize runback into the channel. The orientation of the ODMDS-West broadside to the prevailing currents in the area increases the chance that material placed in the ODMDS-West will be moved from the site before undesirable mounding can occur.

5. The EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites that have been historically used.

In this area of the Gulf of Mexico, an ODMDS beyond the continental shelf would be at least 84 miles from the area to be dredged. A dredged material placement site beyond the continental shelf would not be feasible due to, among other things, increased safety risks, increased cost of dredged material transportation, and increased costs for site characterization, monitoring, and surveillance studies.

Specific Selection Criteria

1. Geographical position, depth of water, bottom topography, and distance from the coast.

The proposed ODMDS-West is a 16.0-mile long by 3.0 mile-wide rectangular area located west of and parallel to the ARBC and bound by the following coordinates (NAD 83): 29° 22′ 06″ N, 91° 27′ 38″ W; 29° 20′ 30″ N, 91° 25′ 13″ W; 29° 09′ 16″ N, 91° 35′ 12″ W; and 29° 10′ 52″ N, 91° 37′ 33″ W. The depth of the site ranges from 4 to 23 feet MLG, and the total area is approximately 48 square miles. The center of the ODMDS-West is approximately 19 miles from the mouth of the Atchafalaya River. The ODMDS-West is located in the nearshore area of the plain. Except for being located adjacent to the dredged channel, the area occupied by the ODMDS is typical in depth and bottom topography to the continental shelf in the vicinity of the Atchafalaya River Delta.

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.

The northwestern Gulf of Mexico is a breeding, spawning, nursery, and feeding area for shrimp,

menhaden, and bottom fish. Many of the species migrate seasonally between estuaries and the Gulf. Because the timing of species movements vary, some migration can occur at almost any time of the year (Day et al., 1989).

The proposed ODMDS-West is located in a region dominated by species that are estuarine-dependent (Darnell et al., 1983; Phillips and James, 1988; Day et al., 1989). Commercially important species likely found in the area include white shrimp, brown shrimp, Gulf menhaden, and sand sea trout. Commercially important shellfish and fish that inhabit the nearby bay environment include oyster, blue crab, black drum, white shrimp, and brown shrimp.

Limited interferences with nearshore fisheries may occur during placement of maintenance-dredged material. The Atchafalaya estuary has a broader expanse of direct connection with the open Gulf of Mexico than any other estuary along the Louisiana coast. A small portion of this passage route may impede movement/migration of some marine organisms (e.g., shrimp) during periods of active dredging and placement. The settling of dredged material and the sediment plume in and near the ODMDS might also impede localized movement/migration of marine organisms on the continental shelf. However, the effect of these impediments on the movement/migration of marine organism populations affected would be very small and probably undetectable. The stress and possible mortality of individual organisms encountering adverse conditions during dredging and placement operations in the ODMDS would be negligible compared to the passage of the far greater majority of individuals crossing into or out of the estuary and at other locations. Additionally, any impact would also occur at any other ODMDS location near the ARBC.

Placement of material at the proposed ODMDS-West would have negligible effects on endangered and threatened species. Occurrences of whales off Louisiana are considered rare and because the animals generally inhabit waters far deeper than those in the proposed ODMDS, it is unlikely that maintenance-dredged material placement operations would impact whales.

Sea turtles could potentially be found in the proposed ODMDS-West, although the persistent high turbidity makes the area unsuitable for regular use of this area by sea turtles, which generally depend on their sight to feed. Dredging operations might affect sea turtles through incidental take. Hopper dredging has been identified as a source of mortality to sea turtles in inshore waters (Dickerson and Nelson 1990; Magnuson et al. 1990; U.S. Fish and Wildlife Service [USFWS] and NMFS 1991, 1992), not placement operations. Designation of the ODMDS-West has been requested for the placement of future maintenance material dredged from the ARBC by hydraulic cutterhead pipeline dredging and hopper dredging. If hopper dredges are used, there is a possibility of impact to sea turtles, as there would be no matter where the ODMDS is located. Hydraulic cutterhead pipeline dredging operations have not been identified as a source of sea turtle mortality. Hopper dredging will be conducted in accordance with all reasonable and prudent measures and implementing terms and conditions provided to MVN by NMFS in its 2007 Biological Opinion (NMFS 2007) and any subsequent Biological Opinion, to avoid sea turtle mortality.

3. Location in relation to beaches and other amenity areas.

The nearest point of land is North Point of Point au Fer Island that is approximately 2.5 miles from the northeast end of the proposed ODMDS-West. There are no recreational parks or beaches near the proposed ODMDS-West. It may be possible to observe the placement plume from boats in the vicinity during the active period of maintenance-dredged material placement within the site. The plume resulting from the placement of dredged material is not expected to be visible from land because of the distance from land and the existing turbid nature of the water in the area. The plume is expected to dissipate quickly after completion of the placement operations. Except for the minor effects of these limited observations, there should be no effects to the aesthetics of the area.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packaging the waste, if any.

Material dredged from the ARBC is mainly comprised of silt, with lesser amounts of sand and clay (Dettmann and Tracey 1990; PBS&J 2002; PBS&J 2002). Sediment sampling as part of the contaminant assessments conducted by PBS&J (2008) found dredged material from the ARBC consisting of approximately 7-12 percent sand, 81-88 percent silt, and 6-7 percent clay. Based on dredging records since 2002, the volume of maintenance-dredged material to be removed from the ARBC for disposal to the ODMDS-West is approximately 10.8 mcy per fiscal year. Material is removed from the ARBC using a hydraulic cutterhead pipeline dredge and released within the ODMDS as uncohesive slurry. The ARBC is dredged annually and the average length of the dredging contract is 60 to 90 days. It is expected that future disposal operations will follow the past disposal pattern with respect to types, quantities, and methods of release. Any material disposed of at the site would be required to comply with the criteria of the

Ocean Dumping Regulations (40 CFR Pans 220 to 229). None of the material will be packaged in any way.

5. Feasibility of surveillance and monitoring.

The proposed ODMDS-West is in relatively shallow water and is close to shore, which facilitates surveillance and monitoring of the site. Operational observations can be made using shore-based radar, aircraft, and day-use boats. A draft Site Management and Monitoring Plan (SMMP) incorporating monitoring requirements has been developed jointly by EPA and MVN for the proposed ODMDS-West and existing ODMDS-East. The primary purpose of the Site Monitoring Program is to evaluate the impact of dredged material on the marine environment. The SMMP is included in Appendix A of this draft EIS.

6. Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.

Current patterns in the vicinity of the proposed ODMDS are highly complex. Although tides, Loop current intrusions, and river flow may affect the local currents, these currents are influenced predominately by winds (Phillips and James, 1988). Thus, the direction and velocity of the currents vary throughout the year. Winds are a particularly strong driving force in late autumn, winter, and early spring. Net water flow in the winter is to the northwest; however, rapid flow reversals to the southeast occur periodically in concert with wind direction (Crout and

Hamiter 1981; Phillips and James 1988; Walker and Hammack 2000). The near shore current patterns are somewhat more complex in summer. In the absence of strong winds and the presence of a stratified water column, current patterns become considerably less distinct. Net flow in summer can be either to the east or west (Crout and Hamiter 1981; Phillips and James 1988; Walker and Hammack 2000). Spinoff eddies from the Loop current occasionally enter the region, producing flows to the southeast near the ARBC (Weissberg et al. 1980a, 1980b).

Current speeds generally range from 10 to 30 centimeters per second (cm/s) in the vicinity of the proposed ODMDS. Minimum speeds of 5 to 30 cm/s occur in June, July, and August; whereas the highest recorded current speeds in the vicinity range from 70 to 140 cm/s and occur during strong winter storms (Weissberg et al. 1980a, 1980b). Stagnant periods with little or no current motion, lasting as long as 6 days, have been recorded in April, May, and July (Weissberg et al. 1980a, 1980b). Current speeds may reach 200 cm/s during hurricanes, which occur, on average, approximately once every four years (Weissberg et al. 1980a, 1980b; Phillips and James 1988; NOAA 2013a).

In the absence of strong currents, the bulk of the maintenance-dredged material settles on the bottom of the particular area of a site being used at that time. A portion of the plume (fines) will be transported in the direction of the current over a wider area of the disposal site and, to some extent, outside the disposal site. This material will eventually settle over a wide area. Plume measurements were taken by Schubel et al. (1978) during dredged material disposal operations at the ODMDS-East. Background suspended solids concentrations were approximately 100 mg/L and currents were to the southwest at 9 to 19 cm/s. During placement operations, suspended

solids concentrations as high as 300 mg/L were found a quarter of a mile downcurrent from the end of the discharge pipe. During another set of observations made when current directions were to the west and to the northeast, suspended solids concentrations of 300 mg/L were measured at 0.6 to 1.0 mile downcurrent from the end of the discharge pipe. For comparison purposes, total suspended solids (TSS) concentrations in this area of the continental shelf normally range between 250 to 400 mg/L.

The maintenance-dredged material is proportionally very small compared to the sediment load delivered by the discharge of the Atchafalaya River to the area. During disposal operations, a temporary mound of maintenance-dredged material may be initially formed within the ODMDS. However, flow of the noncohesive slurry and resuspension of the maintenance-dredged material results in the disappearance of the mound through dispersal and horizontal transport. The net result would be the remixing of maintenance-dredged material with other materials from the original source. The natural sediment load of the Atchafalaya is estimated to be approximately 40 to 50 percent of the combined discharge from the Mississippi and Atchafalaya Rivers, which is 210 million tons/year (Walker and Hammack 2000).

According to a sediment budget modeled by Teeter et al. (2003) for a hypothetical 10-mcy shoal in the ARBC, placement of material in the ODMDS-West would reduce runback to the channel by 5 mcy but increase lateral inflow by the same amount, when compared to placement in ODMDS-East. Although placement in ODMDS-West reduced runback to the channel, within approximately 10 weeks, the difference was made up through lateral inflow. Based on this analysis, the annual potential lateral source is estimated at approximately 30 mcy, which is a

reasonable rate, given the parameters identified during the study (Teeter et al. 2003). Thus, while placing material on the west side of the ARBC did not eliminate shoaling, it did reduce runback of material into the channel, when compared to placing material on the east side of the channel. The 10-week decrease in the amount of time it takes material to reenter the ARBC, then, would decrease the overall annual maintenance dredging effort (i.e., dredging frequency) needed for the ARBC while providing vessels with a longer period of safe navigation access between maintenance dredging events.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).

The area proposed for selection has been used for the disposal of maintenance-dredged material since 2002. Bathymetric surveys taken prior to and after disposal operations indicate there is no persistent mounding and the maintenance-dredged material is relatively quickly dispersed. No measurable effects from previous disposals have been noticed.

Studies conducted on the ODMDS-East in the early 1980s and 1990s did not identify effects from dredged material placement in the water column, sediments, or benthos of the site. These studies were conducted during placement activities, as well as 10 and 15 months following placement activities (USAC, 1996). Although these studies were conducted at the ODMDS-East, it is reasonable to expect that, because of the proximity of the proposed ODMDS-West, there would also be no effects from placement at ODMDS-West.

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.

The proposed ODMDS-West is outside the navigation channel and therefore does not interfere with shipping. The shallow nature of the continental shelf in the area requires ships to remain in the navigation channels away from the ODMDS-West. Smaller recreational and commercial fishing vessels will pass over the ODMDS-West without interference from dredged material mounds that may temporarily form and that are expected to be relatively low and to disperse relatively quickly. Hydraulic cutterhead dredges and disposal pipelines may cause minor interference, but are not expected to interfere with shipping traffic. All dredging and placement operations are closely coordinated with the USCG with issuance of a Notice to Mariners to dredging operators and the shipping interests to avoid interference with traffic.

Recreational fishing and boating takes place throughout the area of the ODMDS-West. Ship Shoal is located approximately 29 miles east of the ODMDS-West; Trinity and Tiger Shoals are about 28 miles west of the site. Smaller fishing shoals are within 2.9 miles of the ODMDS-West and Point au Fer Reef is located just north of the site. There may be some short-term interference with recreational activities at the ODMDS-West, particularly during disposal operations. The plumes of maintenance-dredged material and activities associated with the dredging operations could have a minor impact on targeted fish stocks, which may tend to avoid the area of active placement, temporarily affecting recreational fishing in the area. This interference would be short-term and restricted to the relatively small area of the ODMDS-West

being used for dredged material placement at any particular time. Trawling and crabbing in the channel and near the placement area may experience interference during dredging operations.

There are numerous active oil and gas platform located in the west and south end the ODMDS-West and other platforms are located adjacent to the east, south, and west of the site. Additionally, several large natural gas pipelines cross the ODMDS-West. Because of the dispersive nature of the site, past experience with dredged material placement has not indicated interference with oil and gas exploration or production. No other types of mineral extraction are taking place either within the site or within the general vicinity of the site. It is not expected that use of the site for placement of maintenance-dredged material would interfere with any other legitimate use of the ocean in this general area.

No desalination or artificial finfish or shellfish culture facilities are located within the site. The nearest oyster leases are located approximately 4 miles east of the ODMDS-West, near Point au Fer (Ernie Dugas 1995, personal communication, Oyster Survey Section LDWF; USACE 1996; LDNR 2012). Fish and shellfish that naturally occur within the site may be affected by placement of dredge material at the site, particularly bottom-dwelling organisms that may be trapped and smothered. Material dispersed from the site is expected to settle in thin layers and be mixed with the naturally occurring sediments in the region. Thus, dispersion and transport of this material outside of the site should not adversely affect the fish and shellfish in the area. Additionally, because the transport of suspended material from the ODMDS-West would be primarily parallel to the coastline and in a generally westward direction for much of the year, effect of placement operations on oyster lease areas near Point au Fer would be minimal and

consistent with natural conditions. There have been no impacts to oyster leases from the use of the interim-designated ODMDS-West, thus no impact is expected from its continued use.

Two areas designated as wildlife management areas or wildlife refuges and that are used for recreational use are located in the project area. The 140,000-acre Atchafalaya Delta WMA, managed by the LDWF, encompasses the developing delta in Atchafalaya Bay. The Atchafalaya Delta WMA is located immediately adjacent to the upper end of the existing Section 103(b) ODMDS-West. The Shell Keys National Wildlife Refuge and Russell Sage - Marsh Island State Wildlife Refuge is located approximately 29 miles west of the ODMDS-West. The transport of suspended materials from the ODMDS-West would mainly be parallel to the coastline, and concentrations of suspended materials produced during dredging operations are expected to be within background levels within a few miles or so of the ODMDS-West (May 1973). Suspended materials originating from the ODMDS-West may drift into adjacent portions of the Atchafalaya Delta WMA; however, the effects of these suspended materials would likely be indiscernible from ambient conditions in these areas. There have been no significant impacts to these areas from use of the interim-designated ODMDS-West, and no impacts are expected from its continued use.

Various universities and state and Federal agencies have studied the biological, geomorphological, and hydrological development of the Atchafalaya Delta. This includes scientific studies that are periodically carried out in the offshore region and the bays of the area. As the Atchafalaya Delta progrades from the Atchafalaya Bay into the Gulf of Mexico, it is

likely that scientific interest in the area will continue. Placement of dredged material into the ODMDS-West is not expected to interfere with any such studies.

9. Existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.

The water quality and ecology of the proposed ODMDS-West generally reflect that of the nearshore region off the Louisiana coast affected by discharges from the Atchafalaya River. The variations in water quality depend on the amount and mixing of freshwater runoff that is highly variable (Phillips and James 1988). Data collected during the IEC (1983) surveys and the EPA-ERLN (Dettmann and Tracey 1990) survey are generally comparable to historic data for the area as summarized in Phillips and James (1988). Neither the IEC (1983) nor the EPA-ERLN (Dettmann and Tracey 1990) water column data were taken during maintenance-dredged material placement operations; therefore, these data reflect ambient conditions. Similarly, water quality and sediment contaminant data from the 2008, 2002 and 1996 contaminant assessments all indicated no water quality impacts related to the placement of dredged material. Additional detail regarding these data, as well as additional discussion of water quality can be found in sections 4.1.4 and 4.1.5.

Macrofaunal assemblages near the ARBC ODMDSs have been examined during benthic investigations of several proposed salt dome brine diffuser sites (Parker et al., 1980; Weissberg et al., 1980a, 1980b). These studies characterized nearshore assemblages typical of estuarine

areas, with communities dominated by polychaete worms, small molluscs, and macrocrustaceans. Most species displayed seasonal population fluctuations, with recruitment during winter and spring. Stations sampled by IEC (1983) in the vicinity of the ODMDS-East were further inshore and shallower than the proposed brine diffuser sites; however, the same general macrofaunal assemblage was found. During both surveys, polychaetes dominated the macrofauna.

Central Louisiana Gulf coastal waters are inhabited by numerous species of finfish and shellfish that can be characterized as estuary-related or demersal shelf inhabitants. Nektonic species and fast swimmers that may occur within the area of the ODMDS are attracted to oil rigs, which provide reef-like environments in the Gulf. Most, but not all, of the larger predators occur seasonally on the northern Gulf shelf, appearing in spring and leaving in the fall (Darnell et al. 1983). The density distribution of total fish and Penaeid shrimp catch in the northwestern Gulf has historically been highest off Louisiana (NMFS 2012). This may be directly attributable to the extensive estuarine nursery areas of Louisiana (Darnell et al. 1983; Darnell and Kleypas 1987). Recreational fishing, including fishing, crabbing, and shrimping, is popular in the vicinity of the ODMDSs.

10. Potentiality for the development or recruitment of nuisance species in the disposal site.

Past placement of maintenance-dredged material at the existing ODMDS-East and ODMDS-West has not resulted in the development or recruitment of nuisance species. Therefore,

placement of maintenance-dredged material at the proposed ODMDS-West is not expected to result in development or recruitment of nuisance species.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

The USACE Submerged Cultural Resource Database contains historical accounts of 52 shipwrecks in the Atchafalaya River and 7 shipwrecks in Atchafalaya Bay. These records indicate historical use of the Atchafalaya Basin. In 1996, a remote sensing survey was conducted in the ODMDS-East. This study found that while several anomaly clusters existed, which may represent shipwrecks, the geomorphologic and bathymetric data indicates that between 17 and 21 feet of sedimentation had occurred in the area between 1839 and 1996. A vessel wrecked more than 157 years ago may have at least 17 feet of sediment covering it. As a result of this survey, it was concluded that the placement of maintenance-dredged materials in the proposed ODMDS-West would not add appreciably to the impact already induced by progradation of the Atchafalaya Delta during the last century. There is no other information suggesting the presence of significant natural or cultural resources of historical importance in the vicinity of the proposed ODMDS-West. The results of the 1996 remote sensing study can be applied to the present study given its proximity to the previously designated ODMDS-East.

F. Regulatory Requirements

1. National Environmental Policy Act (NEPA)

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) federal agencies are generally required to prepare an environmental impact statement (EIS) on major federal actions significantly affecting the quality of the human environment. Due to the doctrine of functional equivalency, EPA designations of ODMDS under MPRSA are not subject to NEPA's requirements. EPA believes the NEPA process enhances public participation on such designations, however, and the potential effects of these proposed designations are fully analyzed in a draft EIS on the Designation of the Atchafalaya River Bar Channel Ocean Dredged Materal Disposal Site Pursuant to Section 102(c) of the Marine Protection, research, and Sanctuaries Act of 1972, St. Mary Parish, Louisiana. The EPA is the lead agency on the draft EIS and Corps of Engineers a cooperating agency.

A Notice of Intent to prepare an EIS was published in the Federal Register on July 21, 2011 requesting comments or names for the project mailing list to be submitted by August 22, 2011. A Scoping Input Request Letter requesting comments regarding the scope of the study was sent to Federal, state and local agencies; and interested groups and individuals on September 15, 2011; comments were received through October 31, 2011. Scoping comments were received from 11 entities and will be considered during the study process and in preparation of the draft EIS. A Scoping Report was prepared and is appended to the draft EIS. EPA has relied on information from the draft EIS and Scoping Report in its consideration and application of ocean dumping criteria to the Atchafalaya ODMDS-West it proposes to designate.

2. Endangered Species Act Consultation

During development of the site designation draft EIS, EPA and the USACE consulted with the U.S. Fish and Wildlife Service (USFWS) pursuant to the provisions of the Endangered Species Act (ESA), regarding the potential for designation and use of the ocean disposal sites to adversely affect any threatened or endangered species or their critical habitat. By letter dated January 26, 2012, the USFWS concurred with the determination of EPA and the USACE that the proposed action is not likely to adversely affect the West Indian manatee, pallid sturgeon, or the piping plover or its critical habitat. This consultation process is fully documented in the site designation draft EIS.

3. Magnuson-Stevens Fishery Conservation and Management Act of 1996

The Magnuson-Stevens Fishery Conservation and Management Act of 1996 (MSFCMA) defines Essential Fish Habitat (EFH) as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." The estuarine and marine waters in St. Mary Parish, as well as the northern Gulf of Mexico, are designated as EFH. In particular, EFH identified by the Gulf of Mexico Fishery Management Plan (FMP) in St. Mary Parish and adjoining waters—including Atchafalaya Bay—include estuarine water column and estuarine water bottoms, including mud, rock, sand, intertidal vegetation, and shell substrates. No "Habitat Areas of Particular Concern" have been identified in the project vicinity. By letter dated October 19, 2011, the National Marine Fisheries Service (NMFS) confirmed this subtital habitat is categorized as essential fish habitat (EFH) under provisions of the Magnuson-Stevens fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS concurs with the initial evaluation provided in the September 15, 2011 information package that material removed from the bar channel is not suitable for wetland development and its disposal at the proposed location

is not expected to have significant impacts to EFH and related marine fishery resources. Coordination with NMFS will be fulfilled through their review and comment on the draft EIS.

4. Coastal Zone Management Act

Pursuant to section 307(c)(1) of the Coastal Zone Management Act, federal activities that affect a state's coastal zone must be consistent to the maximum extent practicable with the enforceable policies of the state's approved coastal zone management program. To implement that requirement, federal agencies prepare coastal consistency determinations and submit them to the appropriate state agencies, which may concur in or object to a consistency determination.

In connection with its preparation of the draft EIS on the Designation of the Atchafalaya River Bar Channel Ocean Dredged Material Disposal Site Pursuant to Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1792, St. Mary Parish, Louisiana, the EPA prepared a coastal consistency determination the proposed Atchafalaya ODMDS-West designation, which it submitted to the Louisiana Department of Natural Resources (LDNR). By letter of April 30, 2012 LDNR agreed that the proposed designation of the Atchafalaya ODMDS-West was not inconsistent with the approved Louisiana Coastal Resources Program (LCRP). More detailed plans and descriptions of the proposed navigation projects may be needed for LDNR and the Corps to resolve potential issues on the practicability of beneficial use of dredged materials in Louisiana's coastal zone. Such issues are independent of EPA's proposed ODMDS designations, however, which only make an offshore disposal option available when the Corps deems beneficial use that might otherwise be required by a state CZM program impracticable. EPA supports beneficial use of dredged material, but ODMDS designations do not in any way require that the Corps forego beneficial use in favor of ocean disposal.

5. Coastal Barrier Improvement Act of 1990

The disposal of dredged materials related to maintenance and construction is an exception to Federal expenditure restrictions related to Coastal Barrier Resources Act of 1982; therefore, project activities related to disposal are exempt from the prohibitions set forth in this act.

H. Administrative Review This rule proposes the designation ofan ocean dredged material disposal site pursuant to Section 102 of the MPRSA. This proposed action complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866

Under Executive order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is 'significant", and therefore subject to office of Management and Budget (OMB) review and other requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to 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 entitlements, 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.

This Proposed Rule should have minimal impact on State, local or Tribal governments or communities. Consequently, EPA has determined that this Proposed Rule is not a "significant regulatory action" under the terms of Executive Order 12866.

2. Paperwork Reduction Act

The Paperwork Reduction Act, **44 U.S.C. 3501** *et seq.,* is intended to minimize the reporting and recordkeeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. EPA anticipates that few, if any, non-federal entities will use the site as none have in the past

3. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that whenever an agency promulgates a final rule under **5 U.S.C. 553**, the agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities (**5 U.S.C. 604** and 605). The site designation and management actions would only have the effect of setting maximum annual disposal volume and

providing a continuing disposal option for dredged material. Consequently, EPA's action will not impose any additional economic burden on small entities. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the Proposed Rule will not have a significant economic impact on a substantial number of small entities

4. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and Tribal governments, in the aggregate, or to the private sector, of $10 million or more in any year.

This Proposed Rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The Proposed rule would only provide a continuing disposal option for dredged material. Consequently, it imposes no new enforceable duty on any State, local or Tribal governments or the private sector. EPA anticipates that few, if any, non-federal entities will use the site as none have in the past.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (**64 FR 43255**, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This Proposed Rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in **Executive Order 13132**. The Proposed Rule would only have the effect of providing a continuing disposal option for dredged material. Thus, **Executive Order 13132** does not apply to this Proposed Rule.

6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (**65 FR 67249**, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." This Proposed Rule does not have Tribal implications, as specified in **Executive Order 13175**. The Proposed Rule would only have the

effect of providing a continuing disposal option for dredged material. Thus, **Executive Order 13175** does not apply to this Proposed Rule.

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

This Executive Order (**62 FR 19885**, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under **Executive Order 12866**, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This Proposed Rule is not subject to the Executive Order because it is not economically significant as defined in **Executive Order 12866**, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use Compliance with Administrative Procedure Act

This Proposed Rule is not subject to **Executive Order 13211**, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (**66 FR 28355** (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. The Proposed Rule

would only have the effect of providing a continuing disposal option for dredged material. Thus, EPA concluded that this Proposed Rule is not likely to have any adverse energy effects.

9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), **Public Law 104-113**, 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.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This Proposed Rule does not involve technical standards. Therefore, EPA is not considering 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 (**59 FR 7629**) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income

populations in the United States. EPA determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA has assessed the overall protectiveness of designating the disposal site against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable.

List of subjects in 40 CFR part 228

Environmental protection, Water pollution control.

Dated: May 7, 2013.

Samuel Coleman, P.E.,
Acting Regional Administrator, Region 6.

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

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

2. Section 228.15 is amended by adding paragraph (j)(22) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(j) * * *

(22) Atchafalaya River and Bayous Chene, Boeuf, and Black, LA (ODMDS-West)

(i) *Location (NAD83):* 29°22′06″ N, 91°27′38″ W; 29°20′30″ N, 91°25′13″ W; 29°09′16″ N, 91°35′12″ W; 29°10′52″ N, 91°37′33″ W; thence to point of beginning.

(ii)*Size:* 48 square miles

(iii)*Depth:* Ranges from 4 to 23 feet

(iv)*Primary Use*: Dredged material.

(v)*Period of Use:* Continuing use.

(vi)*Restrictions:* Disposal shall be limited to dredged material from the Atchafalaya River Bar channel that complies with EPA's Ocean Dumping Regulations. Dredged material that does not meet the criteria set forth in 40 CFR Part 227 shall not be placed at the site. Disposal operations shall be conducted in accordance with requirements specified in a Site Management and Monitoring Plan developed by EPA and USACE, to be reviewed periodically, at least every 10 years.

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