6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA-R04-OW-2014-0372; FRL - 9921-73-Region 4]

Ocean Dumping: Expansion of an Ocean Dredged Material Disposal Site Offshore of Jacksonville, Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve an expansion of the ocean dredged material disposal site (ODMDS) site offshore of Jacksonville, Florida pursuant to the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). The primary purpose for the site expansion is to serve the long-term need for a location to dispose of material dredged from the St. Johns River navigation channel, and to provide a location for the disposal of dredged material for persons who have received a permit for such disposal. The expanded site will be subject to ongoing monitoring and management to ensure continued protection of the marine environment.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OW-2014-0372, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments and

accessing the docket and materials related to this proposed rule.

- E-mail: mcarthur.christopher@epa.gov
- Mail: Christopher McArthur, U.S. Environmental Protection Agency, Region 4, Water Protection Division, Marine Regulatory and Wetlands Enforcement Section, 61 Forsyth Street, Atlanta, Georgia 30303.

  Instructions: Direct your comments to Docket ID No. EPA-R04-OW-2014-0372. The 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 through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means the 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 the 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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. For additional information about the EPA's public docket visit the

EPA Docket Center homepage at http://www.epa.gov/epahome/dockets.htm.

Docket: Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy during normal business hours from the regional library at the U.S. Environmental Protection Agency, Region 4 Library, 9th Floor, 61 Forsyth Street, Atlanta, Georgia 30303. For access to the documents at the Region 4 Library, contact the Region 4 Library Reference Desk at (404) 562-8190, between the hours of 9:00 a.m. to 12:00 p.m., and between the hours of 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays, for an appointment.

FOR FURTHER INFORMATION CONTACT: Christopher McArthur, U.S. Environmental Protection Agency, Region 4, Water Protection Division, Marine Regulatory and Wetlands Enforcement Section, 61 Forsyth Street, Atlanta, Georgia 30303; phone number (404) 562-9391; e-mail: mcarthur.christopher@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445. The EPA's proposed action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Jacksonville, Florida. Currently, the U.S. Army Corps of Engineers (USACE) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal government …	U.S. Army Corps of Engineers Civil Works projects, U.S. Navy and other Federal agencies

Industry and general public …	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners
State, local and tribal governments …	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

II. Background

a. History of disposal sites offshore of Jacksonville, Florida

The existing Jacksonville ODMDS is located approximately 5 nautical miles (nmi) southeast of the mouth of the St. Johns River on the continental shelf off the east coast of Florida. It is currently 1 nmi by 1 nmi (1 nmi^2) in size. Since 1952, the area now designated as the Jacksonville ODMDS and vicinity has been used for disposal of dredged material (e.g., sand, silt, clay, rock) primarily from the Jacksonville Harbor Navigation Project, Naval Station Mayport entrance channel, and Naval Station Mayport turning basin. The Jacksonville ODMDS received interim site designation status in 1977 and final designation in 1983.

The USACE Jacksonville District and the EPA Region 4 have identified a need to either designate a new ODMDS or expand the existing Jacksonville ODMDS. The need for expanding current ocean disposal capacity is based on observed mounding at the Jacksonville ODMDS, future capacity modeling, historical dredging volumes, estimates of dredging volumes for future proposed projects, and limited capacity of upland confined disposal facilities (CDFs) in the area.

This section discusses in detail the current and future capacity issues at the existing Jacksonville ODMDS and CDFs.

The proposed expansion of the ODMDS for dredged material does not mean that the USACE or the EPA has approved the use of the ODMDS for open water disposal of dredged material from any specific project. Before any person can dispose dredged material at the ODMDS, the EPA and the USACE must evaluate the project according to the ocean dumping regulatory criteria (40 CFR, part 227) and authorize the disposal. The EPA independently evaluates proposed dumping and has the right to restrict and/or disapprove of the actual disposal of dredged material if the EPA determines that environmental requirements under the MPRSA have not been met.

b. Location and configuration of Expanded Ocean Dredged Material Disposal Site

This action proposes the expansion of the ocean dredged material site offshore of Jacksonville, Florida. The location of the proposed expanded ocean dredged material disposal site is bounded by the coordinates, listed below, and shown in Figure 1. The proposed expansion of the ODMDS will allow the EPA to adaptively manage the ODMDS to maximize its capacity, minimize the potential for mounding and associated safety concerns, potentially create hard bottom habitat and minimize the potential for any long-term adverse effects to the marine environment.

The coordinates for the site are, in North American Datum 83 (NAD 83):

Expanded Jacksonville ODMDS

A) 30° 21.514’ N, 81° 18.555’ W

B) 30° 21.514’ N, 81° 17.422’ W

C) 30° 20.515’ N, 81° 17.422’ W

D) 30° 20.515’ N, 81° 17.012’ W

E) 30° 17.829’ N, 81° 17.012’ W

F) 30° 17.829’ N, 81° 18.555’ W

The proposed expanded ODMDS is located in approximately 28 to 61 feet of water, and is located to 4.4 nmi offshore the mouth of the St. Johns River. The proposed expanded ODMDS would be 3.7 nmi long on the west side and 2.7 nmi long on the east side. It would be 1 nmi long on the north side and 1.3 nmi wide on the south side. It would be 4.56 nmi^2 in size.

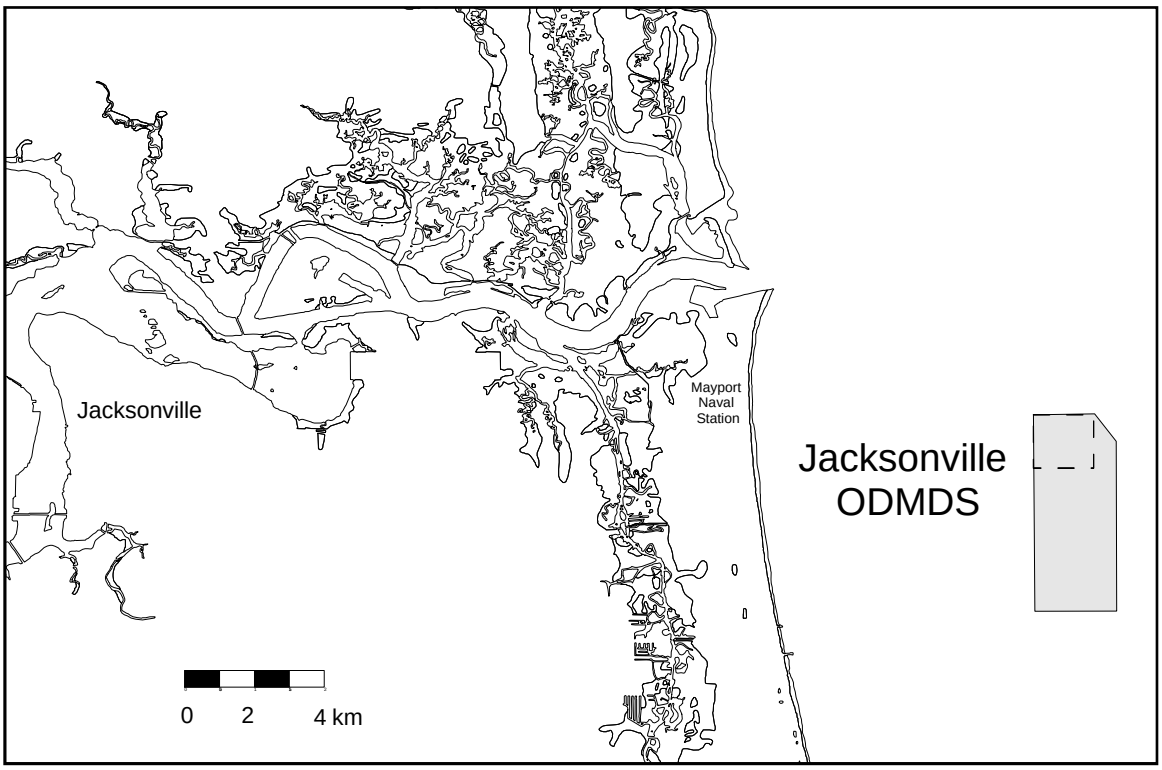

Figure 1. Proposed Expanded Jacksonville ODMDS

c. Management and monitoring of the Site

The proposed expanded ODMDS is expected to receive sediments dredged by the USACE to deepen and maintain the federally authorized navigation project at Jacksonville Harbor, Florida, maintain Naval Station Mayport and dredged material from other persons who have obtained a permit for the disposal of dredged material at the ODMDS. All persons using the ODMDS are

required to follow a Site Management and Monitoring Plan (SMMP) for the ODMDS. The SMMP includes management and monitoring requirements to ensure that dredged materials disposed at the ODMDS are suitable for disposal in the ocean and that adverse impacts of disposal, if any, are addressed to the maximum extent practicable. The SMMP for the proposed expanded ODMDS, in addition to the aforementioned, also addresses management of the ODMDS to ensure adverse mounding does not occur, promotes habitat creation where possible and to ensure that disposal events minimize interference with other uses of ocean waters in the vicinity of the proposed expanded ODMDS. The SMMP is available as a draft document for review and comment at this time. The public is encouraged to take advantage of this opportunity to read and submit comments on the draft SMMP.

d. MPRSA criteria

In proposing to expand the ODMDS, the EPA assessed the proposed expanded ODMDS according to the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR part 228, to determine whether the proposed site designations satisfy those criteria. The EPA's *Final Environmental Impact Statement for Designation of an Ocean Dredged Material Disposal Site Offshore Jacksonville, Florida, [October 2014] (EIS),* provides an extensive evaluation of the criteria and other related factors for the expansion of the ODMDS.

General Criteria (40 CFR 228.5)

(1) Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).

Historical disposal of dredged material at the existing Jacksonville ODMDS has not interfered with commercial or recreational navigation, commercial fishing, or sportfishing activities. Expansion of this site is not expected to change these conditions. The proposed expanded ODMDS avoids any identified major fisheries, natural and artificial reefs, and areas of recreational use. The proposed expanded ODMDS is approximately 1 nmi east of the areas identified by commercial shrimpers as important shrimp trawling areas. The proposed expanded ODMDS minimizes interference with shellfisheries by avoiding areas frequently used by commercial shrimpers. The proposed expanded ODMDS is not expected to adversely affect recreational boating and is located outside of designated shipping/navigation channels and anchorage areas. The draft SMMP outlines site management objectives, including minimizing interference with other uses of the ocean. Should a site use conflict be identified, site use could be modified according to the SMMP to minimize that conflict.

(2) Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

Based on the EPA's review of modeling, monitoring data, sediment quality, and history of use, no detectable contaminant concentrations or water quality effects, e.g., suspended solids, would be expected to reach any beach or shoreline from disposal activities at the proposed expanded ODMDS. The expanded proposed ODMDS is removed far enough from shore (4.4 nmi) and fishery resources to allow water quality perturbations caused by dispersion of disposed material to be reduced to ambient conditions before reaching any environmentally sensitive

areas. Dilution rates are expected to range from 140:1 to 2800:1 after four hours. The primary impact of disposal activities on water quality is expected to be temporary turbidity caused by the physical movement of sediment through the water column. All dredged material proposed for disposal will be evaluated according to the ocean dumping regulations at 40 CFR 227.13 and guidance developed by the EPA and the USACE.

(3) The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

The location, size, and configuration of the proposed expanded ODMDS allow and facilitate long-term capacity, site management, and site monitoring while limiting environmental impacts to the surrounding area to the extent possible. Based on projected future new work and maintenance dredged material disposal needs, it is estimated that the new ODMDS should be approximately 4 nmi^2 in size to meet the long-term (>50 years) disposal needs of the area. An ODMDS of this size should have a capacity of greater than 65 million cubic yards. The proposed expanded ODMDS is 4.56 nmi^2 in size inclusive of the existing Jacksonville ODMDS.

A site management and monitoring program will be implemented to determine if disposal at the site is significantly affecting adjacent areas and to detect the presence of long-term adverse effects. At a minimum, the monitoring program will consist of bathymetric surveys, sediment grain size analysis, chemical analysis of constituents of concern in the sediments, an assessment of the health of the benthic community, and an assessment of any movement of disposed dredged material offsite. The size of the proposed expanded ODMDS is similar to that of other ocean

dredged material disposal sites in the Southeastern United States. Monitoring of sites of this size have proved to be effective and feasible.

(4) EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).

Disposal areas located off of the continental shelf would be at least 60 to 70 nautical miles offshore. This distance is well beyond the 5 to 10 nautical mile haul distance determined to be feasible by the USACE for maintenance of their Jacksonville Harbor project. Additional disadvantages to off-shelf ocean disposal would be the unknown environmental impacts of disposal on deep-sea, stable, fine-grained benthic communities and the higher cost of monitoring sites in deeper waters and further offshore.

Historic disposal has occurred at the proposed location for the expanded ODMDS. The substrate of the proposed expanded ODMDS is similar grain size to the disposal material.

Specific Criteria (40 CFR 228.6)

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

The EPA does not anticipate that the geographical position of the proposed expanded ODMDS, including the depth, bottom topography and distance from the coastline, will unreasonably degrade the marine environment. The proposed expanded ODMDS is located on the shallow continental shelf off northeast Florida and is 7.1 nautical miles southeast of the mouth of the St. Johns River. Depths within the proposed expansion area of the ODMDS range from 43 to 66 feet (13 to 20 meters) with an average depth of 57 feet (17 meters). To help avoid adverse mounding at the proposed expanded ODMDS, bathymetry will be routinely monitored following disposal activities and disposal locations modified as necessary. In this way, mounding

that could create a navigation hazard will be avoided. Material disposed in the proposed expanded ODMDS is not expected to move from the proposed expanded ODMDS except during large storm events.

(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 proposed expanded ODMDS is located within the North Atlantic right whale critical habitat. The coastal waters off Georgia and northern Florida are the only known calving ground for the North Atlantic right whale between November and April. The proposed expansion of the ODMDS is not expected to alter the critical habitat. Disposed dredged material will settle out of the water column to the benthos, which is not considered part of the critical habitat. Disturbances from ships transiting through the area would not be significantly different from normal vessel operations that occur daily in the project area, although during dredging activities there would be an increase in vessel activity in the areas between the river entrance and the proposed expanded ODMDS which may lead to an increase risk of animal collisions. Observance of critical habitat designations and the North Atlantic right whale Early Warning System should mitigate for this potential increase.

The proposed expanded ODMDS is not located in exclusive breeding, spawning, nursery, feeding or passage areas for adult or juvenile phases of living resources. The most active fish breeding and nursery areas are located in inshore estuarine waters, along adjacent beaches, or in nearshore reef areas. At and in the immediate vicinity of the proposed expanded ODMDS, spawning and migrating adult penaeid shrimp may be present. However, as much of the dredged material will consist of silts and clays, it appears likely that the area will remain suitable for penaeid shrimp.

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

The proposed site is approximately 4.4 nmi from coastal beaches and protected inshore waters. Shore-related amenities include Nassau River-St. Johns River Marshes Aquatic Preserve, Little Talbot Island State Park, Kingsley Plantation Historic Monument, and Fort Caroline National Memorial. These amenity areas are outside the area to be affected by disposal in the proposed expanded ODMDS. The site is approximately 4 to5 nmi west of the nearest artificial reef or fishing hotspots.

(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)).

Dredged material found suitable for ocean disposal pursuant to the regulatory criteria for dredged material, or characterized by chemical and biological testing and found suitable for disposal into ocean waters, will be the only material allowed to be disposed at the proposed expanded ODMDS. No material defined as "waste" under the MPRSA will be allowed to be disposed at the site. The dredged material to be disposed at the proposed expanded ODMDS will be a mixture of rock, sands, silts and clays. Annual average quantities are expected to range 0.5 to 1.1 million cubic yards. 18 million cubic yards is expected to be disposed from the Jacksonville Harbor Deepening Project. Generally, disposal is expected to occur from a hopper dredge or disposal scow, in which case, material will be released just below the surface while the disposal vessel remains underway and slowly transits the disposal location.

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

The EPA expects monitoring and surveillance at the proposed expanded ODMDS to be feasible and readily performed from ocean or regional class research vessels. The proposed expanded ODMDS is of similar size, water depth and distance from shore of a majority of the

ODMDSs within the Southeastern United States which are routinely monitored. The EPA will ensure monitoring of the site for physical, biological and chemical attributes as well as for potential impacts beyond the site boundaries. Bathymetric surveys will be conducted routinely as defined in the SMMP, contaminant levels in the dredged material will be analyzed prior to dumping, and the benthic infauna and epibenthic organisms will be monitored every 10 years, as funding allows.

(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)).*

Waves are predominately out of the east and a few exceed 2 meters (6.6 feet) in height or 15 seconds (s) in period. Waves are the primary factor influencing re-suspension of disposed dredged material, and currents probably affect the direction and magnitude of transport. Currents flow predominately in a north-northwest and south-southeast direction and rarely exceeds 30 cm/s in magnitude. Modeling and monitoring conducted at the existing ODMDS has shown that the net direction of transport is to the south. Dilution rates due to mixing are expected to range from 140:1 to 2800:1 after four hours.

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

The areas within the vicinity of the Jacksonville ODMDS have been in use since 1952 for disposal of dredged material (e.g., sand, silt, clay, gravel, shell, and some rock) from the Jacksonville Harbor Navigation Project and the Naval Station Mayport entrance channel and turning basin. The Jacksonville ODMDS received interim site designation status in 1977 and final designation in 1983. Prior to 1970 and in the early 1970s, material was disposed in an area 0.5 nmi east of the Jacksonville ODMDS. In the late 1970s material was unintentionally disposed

south of the site. Water column chemistry in past studies at ODMDS sites has typically shown little or no impact due to dredged material disposal. Sediment analysis in the late 1970s showed higher concentrations of certain heavy metals (nickel, copper, zinc, lead, and chromium), Kjeldahl nitrogen, and organic carbon in sediments within the disposal site versus outside the site. Sediment analysis as part of a 1995 benthic survey showed that, in general, metal concentrations within the ODMDS remained elevated compared to concentrations outside the ODMDS. However, concentrations within the ODMDS have decreased since 1978 and, based on a 1998 study, continue to decrease. The average percentage of silts and clays at stations within the ODMDS exceeds that of stations outside the ODMDS, but has decreased both inside and outside the ODMDS since. A 2009 study documented tri-n-butyltin, di-n-butyltin, and n-butyltin present at sampling stations both inside and outside the Jacksonville ODMDS. Benthic infaunal community studies at the existing Jacksonville ODMDS have showed that communities remain diverse with no significant changes. The normal equilibrium benthic community in the area consists of surface-dwelling suspension feeders that are pre-adapted to energetic sandy environments.

(8) *Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).*

The proposed expanded ODMDS is not expected to interfere with shipping, fishing, recreation or other legitimate uses of the ocean. Commercial navigation, commercial fishing, and mineral extraction (sand mining) are the primary activities that may spatially overlap with disposal at the proposed expanded ODMDS. The proposed expanded ODMDS avoids the

National Oceanographic and Atmospheric Administration (NOAA) recommended vessel routes offshore Jacksonville, Florida, thereby avoiding conflict with commercial navigation.

Commercial fishing (shrimp trawling) occurs primarily to the west of the proposed expanded ODMDS. The northern portion of the proposed expanded ODMDS encompasses areas with rubble and other debris that commercial shrimp trawlers avoid due to potential damage to their shrimp nets. The southern portion of the proposed expanded ODMDS includes areas used for commercial shrimp trawling. The proposed expanded ODMDS will be managed such that rock will be disposed in the eastern portion of the proposed expanded ODMDS outside of the fishing area and finer grained material (silts/clays) will be disposed in the western portion. Additionally, the southern portion will only be used if the northern portion has reached capacity.

Potential sand borrow areas have been identified to the east of the proposed expanded ODMDS. The proposed expanded ODMDS will be managed to avoid impacts to these areas. Only rock and sand will be disposed in the eastern portions of the proposed expanded ODMDS providing a buffer between the disposal of silts and clays and the potential borrow areas. The nearest potential borrow areas is adjacent to the southern half of the proposed expanded ODMDS. This borrow area is expected to be exhausted prior to use of the southern portion of the proposed expanded ODMDS as the southern portion will only be used if the northern portion has reached capacity.

The likelihood of direct interference with these activities is low, provided there is close communication and coordination among users of the ocean resources. The EPA is not aware of any plans for desalination plants, or fish and shellfish culture operations near the proposed expanded ODMDS at this time. The proposed expanded ODMDS is not located in areas of special scientific importance.

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

Spring and fall season baseline surveys were conducted in 2010 at the proposed expanded ODMDS. Water quality was determined to be good with no evidence of degradation. No hypoxia conditions were observed and all chemical constituents were below EPA national recommended water quality criteria for salt water. Annelid worms, arthropods, echinoderms, gastropods, and bivalves are common benthic taxonomic groups. The Atlantic croaker, spotted hake, searobins, drums, and sand flounders are common fish species. Important mollusks include transverse and ponderous arks, mussels, and Atlantic calico scallops.

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

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the proposed expanded ODMDS. Material expected to be disposed at the proposed expanded ODMDS will be rock, sand, silt and clay similar to the sediment present at the proposed expanded ODMDS. Finer-grained material could have the potential to attract different species to the proposed expanded ODMDS then currently exist as was documented following disposal of significant amounts of silts and clays from deepening of Naval Station Mayport. However, it is expected that over time, as currents and waves energy transport the finer-grained sediments away, the normal equilibrium benthic community will re-establish itself. The proposed SMMP includes benthic infaunal monitoring requirements, which will act to identify any nuisance species and allow the EPA to direct special studies and/or operational changes to address the issue if it arises.

(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)).*

No significant cultural features have been identified at, or in the vicinity of, the proposed expanded ODMDS at this time. Archaeological surveys of the proposed expanded ODMDS were conducted in 2011 and 2012. The survey identified three sub-bottom features and one magnetic cluster. Archaeological divers investigated these targets and determined that they did not represent significant cultural features of historical or prehistorical importance. The EPA has coordinated with Florida's State Historic Preservation Officer (SHPO) to identify any cultural features. The SHPO concurred with the EPA's determination that the proposed expansion of the ODMDS will have no effect on cultural resources listed, or eligible for listing on the National Register of Historic Places. No shipwrecks have been observed or documented within the proposed expanded ODMDS or its immediate vicinity.

III. Environmental Statutory Review - National Environmental Policy Act (NEPA); Magnuson-Stevens Act (MSA); Marine Mammal Protection Act (MMPA); Coastal Zone Management Act (CZMA); Endangered Species Act (ESA); National Historic Preservation Act (NHPA)

a. *NEPA*

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major federal actions significantly affecting the quality of the human environment. NEPA does not apply to EPA designations of ocean disposal sites under the MPRSA because the courts have exempted the EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. The EPA has, by policy, determined that the

preparation of NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. The EPA's "Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents," (Voluntary NEPA Policy), 63 FR 58045, (October 29, 1998), sets out both the policy and procedures the EPA uses when preparing such environmental review documents. The EPA's primary voluntary NEPA document for expanding the ODMDS is the *Final Environmental Impact Statement for Designation of an Ocean Dredged Material Disposal Site Offshore Jacksonville, Florida, [October 2014]* (FEIS), prepared by the EPA in cooperation with the USACE. On October 17, 2014, the Notice of Availability (NOA) of the FEIS for public review and comment was published in the Federal Register (79 FR 62436 [October 17, 2014]). Anyone desiring a copy of the FEIS may obtain one from the addresses given above. The public comment period on the FEIS closed on November 17, 2014. The FEIS and its Appendices, which are part of the docket for this action, provide the threshold environmental review for expansion of the ODMDS. The information from the FEIS is used above, in the discussion of the ocean dumping criteria.

The EPA received five comment letters on the FEIS. There were two main concerns expressed in those letters: 1) potential movement of disposed material impacting areas such as habitat, fisheries and sand borrow areas; and 2) effects on nearby recently designated loggerhead critical habitat. No objections to the ODMDS expansion were received. The proposed expanded ODMDS was sited to minimize impacts to shrimping grounds, habitat and sand borrow areas to the extent possible. The EPA and USACE have conducted computer modeling and field monitoring to evaluate sediment transport. The SMMP developed for the proposed expanded ODMDS outlines how the proposed expanded ODMDS will be monitored and managed to minimize impacts outside the boundaries of the proposed expanded ODMDS. This includes

buffer zones, monitoring for sediment transport and deposition offsite and staged site use to avoid conflict with sand borrow activities. Regarding critical habitat for loggerhead sea turtles, the National Marine Fisheries Service issued the final rule on July 10, 2014 to designate critical habitat for the Northwest Atlantic Ocean Distinct Population Segment (DPS) of the loggerhead sea turtle (*Caretta caretta*) within the Atlantic Ocean and the Gulf of Mexico regarding critical habitat for loggerhead sea turtle in the Northwest Atlantic Ocean and Gulf of Mexico. Nearshore reproductive habitat is located within the vicinity of the proposed expanded ODMDS along parts of Duval and St. Johns counties extending from the mean high water mark to 1.6 km offshore. The analysis of endangered and threatened species and associated critical habitat presented in the FEIS did not include this habitat. The EPA has conducted a supplementary analysis of the loggerhead critical habitat and concluded that the action is not likely to adversely affect the loggerhead sea turtle or its critical habitat.

The proposed action discussed in the FEIS is the permanent designation of an expanded ODMDS offshore Jacksonville, Florida. The purpose of the proposed action is to provide an environmentally acceptable option for the ocean disposal of dredged material. The need for the expanded ODMDS is based on a demonstrated USACE need for ocean disposal of dredged material from the Jacksonville Harbor Navigation Project, Naval Station Mayport, and the proposed Jacksonville Harbor Deepening Project. The need for ocean disposal for these and other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the USACE process of issuing permits for ocean disposal for private/federal actions and a public review process for its own actions. This will include an evaluation of disposal alternatives.

For the proposed expanded ODMDS, the USACE and the EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria set forth in the Ocean Dumping Regulations (40 CFR 220-229) and the USACE regulations (33 CFR 209.120 and 335-338). The USACE issues Marine Protection, Research, and Sanctuaries Act (MPRSA) permits to applicants for the transport of dredged material intended for disposal after compliance with regulations is determined. The EPA has the right to disapprove any ocean disposal project if, in its judgment, all provisions of MPRSA and the associated implementing regulations have not been met.

The FEIS discusses the need for the proposed expanded ODMDS and examines ocean disposal site alternatives to the proposed actions. The need for expanding the current ODMDS is based on observed excessive mounding at the existing ODMDS, future capacity modeling, historical dredging volumes, estimated dredging volumes for proposed projects, and limited capacity of upland CDFs in the area. Non-ocean disposal options have been examined in the FEIS based on information provided by the USACE in the Dredged Material Management Plans for Jacksonville Harbor. There is sufficient capacity at CDFs for continued maintenance of the Jacksonville Harbor Cuts 14 through 42 for the next 20 years and nearshore placement is the preferred disposal alternative for beach-compatible material from Cuts 3 through 13. However, capacity at the CDFs is limited and may not be a viable alternative in the long term (greater than 20 years) and nearshore placement alternatives are limited to beach-quality sand and the expected quantity of beach quality sand can be minimal. Furthermore, neither of these alternatives provides capacity for disposal of material from Naval Station Mayport or the proposed Jacksonville Harbor Deepening Project.

The following ocean disposal alternatives were evaluated in the FEIS:

1. Alternative 2: South of the Jacksonville ODMDS

Alternative 2 is the designation of a new ODMDS approximately 1 nmi south of the southernmost boundary of the existing Jacksonville ODMDS. Alternative 2 had more potential impacts to sand borrow areas and was not preferred by shrimp fishing industry.

2. Alternative 3: North of the Jacksonville ODMDS

Alternative 3 is the designation of a new ODMDS approximately 6 nmi north of the northernmost boundary of the existing Jacksonville ODMDS. Alternative 3 is located in an area frequently fished by the shrimping industry. Additionally, it is in an area that historically has had a high number of recorded North Atlantic right whale visits compared to south of the St. Johns River.

3. Alternative sites beyond the continental shelf

Alternative sites beyond the continental shelf would be more than 60 nmi from the mouth of the St. Johns River, a distance beyond the point at which dredged material disposal is considered economically and operationally feasible. This limitation to a 5 to 10 nmi radius reflects the economic constraints on dredging and disposal operations for the Jacksonville Harbor area, particularly as they relate to increasing fuel costs, which could be as much as seven times higher if a site off the continental shelf were selected. Regular monitoring of the site, as required by the SMMP, would also be more difficult logistically and more costly than a site located beyond the continental shelf. Based on these factors, the option of using off shelf sites for disposal of dredged material was eliminated from detailed consideration.

4. No Action Alternative

The No-Action Alternative means that the EPA would not designate a new or expand the existing Jacksonville ODMDS. Dredged material that would normally have gone to the Jacksonville ODMDS may have to go to the Fernandina Beach ODMDS once the Jacksonville

ODMDS reaches capacity. There are several concerns associated with using the Fernandina Beach ODMDS for disposal of dredged material from the Jacksonville Harbor area, including: 1) adverse impacts to dredging projects from the Fernandina Beach, Florida area due to reduced capacity at the Fernandina Beach ODMDS; 2) increased costs associated with additional fuel consumption; 3) increased air emissions associated; and 4) increased risk of vessel strikes with the North Atlantic right whale. The No Action Alternative does not meet the proposed action's purpose and need. However, it was evaluated in the FEIS as a basis to compare the effects of the other alternatives considered.

5. Preferred Alternative: Expansion of the Existing Jacksonville ODMDS

The preferred alternative is the proposed expansion of the existing Jacksonville ODMDS. Under this alternative, an additional 3.56 nmi^2 area would be added adjacent to the south and east of the existing Jacksonville ODMDS. The eastern portion of the proposed expanded ODMDS contains approximately 3.5 acres of rubble from what is believed to be historic dredged material disposal. Disposal operations will be managed so that only rock disposal occurs in this area to enhance any potential habitat features. The eastern edge of proposed expanded ODMDS is approximately 1 nmi west of the Duval County Sand borrow area and does not overlap with any potential future sand band areas. It is approximately 1 nmi east of primary shrimp trawling areas and is in an area less frequented by the North Atlantic right whale. Furthermore, from an operations and site management standpoint, it is advantageous to have a single expanded ODMDS rather than the existing ODMDS and a new ODMDS as it can be managed as a single entity and will provide additional disposal capacity in areas that would otherwise be used as buffer zones. Therefore, expansion of the existing Jacksonville ODMDS has been selected as the preferred alternative in the FEIS.

The FEIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation use and is based on a series of disposal site environmental studies. The environmental studies and final designation are being conducted in accordance with the requirements of MPRSA, the Ocean Dumping Regulations, and other applicable Federal environmental legislation. The site coordinates have been adjusted slightly from those presented in the FEIS to align site corners with lines of longitude and latitude. Differences differ by no more than 100 feet and do not affect the conclusions and information presented in the FEIS.

b. *MSA*

The EPA prepared an essential fish habitat (EFH) assessment pursuant to Section 305(b), 16 U.S.C. 1855(b)(2), of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d, and submitted that assessment to the National Marine Fisheries Service (NMFS) on May 11, 2012. The NMFS provided EFH Conservation Recommendations and a request for additional information on July 11, 2012. The EPA prepared an interim response with the requested additional information on August 2, 2012 and a revised EFH Assessment for the preferred alternative on October 6, 2014. In a letter dated January 5, 2015, NMFS determined that the EPA and the USACE have provided the substantive justification required by 50 CFR 600.920(k) for not following EFH conservation recommendations.

c. *CZMA*

Pursuant to an Office of Water policy memorandum dated October 23, 1989, the EPA has evaluated the proposed site designations for consistency with the State of Florida's (the State) approved coastal management program. The EPA has determined that the designation of the proposed site is consistent to the maximum extent practicable with the State coastal management program, and submitted this determination to the State for review in accordance with the EPA

policy. The State concurred with this determination on November 17, 2014. In addition, as part of the NEPA process, the EPA has consulted with the State regarding the effects of the dumping at the proposed site on the State's coastal zone. The EPA has taken the State's comments into account in preparing the FEIS for the site, in determining whether the proposed site should be designated, and in determining whether restrictions or limitations should be placed on the use of the site, if they are designated. The EPA modified Alternative 1 to address the State's concern regarding potential impacts to hard bottom benthic habitat and has incorporated management and monitoring requirements into the SMMP to ensure that disposed dredged materials do not negatively affect important benthic resources and sand borrow areas located outside of the designated ODMDS boundaries. Furthermore, at the request of the State, the EPA has conducted an evaluation of recently designated critical habitat for the loggerhead sea turtle.

d. *ESA*

The Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with NMFS and the U.S. Fish and Wildlife Service (USFWS) to ensure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of any critical habitat. The EPA prepared a Biological Assessment (BA) to assess the potential effects of expanding the Jacksonville ODMDS on aquatic and wildlife species and submitted that BA to the NMFS and USFWS on October 6, 2014. A supplement to the BA addressing loggerhead critical habitat was submitted on January 15, 2015. The EPA concluded that its action may affect, but is not likely to adversely affect 10 ESA-listed species and is not likely to adversely affect designated critical habitat for the North Atlantic right whale or the loggerhead sea turtle. The USFWS concurred on the EPA's finding that the proposed

action is not likely to adversely affect listed endangered or threatened species under the jurisdiction of the USFWS. The EPA will not take final action on the proposed site until consultation with NMFS under the ESA is complete.

e. *NHPA*

The USACE and the EPA initiated consultation with the State of Florida's Historic Preservation Officer (SHPO) on November 24, 2010, to address the National Historic Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a-2, which requires Federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register of Historic Places (NRHP). A submerged cultural resource survey of the area including the use of magnetometer, side scan sonar, and sub-bottom profiler was conducted in 2011. A follow-up archaeological diver investigation was conducted in 2012. No historic properties were found within the proposed expanded ODMDS boundaries and SHPO concurred with the determination that designated the expanded ODMDS would have no effect on cultural resource listed, or eligible for listing on the NRHP.

IV. Statutory and Executive Order Reviews

This rule proposes the designation of an expanded ODMDS pursuant to Section 102 of the MPRSA. This proposed action complies with applicable executive orders and statutory provisions as follows:

a. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

b. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This proposed site designation, does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

c. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA determined that this proposed action will not have a significant economic impact on small entities because the proposed rule will only have the effect of regulating the location of site to be used for the disposal of dredged material in

ocean waters. After considering the economic impacts of this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

d. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

e. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It does 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 various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicited comments on this proposed action from State and local officials.

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

This proposed action does not have tribal implications, as specified in Executive Order 13175 because the expansion of the Jacksonville ODMDS will not have a direct effect on Indian Tribes, on the relationship between the federal government and Indian Tribes, or on the distribution of

power and responsibilities between the federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action. Although Executive Order 13175 does not apply to this proposed action the EPA consulted with tribal officials in the development of this action, particularly as the action relates to potential impacts to historic or cultural resources. The EPA specifically solicits additional comments on this proposed action from tribal officials.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5-501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The proposed action concerns the expansion of the Jacksonville ODMDS and only has the effect of providing a designated location for ocean disposal of dredged material pursuant to Section 102 (c) of the MPRSA. However, we welcome comments on this proposed action related to this Executive Order.

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

This proposed action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355) because it is not a "significant regulatory action" as defined under Executive Order 12866. However, we welcome comments on this proposed action related to this Executive Order.

i. National Technology Transfer and 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), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed action includes environmental monitoring and measurement as described in EPA's proposed SMMP. The EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the designated ODMDS. The Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the proposed SMMP. The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this proposed action.

j. 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. The 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. The EPA has assessed the overall protectiveness of expanding the Jacksonville ODMDS 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. We welcome comments on this proposed action related to this Executive Order.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: February 11, 2015.

V. Anne Heard,

Acting Regional Administrator, Region 4.

For the reasons set out in the preamble, The EPA proposes to amend chapter I, title 40 of the Code of Federal Register 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 revising paragraphs (h)(9)(i) through (iii) and (vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(9) * * *

(i) *Location:* 30° 21.514’ N, 81° 18.555’ W.

30° 21.514’ N, 81° 17.422’ W.

30° 20.515’ N, 81° 17.422’ W.

30° 20.515’ N, 81° 17.012’ W.

30° 17.829’ N, 81° 17.012’ W.

30° 17.829’ N, 81° 18.555’ W.

(ii) *Size:* Approximately 3.68 nautical miles long and 1.34 nautical miles wide (4.56 square nautical miles); 3,861 acres (1,562 hectares).

(iii) *Depth:* Ranges from approximately 28 to 61 feet (9 to 19 meters).

* * * * *

(vi) *Restrictions:* (A) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13;

(B) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(C) Monitoring, as specified in the SMMP, is required.

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[FR Doc. 2015-05232 Filed: 3/10/2015 08:45 am; Publication Date: 3/11/2015]