6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA-R04-OW-2014-0372; FRL-9934-57-Region 4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and technical amendment.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing 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 EPA decided to finalize the expansion of the site because the site expansion is needed 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 or entities who have received a permit for such disposal. The newly expanded site will be subject to ongoing monitoring and management to ensure continued protection of the marine environment. In addition to the designation, the EPA now issues a technical amendment to correct a clerical error in the proposed rule.

DATES: The effective date of this final action shall be **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

ADDRESSES: *Docket*: All documents in the Docket are listed in the www.regulations.gov index. Although listed in the index, some information may not be publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available or in hard copy at the EPA Region 4 Office, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The file will be made available for public inspection in the Region 4 library between the hours of 9:00 am and 4:30 pm weekdays. Contact the person listed in the "FOR FURTHER INFORMATION CONTACT" paragraph below to make an appointment. If possible, please make your 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.

FOR FURTHER INFORMATION CONTACT: Jennifer Derby, 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) 562-9401; e-mail: derby.jennifer@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 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 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 expanded ocean dredged material disposal site is bounded by the coordinates, listed below, and shown in Figure 1. The 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 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 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.

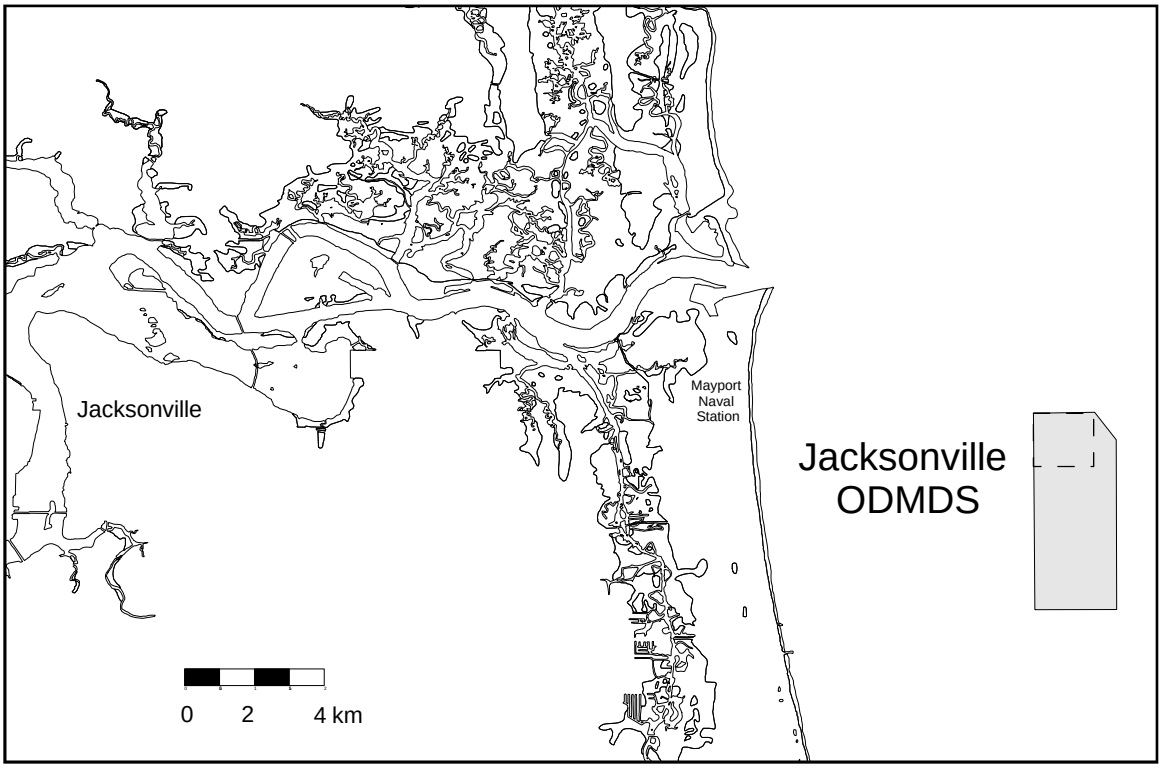

Figure 1. Expanded Jacksonville ODMDS

c. Response to Comments Received

On March 11, 2015, the EPA published a proposed rule to expand the site and opened a public comment period under Docket ID No. EPA-R04-OW-2014-0372. The comment period closed on April 10, 2015. The EPA received six comments on the proposed rule. One comment was from the U.S. Department of the Interior stating they have no comments at this time. One

commenter was in support of the expansion as it would protect wildlife by having a specific location for disposal of dredged materials.

Two commenters raised concerns regarding impacts to endangered species and critical habitat including whales. Although located within the North Atlantic right whale critical habitat, disposal vessel speed and operation will be restricted as necessary in order to protect North Atlantic right whales as set forth in: (1) the Site Management and Monitoring Plan (SMMP) for the expanded ODMDS developed by the EPA in coordination with the USACE; and (2) an Endangered Species Act (ESA) Biological Assessment completed by the EPA. In a letter to the EPA from the National Marine Fisheries Service (NMFS) dated August 3, 2015, NMFS concluded that because all potential project effects to listed species and critical habitat were found to be discountable, insignificant, or beneficial, that the ODMDS expansion is not likely to adversely affect listed species under NMFS purview including the North Atlantic right whale. Additional discussion of compliance with the ESA is provided in section III.d of this final rule labeled "ESA." The SMMP, the ESA Biological Assessment and the letter from NMFS dated August 3, 2015, are included in the Docket for this action.

Finally, two commenters raised concerns about the overall impacts of disposal of sediments on the ecosystem, fisheries and reefs and that additional measures should be instituted to reduce the amount of waste that needs to be disposed in the ocean. The location of the expanded ODMDS was selected to minimize impacts to the shrimp fishery in the area and to minimize impacts to hard bottom communities in the vicinity of the ODMDS. In response to these commenters, the EPA reviewed the SMMP for the expanded ODMDS to ensure that controls are in place both to prevent negative effects and to correct impacts from negative effects in the unlikely event such effects occurred. The final SMMP, found in the Docket for this action,

includes safeguards to act to prevent negative effects, primarily through ensuring that only material meeting ocean dumping criteria for ocean disposal are allowed to be disposed at the expanded ODMDS. The EPA can respond to negative impacts, including, for example, having ODMDS users adjust disposal amounts, techniques, and timing, and the EPA can shut down the ODMDS on a short term or long term basis if needed, if negative effects are observed or if trends suggest negative impacts could occur. The EPA has authority to condition, terminate, or restrict ODMDS use with cause. Regarding the amount of dredged material needed to be disposed in the ocean, the USACE, rather than the EPA determines the location and amount of dredging necessary to maintain the waterways of the U.S. The EPA determines, with the USACE's input, how best to dispose of material that must be disposed of in the ocean. Part of that analysis includes a balancing community and ocean user needs. The EPA finds this ODMDS expansion to be the best balance of those needs at this time. The EPA will continue to evaluate these local community concerns and will use the SMMP to make adjustments as needed to the extent practicable, to help ensure the needs of the users are balanced against the concerns of the local community.

d. Management and monitoring of the ODMDS

The 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 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 expanded ODMDS. The SMMP, which was available for public comment as a draft document, has been finalized and the final document may be found in the Docket.

e. 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] (FEIS),* provides an extensive evaluation of the criteria and other related factors for the expansion of the ODMDS. The FEIS may be found in the Docket.

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 ODMDS is not expected to change these conditions. The expanded ODMDS avoids any identified major fisheries, natural and artificial reefs, and areas of recreational use. The expanded ODMDS is approximately 1 nmi east of the areas identified by

commercial shrimpers as important shrimp trawling areas. The expanded ODMDS minimizes interference with shellfisheries by avoiding areas frequently used by commercial shrimpers. The 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 ODMDS management objectives, including minimizing interference with other uses of the ocean. Should an ODMDS use conflict be identified, ODMDS 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 expanded ODMDS. The expanded 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 expanded ODMDS allows and facilitates 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, is the USACE 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 expanded ODMDS is 4.56 nmi^2 in size inclusive of the existing Jacksonville ODMDS and therefore meets the long-term disposal needs of the area.

A site management and monitoring program will be implemented to determine if disposal at the ODMDS 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 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 location for the expanded ODMDS. The substrate of the 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 expanded ODMDS, including the depth, bottom topography and distance from the coastline, will unreasonably degrade the marine environment. The 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 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 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 expanded ODMDS is not expected to move from the 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 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 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 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 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 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 ODMDS 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 expanded

ODMDS. The ODMDS 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 expanded ODMDS. No material defined as "waste" under the MPRSA will be allowed to be disposed at the ODMDS. The dredged material to be disposed at the 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 expanded ODMDS to be feasible and readily performed from ocean or regional class research vessels. The 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 ODMDS for physical, biological and chemical attributes as well as for potential impacts beyond the ODMDS 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 ODMDS. Water column chemistry in past studies at the ODMDS 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 ODMDS versus outside the

ODMDS. 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 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 expanded ODMDS. The 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 expanded ODMDS. The northern portion of the 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 expanded ODMDS includes areas used for commercial shrimp trawling. The expanded ODMDS will be managed such that rock will be disposed in the eastern portion of the 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 expanded ODMDS. The expanded ODMDS will be managed to avoid impacts to these areas. Only rock and sand will be disposed in the eastern portions of the expanded ODMDS providing a buffer between the disposal of silts and clays and the potential borrow areas. The nearest potential borrow area is adjacent to the southern half of the expanded ODMDS. This borrow area is expected to be exhausted prior to use of the southern portion of the 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 expanded ODMDS at this time. The 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 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 expanded ODMDS. Material expected to be disposed at the expanded ODMDS will be rock, sand, silt and clay similar to the sediment present at the expanded ODMDS. Finer-grained material could have the potential to attract different species to the 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 current and wave energy transports the finer-grained sediments away, the normal equilibrium benthic community will re-establish itself. The 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 expanded ODMDS at this time. Archaeological surveys of the 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 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 expanded ODMDS or its immediate vicinity.

f. Technical amendment

The EPA corrected a clerical error that was included in the proposed language in 40 CFR 228.15(h)(9)(vi). As indicated in the preamble to the proposed rule, only dredged material from the Jacksonville, Florida area may be disposed in the ODMDS. This restriction was the only restriction specifically stated in the regulation prior to this rulemaking. The language in the proposed rule added three new restrictions to 40 CFR 228.15(h)(9)(vi) but due to a clerical error did not include the existing restriction. The final rule language reflects all four restrictions for disposal of dredged material into the ODMDS.

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.

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 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 ODMDS 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 ODMDS on the State's coastal zone. The EPA has taken the State's comments into account in preparing the FEIS for the ODMDS, in determining whether the ODMDS should be designated, and in determining whether restrictions or limitations should be placed on the use of the ODMDS, 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 action is not likely to adversely affect listed endangered or threatened species under the jurisdiction of the USFWS.

The informal consultation process with NMFS was concluded on August 3, 2015. NMFS concluded that dredged disposal activities at the Jacksonville ODMDS are not likely to adversely affect sea turtles, sturgeon, or whales. The Jacksonville ODMDS is located within Unit 2 of the proposed modifications to the designated critical habitat for the North Atlantic right whale. North Atlantic right whales are observed calving off the southeastern U.S. coast, in an area designated as Unit 2 of the proposed critical habitat. The essential features of right whale calving habitat are calm sea surface conditions, sea surface temperature, and depth. The NMFS concluded that neither the dredging, related vessel operations, nor the disposal of dredged material will significantly impact water depth, sea surface conditions, or the temperature of the ocean. While the ODMDS will decrease water depths, the elevated sea bottom will not impede whales in any way. Water depths will still be sufficient for the animals to move freely throughout the habitat. Furthermore, the likelihood of interaction which may impact the distribution of right whale calf/cow pairs is further reduced by the precautions stipulated for vessel avoidance. These

precautions are required as part of the SMMP and restrict disposal vessel speed and operation in accordance with the most recent USACE South Atlantic Division Endangered Species Act Section 7 Consultation Regional Biological Opinion for Dredging of Channels and Borrow Areas in the Southeastern United States (SARBO), or other relevant Biological Opinion for specific projects not included in the SARBO to capture requirements for projects not covered by the SARBO. Because all potential project effects to listed species and critical habitat were found to be discountable, insignificant, or beneficial, NMFS concluded that the action is not likely to adversely affect listed species under their purview.

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 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 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 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 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 action will not have a significant economic impact on small entities because the 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 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 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 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 action from State and local officials.

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

This 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 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 solicited comment from tribal officials. The EPA did not receive comments 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 action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The 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.

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

This 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.

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 action includes environmental monitoring and measurement as described in EPA's 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 SMMP.

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 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 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: September 28, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

For the reasons set out in the preamble, the EPA amends chapter I, 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 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 from the Jacksonville, Florida, area;

(B) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13;

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

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

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