

V. Request for Comments

The Copyright Office is publishing the proposed new fees and modification of the refund policy in order to provide the public with an opportunity to comment on the proposed adjustments. The Office anticipates implementation of the new fee schedule by April 1, 2009.

Dated: October 8, 2008.

Marybeth Peters,

Register of Copyrights.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA-R10-OW-2008-0745; FRL-8728-6]

Ocean Dumping; Designation of Ocean Dredged Material Disposal Site Offshore of the Rogue River, OR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is withdrawing an earlier proposal to designate an ocean dredged material disposal site near the mouth of the Rogue River, Oregon, and is re-proposing to designate an ocean dredged material disposal site located offshore of the Rogue River, Oregon. EPA's proposed rule was published at 56 FR 47173 (September 18, 1991). Changes since that time to the ocean dumping program, including changes to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445, give rise to EPA's decision to re-propose the site designation to take into account the statutory changes since the original proposal and to incorporate new data about the site. The new site is needed primarily to serve the long-term need for a location to dispose of material dredged from the Rogue River navigation channel, and will also serve to provide a location for the disposal of dredged material for persons who have received a permit for such disposal. The newly designated site will be subject to ongoing monitoring and management to ensure continued protection of the marine environment.

DATES: Comments on this proposed rule must be received by November 13, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OW-2008-0745 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:*

Freedman.Jonathan@epa.gov.

- *Mail:* Jonathan Freedman, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA-183), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

Instructions: Direct your comments to Docket ID No. EPA-R10-OW-2008-0745. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through the Web site, <http://www.regulations.gov>, or through e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through the Web site, <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index.

Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy during normal business hours at the U.S. Environmental Protection Agency, Region 10, Library, 10th Floor, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. For access to the documents at the Region 10 Library, contact the Region 10 Library Reference Desk at (206) 553-1289, between the hours of 9 a.m. to 11:30 a.m., and between the hours of 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, for an appointment.

FOR FURTHER INFORMATION CONTACT:

Jonathan Freedman, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA-183), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, *phone number:* (206) 553-0266, *e-mail:* freedman.jonathan@epa.gov, or contact Jessica Winkler, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs (ETPA-183), Aquatic Resources Unit, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101, *phone number:* (206) 553-7369, *e-mail:* winkler.jessica@epa.gov.

SUPPLEMENTARY INFORMATION:

1. Potentially Affected Persons

Persons potentially affected by this proposed action include those who seek or might seek permits or approval by EPA 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. EPA's action would be relevant to persons, including organizations and government bodies, seeking to dispose of dredged material in ocean waters offshore of the Rogue River, Oregon. Currently, the U.S. Army Corps of Engineers (Corps) would be most impacted by this proposed action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government	U.S. Army Corps of Engineers Civil Works Projects, and other Federal Agencies.
Industry and General Public	Port Authorities, Marinas and Harbors, Shipyards and Marine Repair Facilities, Berth Owners.

Category	Examples of potentially regulated persons
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.

2. Background

a. History of Disposal Site Offshore of the Rogue River, Oregon

The proposed Rogue River ocean dredged material disposal site, or areas in the same vicinity, have been used by the Corps since approximately 1962. When the MPRSA was enacted, the site became an “interim” site under the ocean dumping regulations, a status superseded by later statutory changes to the MPRSA. The site currently exists as a site selected by the Corps under Section 103 of the MPRSA. EPA concurred on the selection of the site and, in 2003, approved the Corps’ request to continue to use the site

through the end of the 2008 dredging season. Site designation, pursuant to Section 102 of the MPRSA, is necessary for any use of the site to continue after 2008.

From 1986 through 2006, over 1.1 million cubic yards (cy) of dredged material were placed at the Rogue River site. A uniform placement strategy, rather than point dumping, has been applied to the disposal of material at the site and regular bathymetric surveys have shown that persistent mounding has not occurred within the site or in the vicinity of the site. Site capacity appears to be virtually unlimited. Data collected at the site and modeling indicate that material disposed at the site redistributes out of the site and is presumed to feed the littoral cell. Consequently, the site is a sound candidate location to propose for designation pursuant to Section 102 of the MPRSA.

b. Location and Configuration of Proposed Rogue River Ocean Dredged Material Disposal Site

Today, EPA withdraws the rule the Agency proposed on September 18, 1991, at 56 FR 47173 to designate a Rogue River site, and simultaneously proposes to designate the Rogue River ocean dredged material site at the coordinates listed below. The figure below shows the Rogue River ocean dredged material disposal site (Rogue River ODMDS or Site) EPA proposes to designate today. This configuration is expected to allow dredged material disposed in shallower portions of the site to naturally disperse into the littoral zone without creating mounding conditions that could contribute to adverse impacts to navigation. The proposed configuration will allow EPA to ensure that disposal of dredged material into the Site will be managed so that as much material as possible is retained in the active littoral drift area to augment shoreline building processes.

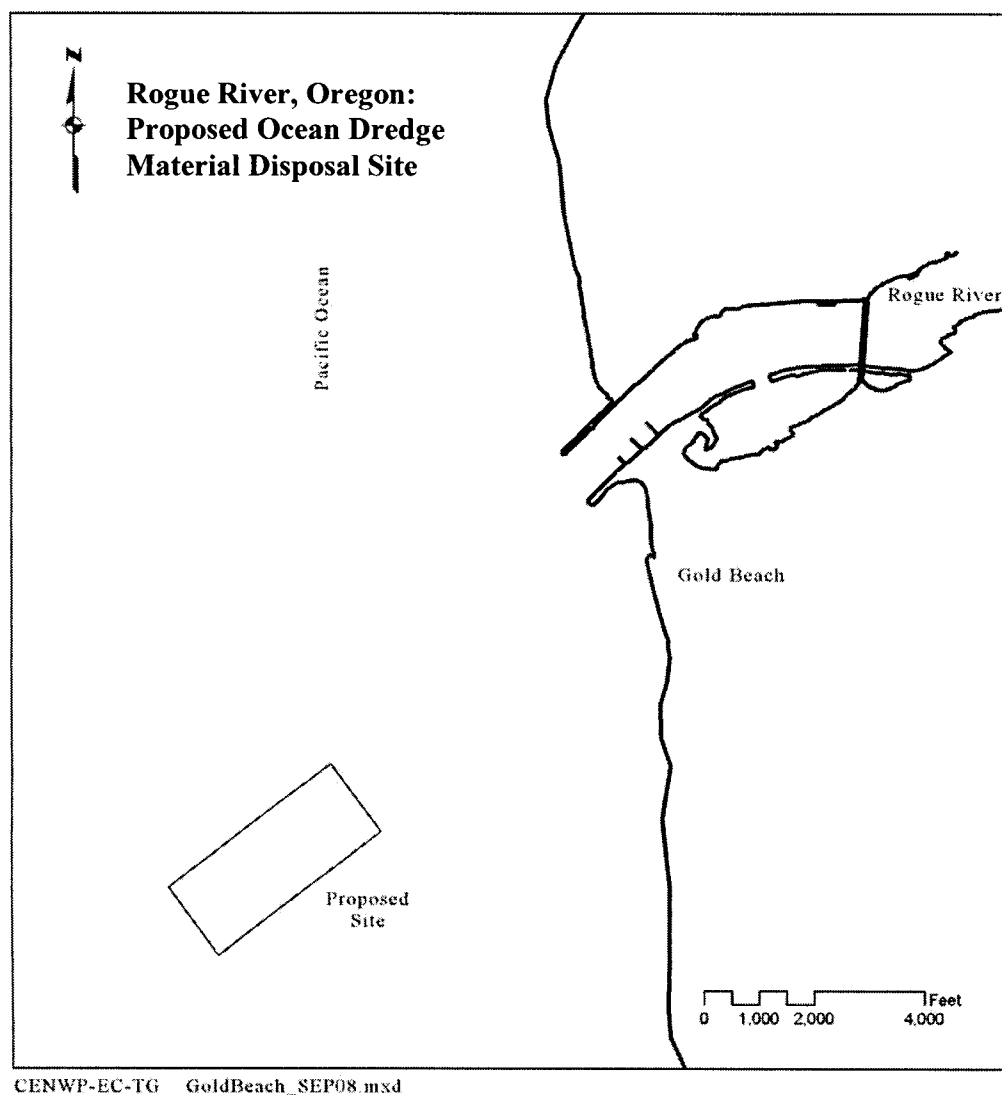


Figure 1 is a diagram of the Proposed Section 102 site.

The coordinates for the Rogue River ODMDS, as proposed today, are, in North American Datum 83 (NAD 83):

42°24'15.40" N	124°26'52.39" W
42°24'03.40" N	124°26'39.39" W
42°23'39.40" N	124°27'17.40" W
42°23'51.40" N	124°27'30.40" W

The Site is expected to occupy approximately 116 acres. The Site's dimensions, as proposed, are: 1,400-foot wide by 3,600-foot long, with Site depth ranging from approximately 50 to 90 feet. The Site generally lies on bottom contours sloping at a rate of 8/1000 feet to the west-southwest. The disposal area, placement area, and drop zone are identical. Limited onshore transport of material disposed of at the proposed Site is not expected because of the nature of the prevailing currents and wave transport in the vicinity of the Site. Net predicted material transport at

the proposed Site is southward in the summer months and northward during the remainder of the year. These transport mechanisms are expected to move material into the active littoral drift area.

c. Management and Monitoring of the Proposed Site

The proposed Rogue River ODMDS is expected to receive sediments dredged by the Corps to maintain the federally authorized navigation project at the Rogue River, Oregon and dredged material from other persons who have obtained a permit for the disposal of dredged material at the Site. The ocean dumping regulations do not require a modification of any existing permits. All persons using the Site are required to follow the Site Management and Monitoring Plan (SMMP) for the Rogue River ODMDS. The SMMP is available

as a draft document for review and comment by the public as of today's action proposing the Rogue River ODMDS designation. The draft SMMP includes management and monitoring requirements to ensure that dredged materials disposed at the Site are suitable for disposal and addresses the timing of disposal events to minimize interference with other uses of ocean waters in the vicinity of the proposed Site.

d. MPRSA Criteria

In proposing to designate the Rogue River ODMDS, EPA assessed the proposed action against the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR Part 228, to determine if the proposed site designation satisfies those criteria.

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)).

EPA's assessment of information available at the time of this proposed rule included a review of the potential for interference with navigation, recreation, shellfisheries, aquatic resources, commercial fisheries, protected geologic features, and cultural and/or historically significant areas. While limited overlap was found to exist between disposal operations and salmon fishing, no observable conflicts were identified. No evidence was found to suggest that the proposed Site would cause interference with fisheries or with navigation in the Rogue River navigation channel. The proposed Site has been used over the past decades for dredged material disposal, most recently pursuant to Section 103 of the MPRSA as a site selected by the Corps, with EPA's concurrence. Mariners in this area are accustomed to Site use.

(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)).

Dredged material found suitable for disposal into ocean waters, as characterized by chemical and biological testing or as evaluated according to 40 CFR 227.13, will be the only material allowed to be disposed of at the proposed Site. Modeling work performed by the Corps demonstrates that water column turbidity would dissipate for an anticipated 97% of the coarser material within a few minutes of disposal, while the remaining 3% of the material, which would be classified as fine-grained, would dissipate within a half hour. Therefore, based on modeling, monitoring data, and history of use, no contaminant or water quality effects would be expected to reach any beach, shoreline, or other area outside of the proposed Site. Over time, some of the suitable disposed material would be expected to migrate into the littoral system, and potentially to coastal shorelines.

(3) If Site designation studies show that any interim disposal sites do not meet the site selection criteria, use of

such sites shall be terminated as soon as any alternate site can be designated (40 CFR 228.5(c)).

There are no interim disposal sites near the proposed Rogue River Site as defined under the Ocean Dumping regulations. The designation of the proposed Site is necessary because no location for the disposal of dredged material will exist in the vicinity of the proposed Site after the end of the 2008 dredge season.

(4) 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)).

EPA sized the proposed Site to meet this criterion. The proposed Site tends to be moderately dispersive in the near-shore area and tends to be less dispersive farther from shore. The overall stability of the Site, as indicated by the lack of adverse mounding, is a significant component of the justification for the size of the Site. Data collected by the Corps through bathymetric monitoring show the spread and movement of material after placement. The data establish that material from the Site eventually disperses over the footprint of the site with seasonal movement into the littoral system. Effective monitoring of the proposed Site is anticipated based on past practice and current ability to monitor the location and conduct surveillance.

(5) 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)).

The proposed Site would be located where historic disposal has occurred with only minimal impact to the environment, and to other uses and amenities. Locations off the continental shelf in the Pacific ocean as a general rule are inhabited by stable benthic and pelagic ecosystems on steeper gradients that are not well adapted to frequent disturbance events such as would occur if disposal of dredged material took place. Monitoring and surveillance of a site located beyond the edge of the continental shelf would be challenging and would present safety concerns for crew transporting the material to be disposed. In addition, dredged material disposed at a location beyond the continental shelf would not be available to the littoral system. The loss of material would potentially have a

negative impact the mass balance of the system with a resulting negative impact on erosion/accretion patterns along this limited area of coastline near the Rogue River.

Specific Criteria (40 CFR 228.6)

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

Based on the data available at the time of this proposal, the geographical position, including the depth of the proposed Site, bottom topography, and distance from the coastline in the vicinity of the proposed Site, indicate that designation of the proposed Site will not cause adverse effects to the marine environment. Based on EPA's understanding of currents at the proposed Site and their influence on the movement of material in the area, there is a high likelihood that much of the material disposed at the Site will be transported to the littoral system. This movement is expected to allow for long-term disposal without creation of adverse mounding conditions.

(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 Site is not located in exclusive breeding, spawning, nursery or feeding areas for adult or juvenile phases of living resources. Many nearshore pelagic organisms occur in the water column over the proposed Site but these organisms are found off most of the Pacific coast and are not unique to the proposed Site. Benthic fauna common to nearshore, sandy, wave-influenced regions that exist along the Pacific coast that are found at the proposed Site are generally well-suited to survive in this dynamic environment and have been found to adapt well to natural and human perturbations. Benthic communities are expected to rapidly recolonize in the event of burying after disposal. Near the proposed Site, a variety of pelagic and demersal fish species, as well as shellfish, are found. Anadromous salmonids are found at all seasons in the nearshore area off the mouth of the Rogue River. Seals and sea lions also inhabit the lower Rogue River and coastal area. Nesting areas offshore of the Rogue River entrance channel support a variety of avian species. Whales and sea turtles are present seasonally offshore of the coastline in this area, but are generally observed further offshore than the proposed site. No unique breeding, spawning, nursery, feeding, or passage habitat is located within the proposed Site or within its

immediate vicinity. Based on modeling of the water column, which indicates that turbidity would be expected to dissipate fairly rapidly, any avoidance behavior by any species at the proposed Site would be short-term.

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

The proposed Site, although located in close proximity to the Rogue River navigation channel, is located a sufficient distance offshore to avoid adverse impacts to beaches and other amenity areas. The local beaches support tourism, and recreational and commercial fishing. Transportation of dredges or barges to and from the proposed Site to dispose of dredged material is expected to be coordinated so as to avoid disturbance of other activities near the Rogue River entrance channel. Dredged material disposed of at the proposed Site is expected to disperse into the littoral system, with a possible positive effect over time of reducing erosion of coastal beaches.

(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 disposal into ocean waters, as characterized by chemical and biological testing or as evaluated according to 40 CFR 227.13, will be the only material allowed to be disposed of at the proposed Site. No material defined as "waste" under the MPRSA will be allowed to be disposed of at the proposed Site. The dredged material expected to be disposed of at the Site will be predominantly marine sand, far removed from known sources of contamination. The physical and chemical analyses of material from the Rogue River Navigation Channel and boat basin indicated only two anomalies. The first is an elevated level of nickel relative to other river drainage basins along the Oregon coast. Since elevated nickel levels have been detected in Rogue River channel sediments historically, those levels are believed to reflect the ambient background for the Rogue River system. The second was an elevated level of phenol in one sample location. The sediments associated with the elevated phenol sample will not be dredged until further characterization can be completed and disposal of the material at the proposed Site will not take place unless and the material has been found to be suitable for unconfined ocean disposal.

With respect to proposed methods of releasing material at the proposed Site,

material will be released just below the surface from dredges while the dredges are under power and slowly transiting the proposed Site. This method of release is expected to spread material at the Site to minimize mounding and to minimize impacts to the benthic community and other species in the Site at the time of a disposal event.

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

Monitoring and surveillance at the proposed Site are expected to be feasible and easily performed from small surface research vessels. The proposed Site is accessible for bathymetric and side-scan sonar surveys. At a minimum, it is expected that annual bathymetric surveys will be conducted at the proposed Site to confirm that no unacceptable mounding is taking place within the Site or its immediate vicinity. Routine monitoring is expected to concentrate on examining how the distribution of material in the near-shore portions of the Site augment littoral processes and how distribution of material in the deeper portions of the Site avoid or minimize mounding.

(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)).

Dispersal, horizontal transport and vertical mixing characteristics of the area at and in the vicinity of the proposed Site are complex. In part, this complexity is a result of rocky reefs to the north of the proposed Site which appear to influence mass transport, and in part the complexity can be attributed to prevailing wave-induced motion and currents moving towards the north during much of the year. Wave-induced motion appears to cause near-constant mobilization of bottom sediment. The overall regional mass transport trend suggests that net littoral transport of material is to the north from the proposed Site. That overall littoral transport appears to be balanced by offshore transport from the mouth of the Rogue River to the north of the proposed Site such that there is shoreline accretion to the north and relative equilibrium of the shoreline to the south.

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

The approximate annual loading volume of dredged material placed at the proposed Site is expected to equal 54,000 cubic yards (cy) of material. This average was calculated by averaging seasonal material placement over disposal seasons from the time the site

became a selected site. EPA's evaluation of historical data and modeling conducted by the Corps concluded that past disposal operations have not resulted in unacceptable environmental degradation and future disposal of dredged material is not expected to result in unacceptable environmental degradation. Although mounding is a potential effect at any dredged material disposal site, bathymetric surveys at the Rogue River ODMDS have not shown persistent mounding over the 30 year site use history. Annual monitoring of the proposed Site will be required in the draft SMMP for the proposed Site. In the unlikely event mounding occurred, the draft SMMP includes requirements for managing the proposed Site to address mounding issues.

(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)).

Designation of the proposed Site is not expected to interfere with shipping, fishing, recreation or other legitimate uses of the ocean. Disposals at the new Site will be managed through the SMMP to minimize interference with other legitimate uses of the ocean through careful timing and staggering of disposals in the near-shore portion of the proposed Site. Commercial and recreational fishing and commercial navigation are the primary uses for which such timing will be needed. No plans for mineral extraction offshore of the Rogue River are planned or proposed for this area. Data indicates that magnetic anomalies suggestive of mineral placer offshore deposits were actually attributable to near-surface masses of bedrock. No desalination or energy projects are planned in the vicinity of the proposed Site. Fish and shellfish culture operations are not under consideration for the area. There are no known areas of scientific importance in the vicinity of the proposed Site.

(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)).

EPA has not identified any adverse water quality impacts from ocean disposal of dredged material as a result of disposal into the existing 103(b)-selected site at the Rogue River. The data collected for the 103(b)-selected site suggest that the pelagic and benthic communities, which are widespread in occurrence off the Oregon coast, are not expected to experience long-term impacts. The ability of this mobile sand community to rapidly recolonize

supports the conclusion that long-term adverse impacts will not occur from managed disposal of dredged material at the proposed Site.

(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 Site. Material expected to be disposed at the proposed Site will primarily be marine sands but some fine-grained material, finer than natural background, may also be disposed. While this finer-grained material could have the potential to attract nuisance species to the proposed Site, no such recruitment has occurred while the proposed Site has been used as a 103(b)-selected site. Evidence suggests that such fine grained material is quickly dispersed from the site. The draft SMMP includes specific biological monitoring requirements, which would act to identify any nuisance species, and management requirements, which would allow EPA to direct special studies and/or operational changes to address the issue.

(11) Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).

The proposed Site is located about two nautical miles south-southeast from the Rogue Reef complex, an ecologically unique feature among a system of neritic reefs off the Oregon coast. Material disposed at the proposed Site would be clean sand that is expected to settle to the seafloor quickly. Movement of the relatively small quantities of disposed sand into the reef area would be anticipated to occur, if at all, through naturally occurring littoral transport which would not be expected to adversely affect aquatic communities in the reef areas. No significant cultural features have been identified at, or in the vicinity of, the proposed Site. As discussed further below, EPA coordinated with Oregon's State Historic Preservation Officer and with Tribes in the vicinity of the proposed Site to identify any cultural features. None were identified. No shipwrecks were observed or documented within the proposed Site or its immediate vicinity. Notwithstanding heavy ship traffic supplying gold fields near this general area in the 1800s, side-scan sonar did not detect any shipwrecks and extensive review of shipwreck databases did not show any shipwrecks at, or near, the proposed Site.

e. 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)

(1) NEPA

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires that Federal agencies 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 EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. Under that doctrine, as EPA discussed most recently in the Agency final rule revising the NEPA regulations, the courts reasoned that actions under the MPRSA are functionally equivalent to the analysis required under NEPA because such actions are undertaken with full consideration of environmental impacts and with opportunities for public involvement. See 72 FR 53653, September 19, 2007. EPA has, by policy, determined that the preparation of non-EIS NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. 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 EPA uses when preparing such environmental review documents. EPA's 2007 revisions to 40 CFR Part 6 provided the framework EPA used to prepare the voluntary NEPA documents for this proposed action.

EPA's primary voluntary NEPA document for designating the proposed Site is the *Rogue River, Oregon Ocean Dredged Material Disposal Site Evaluation Study and Environmental Assessment, 2008* (EA), jointly prepared by EPA and the Corps. The EA and its Technical Appendices, which are part of the docket for today's proposed action, provide the threshold environmental review for the Site designation. The information from the EA is used extensively, above, in the discussion of the ocean dumping criteria. Because EPA's Voluntary NEPA Policy does not require the preparation of an EIS for this proposed action, the EA prepared for this Site designation is available for public comment and a final EA will be made available at the time of

final rulemaking. Persons interested in commenting on this issue should do so at this time. There may not be another opportunity to comment.

(2) MSA and MMPA

In the spring of 2008, EPA initiated consultation with the National Marine Fisheries Service (NMFS) concerning essential fish habitat and protected marine mammals. EPA prepared an essential fish habitat (EFH) assessment pursuant to Section 305(b), 16 U.S.C. 1855(b), of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d. NMFS is also reviewing EPA's EFH assessment and ESA Biological Assessment for purposes of the Marine Mammal Protection Act of 1972, as amended (MMPA), 16 U.S.C. 1361 to 1389. Consultation under both MMPA and MSA is still underway, but is expected to conclude before EPA takes any action to finalize today's proposed rule. Persons interested in commenting on this issue should do so at this time. There may not be another opportunity to comment.

(3) CZMA

EPA initiated consultation with the state of Oregon on coastal zone management issues in June and July of 2008. EPA prepared a consistency determination for the Oregon Ocean and Coastal Management Program (OCMP) to meet the requirements of the Coastal Zone Management Act, as amended, (CZMA), 16 U.S.C. 1451 to 1465, and will submit that determination formally to the Oregon Department of Land Conservation and Development (DLCD) for review.

(4) ESA

EPA initiated informal consultation with NMFS and the U.S. Fish and Wildlife Service on its action to designate the Rogue River ODMDS beginning in the spring of 2008. EPA prepared a Biological Assessment to assess the potential effects of the Site designation on aquatic and wildlife species to determine whether or not its action might adversely affect species listed as endangered or threatened and/or adversely modify or destroy their designated critical habitat. EPA found that its action would not be likely to adversely affect aquatic or wildlife species listed as endangered pursuant to the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, or the critical habitat of such species. EPA found that site designation does not have a direct impact on any of the identified ESA species but also found that indirect impacts associated with reasonably foreseeable future disposal

activities had to be considered. These indirect impacts included a short-term increase in suspended solids and turbidity in the water column when dredged material was disposed at the new Site and an accumulation of material on the ocean floor when material was disposed at the Site. EPA concluded that while its action may affect ESA-listed species, the action would not be likely to adversely affect ESA-listed species or critical habitat.

The U.S. Fish and Wildlife Service (USFWS) concurred with EPA's finding that EPA's action to designate the proposed Rogue River ODMDS would not likely adversely affect listed species or critical habitat. Consultation with the USFWS for this proposed action is complete. The National Marine Fisheries Service (NMFS) is still reviewing the proposed action, but consultation with NMFS is expected to be completed before EPA takes any action to finalize today's proposed rule. EPA specifically requests that any comments concerning ESA be made at this time. This may be the only opportunity for interested persons to comment on this issue.

(5) NHPA

EPA initiated consultation with the State of Oregon's Historic Preservation Officer (SHPO) to address National Historic Preservation Act, as amended (NHPA), 16 U.S.C. Sections 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. EPA determined that no historic properties were affected, or would be affected, by the proposed designation of the Site. EPA did not find any historic properties within the geographic area of the proposed Site. This determination was based on an extensive review of the National Register of Historic Districts in Oregon, the Oregon National Register list and an assessment of cultural resources near the proposed Site. Side scan sonar of the proposed Site did not reveal the presence of any shipwrecks or other cultural or historic properties. This consultation is expected to be completed before EPA takes any action to finalize today's proposed rule. EPA specifically requests that any comments concerning NHPA be made at this time. This may be the only opportunity for interested persons to comment on this issue.

3. Statutory and Executive Order Reviews

This rule proposed to designate an ocean dredged material disposal site pursuant to Section 102 of the MPRSA. This rule complies with applicable executive orders and statutory provisions as follows:

(1) Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant," and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

(2) Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing, and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

(3) 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 today's 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 Part 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. EPA has determined that this 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 a site to be used for the disposal of dredged material in ocean waters. After considering the economic impacts of today's rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

(4) 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.

(5) Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.” This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This rule proposes to designate a site for the disposal of dredged material in ocean waters. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

(6) Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications, as specified in Executive Order 13175 because the designation of this dredged material disposal Site 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 rule. Although Executive Order 13175 does not apply to this proposed rule EPA consulted with tribal officials in the development of this rule,

particularly as it relates to potential impacts to historic or cultural resources. EPA specifically solicits additional comment on this proposed rule from tribal officials.

(7) Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) 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 proposed action concerns the designation of an ocean disposal Site and would only have the effect of providing a designated location to use for ocean disposal of dredged material pursuant to section 102(c) of the MPRSA.

(8) 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, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

(9) National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, Section 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The proposed action includes environmental monitoring and measurement as described in EPA’s draft SMMP. EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the proposed Site once designated. Rather, 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 final SMMP. 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 regulation.

(10) Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA has assessed the overall protectiveness of designating the proposed disposal Site against the criteria established pursuant to the MPRSA to ensure that any adverse impact on the environment will be mitigated to the greatest extent practicable.

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: October 1, 2008.

Elin D. Miller,
Regional Administrator, Region 10.

For the reasons set out in the preamble, Chapter I of title 40 is amended as set forth below:

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

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

2. Section 228.15 is amended by adding paragraph (n)(6) as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(6) Rogue River, OR—Dredged Material Site

(i) *Location*: 42°24' 5.40" N, 124°26'52.39" W; 42°24'03.40" N, 124°26'39.39" W; 42°23'39.40" N, 124°27'17.40" W; 42°23'51.40" N, 124°27'30.40" W (NAD 83)

(ii) *Size*: Approximately 1.1 kilometers long and 0.4 kilometers wide.

(iii) *Depth*: Ranges from approximately 15 to 27 meters

(iv) *Primary Use*: Dredged material

(v) *Period of Use*: Continuing Use

(vi) *Restrictions*: (1) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13, from the Rogue River navigation channel and adjacent areas; (2) Disposal shall be managed by the restrictions and requirements contained in the currently approved Site Management and Monitoring Plan (SMMP); (3) Monitoring, as specified in the SMMP, is required.

(7) (reserved)

[FR Doc. E8–24176 Filed 10–10–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 08–2147; MB Docket No. 08–199; RM–11486]

Television Broadcasting Services; Kearney, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Pappas Telecasting of Central Nebraska, L.P. ("Pappas"), the permittee of KHGI-DT, DTV channel 36, Kearney, Nebraska. Pappas requests the substitution of DTV channel 13 for channel 36 at Kearney.

DATES: Comments must be filed on or before November 13, 2008, and reply comments on or before November 28, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Kathleen Victory, Esq., Fletcher, Heald

& Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT:

Joyce L. Bernstein,
joyce.bernstein@fcc.gov, Media Bureau,
(202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–199, adopted September 19, 2008, and released September 25, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail <http://www.BCPIWEB.com>. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Nebraska, is amended by adding channel 13 and removing channel 36 at Kearney.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–24303 Filed 10–10–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 08–1503; MB Docket No. 08–100; RM–11437]

Television Broadcasting Services; Columbus, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by WTVM License Subsidiary, LLC ("WTVM"), the permittee of WTVM-DT, post-transition digital channel 9, Columbus, Georgia. WTVM requests the substitution of digital channel 11 for post-transition digital channel 9 at Columbus.

DATES: Comments must be filed on or before November 13, 2008, and reply comments on or before November 28, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Jennifer A. Johnson, Esq., Covington & Burlington, LLP, 1201 Pennsylvania Avenue, NW., Washington, DC 20004–2401.

FOR FURTHER INFORMATION CONTACT:

Shaun A. Maher, shaun.maher@fcc.gov, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–100, adopted September 25, 2008, and released September 30, 2008. The