

to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. The reasons for exempting this system of records from the foregoing provisions are as follows: To notify an individual at the individual's request of the existence of an investigative file pertaining to such individual or to grant access to an investigative file pertaining to such individual could interfere with investigative and enforcement proceedings; deprive co-defendants of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by such sources; and, disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(1). This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The reasons for exempting this system of records from the foregoing are as follows:

(i) The IRS will limit the Anti-Money Laundering/Bank Secrecy Act (BSA) and Form 8300 Records to those relevant and necessary for identifying, monitoring, and responding to complaints, allegations and other information received concerning violations or potential violations of the anti-money laundering provisions of Title 31 and Title 26 laws. However, an exemption from the foregoing is needed

because, particularly in the early stages of an investigation, it is not possible to determine the relevance or necessity of specific information.

(ii) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when first received may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established with certainty.

(4) 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. The reasons an exemption from this provision has been claimed, are as follows:

(i) Revealing categories of sources of information could disclose investigative techniques and procedures;

(ii) Revealing categories of sources of information could cause sources who supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is

determined that this proposed rule does not have federalism implications under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The proposed rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

**List of Subjects in 31 CFR Part 1**

Privacy.

Part 1, Subpart C of title 31 of the Code of Federal Regulations is amended as follows:

**PART 1—[AMENDED]**

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

**Authority:** 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 paragraph (g)(1)(viii) is amended by adding the following text to the table in numerical order.

**§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.**

*	*	*	*	*
(g)	*	*	*	
(1)	*	*	*	
(viii)	*	*	*	

Number	Name of system
IRS 42.031 .....	Anti-Money Laundering/Bank Secrecy Act (BSA) and Form 8300 Records.

\* \* \* \* \*

Dated: April 21, 2004.

**Jesus Delgado-Jenkins,**  
*Acting Assistant Secretary for Management.*  
[FR Doc. 04–9813 Filed 4–29–04; 8:45 am]

BILLING CODE 4830–01–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 228**

**[FRL–7654–9]**

**Designation of the Rhode Island Region Dredged Material Disposal Site in Rhode Island Sound**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing today to designate the Rhode Island Sound Disposal Site (RISDS) in Rhode Island

Sound offshore of Rhode Island. This action is necessary to provide a long-term dredged material disposal site for the current and future disposal of dredged material from Rhode Island, southeastern Massachusetts, and surrounding harbors (hereinafter referred to as the Rhode Island Region). The proposed site designation is for an indefinite period of time. The RISDS will be subject to continuing monitoring to ensure that significant unacceptable, adverse environmental impacts do not occur. The proposed action is described in the Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project Draft Environmental

Impact Statement (DEIS), and the monitoring plan is described in the RISDS Site Management and Monitoring Plan (SMMP). The SMMP is provided as Appendix C of the DEIS. Site designation does not itself actually authorize the disposal of any particular dredged material at a site. Proposals to dispose of dredged material at a designated site are subject to project-specific reviews and authorization and still must satisfy the criteria for ocean dumping.

**DATES:** Comments must be received by 5 p.m. on June 21, 2004.

**Public Hearing:** The public hearings are as follows:

1. June 15, 2004 at 1 p.m., Galilee, Rhode Island
2. June 15, 2004 at 7 p.m., Galilee, Rhode Island

**ADDRESSES:** *Comments:* Comments may be submitted by mail or electronically as follows:

1. By mail: Submit written comments on this document to: Ms. Olga Guza, U.S. Environmental Protection Agency New England Region, One Congress

Street, Suite 1100 (CWQ), Boston, MA 02114-2023. To ensure proper identification of your comments, include in the subject line the name, date and **Federal Register** citation of this document.

2. Electronically: Submit your comments electronically to: [R1\\_RISEIS@EPAMAIL.EPA.GOV](mailto:R1_RISEIS@EPAMAIL.EPA.GOV). Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Comments will also be accepted on disks in WordPerfect or ASCII file format sent or delivered to the addresses above. All comments and data in electronic form must be identified by the name, date and **Federal Register** citation of this notice. No confidential business information should be sent via e-mail.

**Public Hearings:** Both public hearings will take place at:

1. Galilee, Rhode Island: Lighthouse Inn, 307 Great Island Road, Galilee, Rhode Island, 02882.

**FOR FURTHER INFORMATION CONTACT:** Ms. Olga Guza, U.S. Environmental Protection Agency New England Region,

One Congress Street, Suite 1100 (CWQ), Boston, MA 02114-2023, telephone (617) 918-1542, electronic mail: [guza.olga@epa.gov](mailto:guza.olga@epa.gov).

**SUPPLEMENTARY INFORMATION:** General Information:

#### A. Regulated Entities

Entities potentially regulated by this action are persons, organizations, or government bodies seeking to dispose of dredged material into ocean waters of Rhode Island Sound, under the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* (hereinafter referred to as the MPRSA) and its implementing regulations. This proposed rule is expected to be primarily of relevance to (a) parties seeking permits from the Corps to transport dredged material for the purpose of disposal into the waters of Rhode Island Sound and (b) to the Corps itself for its own dredged material disposal projects. Potentially regulated categories and entities that may seek to use the proposed RIR dredged material disposal site may include:

Category	Examples of potentially regulated entities
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.
State, local and tribal governments .....	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that could potentially be regulated should the proposed rule become a final rule. To determine whether your organization is affected by this action, you should carefully consider whether your organization is subject to the requirement to obtain an MPRSA permit in accordance with the Purpose and Scope of 40 CFR 220.1, and you wish to use the site subject to today's proposal. EPA notes that nothing in this proposed rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this proposed rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

#### B. Background

In 1972, the Congress of the United States enacted MPRSA to address and control the dumping of materials into ocean waters. Title I of MPRSA authorized EPA and the Corps to

regulate dumping in ocean waters. Regulations implementing MPRSA are set forth at 40 CFR parts 220 to 229. With few exceptions, the MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping except as may be authorized by a permit or authorization (in the case of Corps projects) issued under the MPRSA. The MPRSA divides permitting responsibility between EPA and the Corps. Under section 102 of the MPRSA, EPA has responsibility for issuing permits for all materials other than dredged material (e.g., vessels, fish wastes, burial at sea). Under section 103 of the MPRSA, the Secretary of the Army has the responsibility for issuing permits and authorizations (in the case of Corps projects) for the ocean dumping of dredged material. This permitting authority has been delegated to the District Engineer of the Corps New England District. Determinations to issue permits and authorizations (in the case of Corps projects) for dredged material are subject to EPA review and concurrence.

Section 102(c) of the MPRSA, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA authority to

designate sites and times where ocean disposal, also referred to interchangeably as ocean dumping, may be permitted. Section 103(b). Further provides that the Corps should use such EPA designated sites to the maximum extent feasible. EPA's ocean dumping regulations provide that EPA's designation of an ocean dumping site is accomplished by promulgation of a site designation in 40 CFR part 228 specifying the site. On October 1, 1986, the Administrator delegated authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the EPA Region in which the sites are located. The RISDS site is located within New England (EPA New England); therefore, this action is being taken pursuant to the Regional Administrator's delegated authority. EPA regulations (40 CFR 228.4(e)(1)) promulgated under the MPRSA require, among other things, that EPA designate ocean dumping sites (ODMDS) by promulgation in 40 CFR part 228. Designated ocean dumping sites are codified at 40 CFR 228.15. This rule proposes to designate a site for open water disposal of dredged material. This site is currently being used under the

authority of MPRSA section 103 as site 69B and is located in ocean waters of Rhode Island Sound approximately 9 nautical miles (nmi) south of Point Judith, Rhode Island.

The RISDS is being proposed in this action to provide a long-term disposal option for the Corps to maintain deep-draft, international commerce and navigation through authorized Federal navigation projects and to ensure safe navigation for public and private entities.

The RISDS will be subject to continuing site management and monitoring to ensure that unacceptable, adverse environmental impacts do not occur. The management of the RISDS is further described in the draft SMMP (Appendix C of the DEIS). Documents being made available for public comment by EPA at this time include this proposed rule, DEIS, and Draft SMMP (Appendix C of DEIS).

The designation is being proposed in accordance with 40 CFR 228.4(e) of the Ocean Dumping Regulations, which allow EPA to designate ocean sites for disposal of dredged materials.

### C. EIS Development

Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting environmental quality. The objective of NEPA is to build into agency decisionmaking process careful consideration of all environmental aspects of proposed actions, including evaluation of reasonable alternatives to the proposed action. While NEPA does not apply to EPA activities in designating ocean disposal sites under the MPRSA, EPA has voluntarily agreed as a matter of policy to conduct a NEPA environmental review in connection with ocean dumping site designations. (See 63 FR 58045 (October 29, 1998), "Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents.") Consistent with this policy, EPA, in cooperation with the Corps, has prepared a DEIS entitled, "Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project" which considers the environmental aspects of site designation in ocean waters of Rhode Island Sound. A Notice of Availability of the DEIS for public review and comment is being published concurrently with this proposed rule in today's **Federal Register**. Anyone wishing to review a copy of the DEIS

may do so in one of the ways described above (see **ADDRESSES**). The public comment period for the DEIS will close on June 21, 2004. The public comment period on the proposed rule publication will also close on June 21, 2004. Comments may be submitted by one or more of the methods described above.

The purpose of the proposed action is to designate an ocean disposal site that will meet the long-term dredged material disposal needs in the RIR. The appropriateness of ocean disposal for any specific, individual dredging project is determined on a case-by-case basis under the permit and authorization (in the case of Corps projects) process under MPRSA.

Designation of an ocean disposal site under 40 CFR part 228 is essentially a preliminary, planning measure. The practical effect of such a designation is only to require that if future ocean disposal activity is permitted and/or authorized (in the case of Corps projects) under 40 CFR part 227, then such disposal should normally be consolidated at the designated sites (See 33 U.S.C. 1413(b)). Designation of an ocean disposal site does not authorize any actual disposal and does not preclude EPA or the Corps from finding available and environmentally preferable alternative means of managing dredged materials, or from finding that certain dredged material is not suitable for ocean disposal under the applicable regulatory criteria. Nevertheless, EPA has determined that it is appropriate to designate an ocean disposal site for dredged material in the ocean waters of Rhode Island Sound now, because it appears unlikely that feasible alternative means of managing dredged material will be available to accommodate the projected dredged material of this region in the future.

Proposals for the ocean disposal of dredged materials from individual projects are evaluated by EPA New England and the Corps' New England District on a case-by-case basis, taking into account all the alternatives available at the time of permitting. Beneficial reuse alternatives will be preferred over ocean disposal whenever they are practicable.

The DEIS describes the purpose and need for the proposed action and evaluates a number of alternatives to this action. EPA's analysis of alternatives considered several different potential ocean disposal sites for dredged material from Rhode Island, southeastern Massachusetts, and surrounding harbors, as well as potential alternative means of managing these dredged materials other than ocean disposal. As described in the

DEIS, the initial screening effort was established to consider the most environmentally sound, economically and operationally feasible area for site designation. Alternatives evaluated included various marine sites, upland disposal, beneficial uses, and the no action alternative.

In addition to considering reasonable distances to transport dredged material, the ocean disposal analysis considered areas of critical resources as well as areas of incompatibility for use as a disposal site. This included but was not limited to such factors as the sensitivity and value of natural resources, geographically limited habitats, fisheries and shellfisheries, natural resources, shipping and navigation lanes, physical and environmental parameters, and economic and operational feasibility. The analysis was carried out in a tiered process. The final tier involved further analysis of the no action alternative and the following alternative sites: Site E and Site W (the proposed RISDS). These sites were evaluated and the RISDS was selected as the preferred alternative for potential ocean disposal site designation. Management strategies were developed for the preferred alternative and are described in the draft SMMP (Appendix C of the DEIS).

To obtain public input during the process, EPA and the Corps held public scoping meetings, meetings with local fishermen, as well as convened an EIS working group. The purpose of the working group was to assist in identifying and prioritizing initial screening criteria that assisted in the evaluation of the best long-term dredged material disposal options for the RIR. Representatives from state, local, tribal and Federal agencies were invited to participate in the working group as well as individuals representing other interests. The working group assembled for a series of 7 meetings between September 26, 2002 and November 19, 2003. Comments received were factored into the development of the DEIS. The NEPA process led to the current proposal that RISDS be designated as an ocean dredged material disposal site.

### D. Proposed Sites Description

Today's proposal would designate the RISDS. A DEIS and draft SMMP have been prepared for the RISDS and are available for review and comment by the public. Copies may be obtained by request from the **FOR FURTHER INFORMATION CONTACT** listed in the introductory section to this proposed rule. Use of the RISDS would be subject to any restrictions included in the site designation and the approved SMMP. These restrictions will be based on a

thorough evaluation of the proposed sites pursuant to the Ocean Dumping Regulations and potential disposal activity as well as consideration of public review and comment.

The RISDS proposed for long-term designation by EPA is currently being used by the Corps' under their short-term site selection authority as Site 69B. Overall, Site 69B has received approximately 2.8 million cubic yards since 2003. The RISDS is in the exact same location and the same size as Site 69B. The site is a square area, approximately 1 nautical mile by 1 nautical mile, for a size of 1-nmi<sup>2</sup>. The RISDS is located approximately 9 nmi south of Point Judith, Rhode Island and approximately 6.5 nmi east of Block Island, Rhode Island, with depths from 115 to 128 feet (35 to 39 m). The sediments at the site range from glacially derived till to soft, silty sand. The coordinates (North American Datum 1983: NAD 83) for the proposed RISDS site, are as follows: 41°14'21" N, 71°23'29" W; 41°14'21" N, 71°22'09" W; 41°13'21" N, 71°23'29" W; 41°13'21" N, 71°22'09" W.

#### **E. Analysis of Criteria Pursuant to the Ocean Dumping Act Regulatory Requirements**

Five general criteria are used in evaluating possible dredged material disposal sites for long-term use under the MPRSA (see 40 CFR 228.5).

##### **General Criteria (40 CFR 228.5)**

1. *Minimize interference with other activities, particularly avoiding fishery areas or major navigation areas (40 CFR 228.5(a)).* The first of the five general criteria requires that a determination be made as to whether the site or its use will minimize interference with other uses of the marine environment. For this proposed rule, a determination was made to overlay individual uses and resources over GIS bathymetry and disposal site locations. This process was used to visually determine the maximum and minimum interferences with other uses of the marine environment that could be expected to occur. Areas that would interfere with other activities, particularly fishing and navigation, were eliminated from further consideration. Sites E and W were the only areas left for consideration. The RISDS (Site W) showed minimum interference with other activities and was thus selected for this proposal. The proposed site is not in an area of distinctive lobster, shellfish, or finfish resources and thus will not interfere with lobster or fishing activities. The proposed site is not located in shipping lanes or major

navigation areas, is not in a geographically limited fishery area, and has been selected to minimize interference with fisheries, shellfisheries and regions of commercial or recreational navigation.

2. *Minimize Changes in Water Quality. Temporary water quality perturbations (during initial mixing) caused by disposal operations would be reduced to normal ambient levels before reaching areas outside of the disposal site (40 CFR 228.5(b)).* The second of the five general criteria requires that locations and boundaries of disposal sites be selected so that temporary changes in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within a site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching beaches, shorelines, sanctuaries, or geographically limited fisheries or shellfisheries. The proposed site will be used only for dredged material disposal of suitable sediments as determined by application of MPRSA criteria. Based on data evaluated as part of the DEIS, disposal of either sandy or fine-grained material would have no long-term impact on water quality at the proposed site. In addition, dredged material deposited at the RISDS will not reach any marine sanctuary, beach, or other important natural resource area. Further, disposal at the RISDS will be managed and monitored in accordance with the SMMP (Appendix C of the DEIS) such that there will be no temporary perturbations in water quality anywhere outside the site or within the site after allowance for initial mixing.

3. *Interim Sites Which Do Not Meet Criteria (40 CFR 228.5 (c)).* There are no interim sites to be considered under this criterion. The RISDS (formerly known as Site 69B) is not an interim site as defined under the Ocean Dumping regulations.

4. *Size of sites (40 CFR 228.5(d)).* The fourth general criterion requires that the size of open water disposal sites be limited to localize for identification and control any immediate adverse impacts and to permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. Size, configuration and location is to be determined as part of the disposal site evaluation. For this proposed rule, EPA has determined, based on the information presented in the DEIS, that the RISDS (formerly known as Site 69B) has been sized to provide sufficient capacity to accommodate material dredged from

within the RIR. The site management and monitoring plan is described in the RISDS SMMP (Appendix C of the DEIS).

5. *EPA must, wherever feasible, designate dumping sites beyond the edge of the continental shelf and where historical disposal has occurred (40 CFR 228.5(e)).* The fifth criterion requires EPA, wherever feasible, to designate ocean dumping sites beyond the edge of the continental shelf and at other such sites that have historically been used. Sites beyond the edge of the continental shelf are not economically feasible due to the extended travel time and associated expense. In addition, the proposed site, if designated, encompasses the footprint of Site 69B, currently in use. Thus, the proposed disposal site is consistent with this criterion.

As discussed briefly above, EPA has found that the RISDS satisfies the five general criteria described in 40 CFR 228.5 of the EPA Ocean Dumping Regulations. More detailed information relevant to these criteria can be found in the DEIS and SMMP.

In addition to the general criteria discussed above, 40 CFR 228.6(a) lists eleven specific factors to be used in evaluating a proposed disposal site under the MPRSA to assure that the five general criteria are met. The RISDS, as discussed below, is also acceptable under each of the 11 specific criteria. The evaluation of the preferred disposal site relevant to the 5 general and 11 specific criteria is discussed in substantially more detail in the DEIS and SMMP.

##### *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 RISDS is in the same location and is the same size as Site 69B. The RISDS will replace Site 69B. The site is a square area, approximately 1 nautical mile by 1 nautical mile, for a size of 1-nmi<sup>2</sup>. The RISDS is located approximately 9 nmi south of Point Judith, Rhode Island and approximately 6.5 nmi east of Block Island, Rhode Island, with depths from 115 to 128 feet (35 to 39 meters). The sediments at the site range from glacially derived till to soft, silty sand. Water depths in the surrounding areas are between 110 and 118 feet to the north, east, and south of the site. The southeastern portion of the site shoals more rapidly than the northern area. The coordinates (North American Datum 1983: NAD 83) for the proposed RISDS site, are as follows: 41°14'21" N, 71°23'29" W; 41°14'21" N, 71°22'09" W; 41°13'21" N, 71°23'29" W; 41°13'21" N, 71°22'09" W.

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 Corps and EPA initiated informal Endangered Species Act (ESA) and Essential Fish Habitat (EFH) consultation in January 2003 and formal consultation with publication of the DEIS in coordination with the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS). Additional coordination was conducted with the Commonwealth of Massachusetts and State of Rhode Island. Through these efforts, data has been obtained on current threatened or endangered species in the RIR. The plankton community at the RISDS includes zooplankton (copepods, larval forms of many species of invertebrates and fish, Foraminifera, and Radiolara) and phytoplankton (diatoms and dinoflagellates). These organisms display a range of abundance by season. The populations at or near the proposed site are not unique to the site and are present over most of the RIR. It is expected that although small, short-term entrainment losses may occur immediately following disposal, no long term, adverse impacts to organisms in the water column will occur.

The benthic community at the RISDS is comprised primarily of Annelida, Crustacea, and Mollusca. It is expected that short-term reduction in abundance and diversity at the sites may occur immediately following disposal, but long term, adverse impacts to benthic organisms are not expected to occur. Recovery to levels similar to predisposal is expected within a few years after disposal.

The RISDS is located in the ocean waters of Rhode Island Sound, which is occupied by more than 116 fish species. Seven species appear consistently dominant among all trawl surveys. These were scup, butterfish, longfin squid, little skate, winter flounder, silver hake, and red hake. Atlantic herring, Atlantic mackerel, and ocean pout were also very abundant. It is expected that impacts to finfish resources will consist of short-term, local disruptions and the potential loss of some individual fish of certain non-migratory species. Most of the finfish species are migratory. Several commercially harvestable species of shellfish occur in the RIR. They are Atlantic surf clams, blue mussels, lobster, northern quahogs, ocean quahogs, sea scallops, razor clams, and whelks. It is expected that impacts to shellfish within the RISDS will be short-term and associated with disposal, burial and loss of habitat or food. No

impacts to shellfish or finfish resources are anticipated outside of the RISDS.

Many different types of resident, migratory, and coastal birds may potentially use the RIR as a feeding habitat or resting area. Dozens of marine and coastal birds migrate through Rhode Island Sound annually. In addition, the RIR provides limited habitat for most marine mammals and reptiles. The species that are frequent or occasional visitors to the RIR are harbor porpoises, white-sided dolphins, minke whales, seals (harbor, hooded, and harp) and sea turtles (green, Kemp's ridley, loggerhead, leatherback and hawksbill).

There are 16 federally listed threatened and endangered species and 5 species of "special concern" which may occur within the area of the RISDS. The Threatened and endangered species are: Whales (humpback, fin, northern right, sperm, blue and sei), turtles (loggerhead, green, Kemp's ridley, leatherback, and hawksbill), birds (bald eagle, piping plover and roseate tern), and insects (American burying beetle and northeastern beach tiger beetle). The species of "special concern" are: common loon, common tern, arctic tern, least tern, and Leach's storm-petrel. Occurrence of these species varies by season. Use of the site by whales and birds would be incidental. The presence of sea turtles may occur in the RISDS during the summer and fall. It is not expected that disposal activities would have any significant adverse effect on these species or their critical habitat. With respect to endangered and threatened species, informal consultation was conducted with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). In 2001 EPA prepared a Biological Assessment (BA) for selection of Site 69B, which is in the exact same location as the RISDS. The USFWS and NMFS concurred with EPA's determination that species under its jurisdiction would not likely be adversely affected by the proposed action. The BA concludes that the proposed action is not likely to affect the threatened and endangered species. EPA reinitiated threatened and endangered species consultation with NMFS and USFWS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 and USFWS concurred on April 1, 2004 that there are unlikely to be any effects on threatened or endangered species or their critical habitat as a result of the proposed action. The BA is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The RIR provides Essential Fish Habitat (EFH) for 33 finfish and 5 invertebrate species, mostly for adults and juveniles. All of the species occur along the northeastern Atlantic Coast of the United States and have EFH designated for waters other than those within the RIR. In 2001, an EFH assessment was prepared for the selection of Site 69B. The EFH assessment concludes that the proposed action is not likely to affect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EPA reinitiated EFH consultation with NMFS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 that the proposed action is not likely to effect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EPA has incorporated NMFS recommendations into the draft SMMP (Appendix C of the DEIS). The EFH assessment is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The RISDS is not located in areas that provide limited or unique breeding, spawning, nursery, feeding, or passage areas.

3. *Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).* The RISDS is located approximately 8.3 nmi from the nearest beach or other amenity area. Modeling and sediment transport studies indicate a very low probability of that any dredged material remaining in the water column following disposal would be transported more than 1 nmi. Plumes would be reduced to background concentrations shortly after disposal. Given the rapid dissipation characteristics of dredged material plumes and that the vast majority of released materials settle to the bottom near the release point, dredged material placed at the RISDS would not adversely affect beaches or similar amenities. As such, it is expected that impacts would not occur to beaches, areas of special concern, parks, natural resources, sanctuaries or refuges since they are either land-based or farther than 8.3 nmi from the proposed disposal site. There are also no marine sanctuaries or limited fisheries or shellfisheries at or near the RISDS. Therefore, EPA has determined that dredged material disposal at the RISDS disposal site location should not have any adverse effect on beaches or other amenity areas, including wildlife refuges or other areas of biological or recreational significance.

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)).* The RISDS has an expected capacity of approximately 20 million cubic yards. However, there is no disposal site capacity volume restriction. The composition of dredged material to be disposed at the site is expected to be typical estuarine sediments dredged from channels, berths, and marinas from harbors and Federal navigation areas within the RIR. The disposal of this material shall occur at designated buoys or coordinates and would be expected to be placed so as to concentrate material from each disposal. This placement is expected to help minimize bottom impacts to benthic organisms. EPA will make a suitability determination prior to the USACE issuing any MPRSA permit or authorization (in the case of Corps projects) for disposal at the RISDS. The site proposed to be designated will receive dredged materials determined to be suitable for ocean disposal that are transported by either government or private contractor hopper dredges or ocean-going bottom-dump barges towed by tugboat. Both types of equipment release the material at or very near the surface. Dredged material placed at the RISDS would not be containerized or packaged.

Furthermore, it should be emphasized that the RISDS is being proposed for designation only to receive dredged material; disposal of other types of material at these sites will not be allowed. It should also be noted that the disposal of certain other types of material is expressly prohibited by the MPRSA and EPA regulations (e.g., industrial waste, sewage sludge, chemical warfare agents). See, e.g., 33 U.S.C. 1414b; 40 CFR 227.5(b). For these reasons, no significant adverse impacts are expected to be associated with the types and quantities of dredged material that may be disposed at the RISDS.

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

Surveillance of the site can be accomplished by boat, helicopter, disposal inspectors aboard barges, scows, and tugboats, or through radar or satellite. This effort would be conducted jointly by the EPA, Corps-New England District, and the U.S. Coast Guard. Monitoring and surveillance are expected to be feasible at the RISDS. The site is readily accessible for bathymetric surveys and has undergone monitoring, including side-scan sonar. If field monitoring of the disposal activities is required because of a future concern for habitat changes or limited resources, a management decision will be made by EPA New England and the Corps-New England District who share

the responsibilities of managing and monitoring the disposal sites. EPA and the Corps have prepared a draft RISDS SMMP (Appendix C of the DEIS). Once the proposed site is designated, monitoring shall be completed in accordance with the then-current SMMP. It is expected that revisions to the SMMP may be made periodically; revisions will be circulated for review, coordinated with the affected States and become final when approved by EPA New England Region in conjunction with the Corps' New England District. See 33 U.S.C. 1413(c)(3).

*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)).* The RISDS is located within the ocean waters of Rhode Island Sound, a water body that is exposed to wind and wave energy from the northwest Atlantic Ocean. The dominant tidal flow directions are northwest and southeast. The amplitude of the tidal velocity decreases with depth (12.7 cm/s at the surface and 7 cm/s near the bottom. The mean current velocity was 2.5 cm/s directed toward the west at mid-depth and 1.6 cm/s toward the west at the bottom. A modeling study performed as part of the Providence River and Harbor Maintenance Dredging Project EIS, examined the likelihood of erosion and transport of cohesive sediments proposed for placement at site 69B (the proposed RISDS), located at a depth of 128 ft. It is concluded that a disposal mound placed at 69B would not be dispersive under any conditions other than the most severe (50-year return period) hurricane; their results, however, were based on an assumption of extremely cohesive material and should therefore be viewed as potentially underpredicting erosion. Areas of the ZSF between 170 and 105 ft, including the north-central portion northeast of Block Island, were depositional areas with some infrequent sorting and reworking by waves and currents. The deepest areas here were the most depositional.

It is expected that peak wave induced bottom orbital velocities are not sufficient to cause significant erosion of dredged material at the RISDS. For these reasons, EPA has determined that the dispersal, transport and mixing characteristics, and current velocities and directions at the RISDS are appropriate for designation as a dredged material disposal site.

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

is currently being used for disposal activity pursuant to the Corps' short-term site selection authority under section 103(b) of the MPRSA. 33 U.S.C. 1413(b) as Site 69B. This *generally* makes the RISDS preferable to more pristine sites that have either not been used or have been used in the more distant past. See 40 CFR 228.5(e). Beyond this, however, EPA's evaluation of data and modeling results indicates that these past disposal operations have not resulted in unacceptable or unreasonable environmental degradation, and that there should be no significant adverse cumulative environmental effects from continuing to use the RISDS on a long-term basis.

*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)).* In evaluating whether disposal activity at the RISDS could interfere with shipping, fishing, recreation, mineral extraction, desalination, areas of scientific importance and other legitimate uses of the ocean, EPA considered both the direct effects from depositing dredged material on the ocean bottom at the proposed sites and the indirect effects associated with increased vessel traffic that will result from transportation of dredged material to the RISDS. Areas that concern the criteria of this section were removed from consideration early in the screening process for the DEIS. The RISDS is not located in shipping lanes and is not an area of special scientific importance, desalination, fish and shellfish culture or mineral extraction. Accordingly, depositing dredged material at the RISDS will not interfere with any of the activities mentioned in this criterion. Increased vessel traffic involved in the transportation of dredged material to the proposed disposal site should not impact shipping or activities discussed above.

*9. The Existing Water Quality and Ecology of the Sites as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9)).* Water and sediment quality analyses conducted in the site and experience with past disposal in this region have not identified any adverse water quality or ecological impacts from ocean disposal of dredged material. Baseline data are further described in the DEIS.

*10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Sites (40 CFR 228.6(a)(10)).* Based on the available evidence, dredged material is not a potential

source for the development or recruitment of nuisance species at the RISDS. Monitoring results and available data indicate that placement of dredged material at Site 69B (which is in the same exact location as the RISDS) has not extended the range of undesirable living organisms, pathogens, degraded areas, or introduced viable non-indigenous species into the area. Local opportunistic benthic species characteristic of disturbed conditions are expected to be present and abundant at any ocean dredged material disposal site in response to physical deposition of sediments. However, no recruitment of nuisance species or species capable of harming human health or the marine ecosystem is expected to occur at the site.

11. *Existence at or in Close Proximity to the Sites of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).* As part of the site selection for Site 69B, the Corps conducted an archaeological assessment, Entitled, "Archaeological Assessment, Remote Sensing, and Underwater Archaeological Survey for the Providence River and Harbor Maintenance Dredging Project, Rhode Island April 12, 2001." The archaeological assessment is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The assessment determined that no significant sites were likely to be found within the areas of interest, but there was a potential for historic resources because of known shipwrecks in the vicinity. Additional remote sensing studies were conducted and no significant cultural resources were identified. Coordination between EPA and the Corps and the Commonwealth of Massachusetts and State of Rhode Island are detailed in the DEIS. The Narragansett Indians were included as cooperating agencies during the development of the DEIS. They have also not identified any natural or cultural features of historical significance at the RISDS.

#### F. Proposed Action

The DEIS concludes that the RISDS (currently known as Site 69B) may appropriately be designated for long-term use as a dredged material ocean disposal site. The proposed site is compatible with the general and specific factors used for site evaluation.

EPA is publishing this proposed rule to propose the designation of the RISDS as an EPA-approved dredged material ocean disposal site. The monitoring and management of requirements that will apply to this site are described in the draft SMMP (Appendix C of the DEIS).

Management and monitoring will be carried out by EPA New England in conjunction with the Corps' New England District.

It should be emphasized that, if an ocean disposal site is designated, such a site designation does not constitute or imply Corps or EPA's approval of open water disposal of dredged material from any specific project. Before disposal of dredged material at the site may commence, EPA and the Corps must evaluate the proposal according to the ocean dumping regulatory criteria (40 CFR part 227) and authorize disposal. EPA has the right to disapprove of the actual disposal, if it determines that environmental requirements under the MPRSA have not been met.

The information generated for this project and referenced in the DEIS is available for review on line at the address; <http://www.epa.gov/region1/eco/ridredge/index.html>.

1. *Electronically.* You may review and/or obtain electronic copies of this document and various support documents from the EPA Home page at the **Federal Register** <http://www.epa.gov/fedrgstr/>, or on the EPA New England Region's Home page at [www.epa.gov/region1/eco/ridredge/index.html](http://www.epa.gov/region1/eco/ridredge/index.html).

2. *In person.* The proposed rule, the Draft Environmental Impact Statement (DEIS) which includes the SMMPs (Appendix C), and the complete administrative record for this action are available for inspection at the following locations: (A) EPA New England Library, 11th Floor, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114-2023. For access to the documents, call Peg Nelson at (617) 918-1991 between 10 a.m. and 3 p.m. Monday through Thursday, excluding legal holidays, for an appointment. (B) EPA Atlantic Ecology Division, Library, 27 Tarzwell Drive, Narragansett, RI 02882. For access to the documents, call Mimi Johnson at (401) 782-3025 between 10 a.m. and 3 p.m. Monday through Thursday, excluding legal holidays, for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying. We are also putting copies of the DEIS in all of the Town libraries in the coastal towns in RI & southeast MA.

#### G. Statutory and Executive Order Reviews

##### 1. Executive Order 12866: Regulatory Planning and Review

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 Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(A) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(B) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(D) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed action is not a "significant regulatory action" under E.O. 12866 and is therefore not subject to OMB review.

##### 2. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency 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. For the purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business based on the Small Business Administration's (SBA) size standards; (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 adverse economic impact on small entities because the proposed ocean disposal site designation does not regulate small entities. The site designation will only have the effect of providing a long term environmentally-acceptable disposal option for dredged material. This action will help to facilitate the maintenance of safe navigation on a continuing basis. After considering the economic impacts of today's proposed rule on small



entities, it has been determined that this action will not have a significant adverse economic impact on a substantial number of small entities.

### 3. Paperwork Reduction Act

This proposed rule would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) because it would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

### 4. The Unfunded Mandates Reform Act and Executive Order 12875

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or

the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this proposed action contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this rule.

### 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" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule addresses the designation of an ocean disposal site in Rhode Island Sound for the potential disposal of dredged materials. This proposed action neither creates new obligations nor alters existing authorizations of any State, local or governmental entities. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of the Executive Order 13132 does not apply to this proposed rule, EPA did consult with representatives of State and local governments in developing this rule. In addition, and consistent with Executive Order 13132 and 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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal

implications." "Policies that have Tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

The proposed action does not have Tribal implications. If finalized, the proposed action would not have substantial direct effects on Tribal governments, 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, as specified in Executive Order 13175. This proposed rule designates an ocean dredged material disposal site and does not establish any regulatory policy with tribal implications. EPA specifically solicits additional comment on this proposed rule from tribal officials. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe might have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not an economically significant rule as defined under Executive Order 12866 and does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. Therefore, it is not subject to Executive Order 13045.

### 8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

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



### 9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., 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. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency must conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

No action from this proposed rule would have a disproportionately high and adverse human health and environmental effect on any particular segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

### 11. National Environmental Policy Act of 1969

Section 102(c) of the National Environmental Policy Act of 1969, section 4321 *et seq.* (NEPA) requires Federal agencies to prepare environmental impact statements (EIS)

for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. Although EPA ocean dumping program activities have been determined to be "functionally equivalent" to NEPA, EPA has a voluntarily policy to follow NEPA procedures when designating ocean dumping sites. See, 63 FR 58045 (October 29, 1998). In addition to the Notice of Intent published in the **Federal Register** on April 6, 2001 (66 FR 18244), EPA and the Corps published legal notices in local newspapers and issued a press release inviting the public to participate in DEIS scoping meetings. Formal scoping meetings were conducted on May 17, 2001 and May 22, 2001. In addition EPA and the Corps have held public workshops and several working group meetings. As discussed above, EPA is issuing a DEIS for public review and comment in conjunction with publication of this proposed rule.

In addition, EPA and the Corps will submit Coastal Zone Consistency determinations to the State of Rhode Island. Coordination efforts with NMFS and USFWS for ESA and EFH consultation was completed on April 8 and April 1, respectively, during the DEIS process.

### 12. The Endangered Species Act

Under section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2), federal agencies are required to "insure that any action authorized, funded, or carried on by such agency \* \* \* is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species \* \* \*." Under regulations implementing the Endangered Species Act, a Federal agency is required to consult with either the U. S. Fish and Wildlife Service or the National Marine Fisheries Service (depending on the species involved) if the agency's action "may affect" endangered or threatened species or their critical habitat. See, 50 CFR 402.14(a).

In 2001, EPA prepared a BA for the selection of Site 69B, which is in the exact same location as the RISDS. EPA reinitiated threatened and endangered species consultation with NMFS and USFWS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004, and USFWS concurred on April 1, 2004 that there are unlikely to be any effects on threatened or endangered species or their critical

habitat as a result of the proposed action. The USFWS and NMFS concurred with EPA's determination that species under its jurisdiction would not likely be adversely affected by the proposed action. The BA concludes that the proposed action is not likely to affect threatened and endangered species. The BA is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### 13. Magnuson-Stevens Fishery Conservation and Management Act

The 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) require the designation of essential fish habitat (EFH) for Federally managed species of fish and shellfish. Pursuant to section 305(b)(2) of the MSFCMA, Federal agencies are required to consult with the National Marine Fisheries Service (NMFS) regarding any action they authorize, fund, or undertake that may adversely affect EFH. An adverse effect has been defined by the Act as follows: "Any impact which reduces the quality and/or quantity of EFH. Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions." In 2001, an EFH assessment was prepared for the selection of Site 69B (the proposed RISDS). EPA reinitiated EFH consultation with NMFS as part of the designation process of the RISDS. NMFS concurred on April 8, 2004 that the proposed action is not likely to affect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EPA has incorporated NMFS recommendations into the draft SMMP (Appendix C of the DEIS). The EFH assessment concludes that the proposed action is not likely to affect those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. The EFH assessment is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### 14. Plain Language Directive

Executive Order 12866 requires each agency to write all rules in plain language. EPA has written this proposed rule in plain language to make this proposed rule easier to understand.

### 15. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to "expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment." EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law."

Today's proposed rule implements section 103 of the MPRSA which requires that permits for dredged material are subject to EPA review and concurrence. The proposed rule would amend 40 CFR 228.15 by establishing the RISDS. As such, this proposed rule would afford additional protection of aquatic organisms at individual, population, community, or ecosystem levels of ecological structures. Therefore, EPA expects today's proposed rule would advance the objective of the Executive Order to protect marine areas.

#### List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: April 16, 2004.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

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

#### PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

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

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

2. Section 228.15 is amended by removing and reserving paragraphs (b)(1), and (b)(2), and by adding and reserving paragraphs (b)(3) and (b)(4) (*currently proposed for LIS Sites*); and adding paragraph (b)(5) to read as follows:

#### § 228.15 Dumping sites designated on a final basis.

\* \* \* \* \*

(b) \* \* \*

(5) Rhode Island Sound Disposal Site (RISDS)

(i) *Location:* Corner Coordinates (NAD 1983): 41°14'21" N, 71°23'29" W; 41°14'21" N, 71°22'09" W; 41°13'21" N, 71°23'29" W; 41°13'21" N, 71°22'09" W.

(ii) *Size:* 1 square nautical mile.

(iii) *Depth:* range from 32 to 39 meters.

(iv) *Primary use:* Dredged material disposal.

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

(vi) *Restriction:* Disposal shall be limited to dredged material.

\* \* \* \* \*

[FR Doc. 04-9720 Filed 4-29-04; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 300 and 600

[Docket No. 040423129-4129-01; I.D. 041404D]

RIN 0648-AQ22

#### International Fisheries Regulations; Pacific Tuna Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations necessary to implement the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges (Treaty) as authorized by recently passed legislation. The proposed rule would establish vessel marking, recordkeeping, and reporting requirements for U.S. albacore tuna fishing vessel operators and vessel marking and reporting requirements for Canadian albacore tuna fishing vessel operators fishing under the Treaty. The intended effect of this proposed rule is to allow the United States to carry out its obligations under the Treaty by allowing fishing by both U.S. and Canadian vessels as provided for in the Treaty.

**DATES:** Comments must be submitted by May 17, 2004.

**ADDRESSES:** Comments on the proposed rule should be sent to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long

Beach, CA 90802 or by e-mail to the Southwest Region at 0648-AQ22@noaa.gov. Comments may also be submitted by e-mail through the Federal e-Rulemaking portal: <http://www.regulations.gov>. Include in the subject line of the e-mail comment the following document identifier: 0648-AQ22. Comments also may be submitted by fax to (562) 980-4047. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) are available from Svein Fougner at the NMFS address. Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Svein Fougner, Assistant Administrator for Sustainable Fisheries, NMFS, Southwest Region and to David Rostker, OMB, by e-mail at [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by facsimile (fax) to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, (562) 980-4030; fax: (562) 980-4047; and e-mail: [svein.fougner@noaa.gov](mailto:svein.fougner@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Treaty, as amended in 2002, establishes a number of obligations of the Parties (the United States and Canada) to control reciprocal fishing in the waters of one Party by vessels of the other Party as well as reciprocal port privileges. The Treaty permits fishing vessels of one Party to fish for albacore tuna in waters under the fisheries jurisdiction of the other Party seaward of 12 nautical miles from the baseline from which the territorial sea is measured (hereafter generally referred to as "waters"). The Treaty originally allowed for unlimited fishing for albacore tuna by vessels of each Party in waters of the other Party. The Treaty was negotiated to allow reciprocal fishing and port calls in selected ports at a time when Canada asserted jurisdiction over highly migratory species such as tuna out to 200 nautical miles from its coastlines, while the U.S. did not recognize or assert a comparable claim to jurisdiction over highly migratory species off its coasts. (U.S. law was subsequently amended to accept jurisdiction by coastal states over highly migratory species in their 200-nautical mile Exclusive Economic Zones.)

Initially, vessels of both countries regularly fished in each other's waters, but fishing patterns subsequently changed, as albacore were found more frequently in U.S. waters than in Canadian waters. As a result, Canadian vessels continued to fish regularly in