The special requirements listed in 33 CFR 165.1332, which can be found in the **Federal Register** (75 FR 33700) published on June 15, 2010, apply to the activation and enforcement of this zone.

All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or his Designated Representative by contacting either the on-scene patrol craft on VHF Ch 13 or Ch 16 or the Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.1332 and 33 CFR part 165 and 5 U.S.C. 552(a). In addition to this notice, the Coast Guard will provide the maritime community with extensive advanced notification of the safety zone via the Local Notice to Mariners and marine information broadcasts on the day of the events.

Dated: August 23, 2012.

G.G. Stump,

Captain, U.S. Coast Guard, Acting Captain of the Port, Puget Sound.

[FR Doc. 2012–22010 Filed 9–6–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R10–OW–2012–0197; FRL–9724–7]

Ocean Dumping; Designation of Ocean Dredged Material Disposal Sites Offshore of Yaquina Bay, Oregon

AGENCY: The Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing the designation of two new ocean dredged material disposal (ODMD) sites offshore of Yaquina Bay, Oregon, pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA). On April 5, 2012, the EPA published a proposed rule to designate the sites and opened a public comment period under Docket ID No. EPA–R10–OW–2012–0197. The comment period closed on May 7, 2012. The EPA received several comments on the proposed rule. The EPA's responses are included in section 2.c of this final rule labeled ''Response to Comments Received.'' The EPA decided to finalize the action to designate the new sites because the new sites are needed to serve the long-term need for a location to dispose of material dredged from the Yaquina River navigation channel, and to provide a location for the disposal of dredged material for persons or entities who have received a permit for such disposal. The newly designated sites are subject to ongoing monitoring and management to ensure continued protection of the marine environment.

DATES: The effective date of this final action shall be October 9, 2012.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information may not be publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Region 10 Library, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. The EPA Region 10 Library is open from 9:00 a.m. to noon, and 1:00 to 4:00 p.m. Monday through Friday, excluding federal holidays. The EPA Region 10 Library telephone number is (206) 553–1289.

FOR FURTHER INFORMATION CONTACT: Bridgette Lohrman, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs, Environmental Review and Sediment Management Unit, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, Oregon 97205; phone number (503) 326–4006; email: *Lohrman.Bridgette@epa.gov.*

SUPPLEMENTARY INFORMATION:

1. Potentially Affected Persons

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

Category	Examples of potentially regulated persons
Federal government	U.S. Army Corps of Engineers Civil Works projects, and other Federal agencies.
Industry and general public	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

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

2. Background

a. History of Disposal Sites Offshore of Yaquina Bay, Oregon

The Corps historically used the general area offshore of Yaquina Bay for dredged material disposal. In 1977, an Interim ODMD site offshore of Yaquina Bay received an EPA interim designation and was used by the Corps for dredged material disposal after 1977 and prior to 1986 (Figure 1). Because of increased mounding in the Interim Site and its potential adverse effect on navigation safety, the Corps selected an alternate ODMD site, the ''Adjusted Site,'' under the authority of Section 103 of the MPRSA, with the EPA's concurrence. The Corps began to use this ''Adjusted Site'' in 1986. By 1990, dredged material had accumulated in the Adjusted Site to an extent that portions of the Site had to be avoided, and careful placement of material was necessary on specific portions of the Adjusted Site. In 2000, the Corps ceased

disposal of material at the Adjusted Site. In 2001, the Corps and the EPA completed a study examination of possible new locations for ocean disposal further offshore from the entrance to Yaquina Bay. The recommended locations from that study are the Yaquina North and South Sites designated in this action.

In October 2000, these disposal sites were authorized for use by the Corps, following the EPA's concurrence, under Section 103 of the MPRSA as selected sites. To provide for sufficient disposal capacity over the long term, on April 5, 2012, the EPA proposed to designate both a Yaquina North Site and a Yaquina South Site under Section 102 of the MPRSA, for the ocean disposal of dredged material offshore of Yaquina Bay. These proposed sites were designed to use the footprints of the Section 103 selected sites. The Yaquina North Site, which had been unavailable once authorization for use under Section 103 of the MPRSA expired at the end of the 2011 dredge season, will be available for use as a designated site upon the effective date of this final action. The Yaquina South Site, which was used for disposal of dredged material for the first time during the 2012 dredging and disposal season since its selection under Section 103 in 2001, will also be available for use as a designated site upon the effective date of this action.

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

b. Location and Configuration of Yaquina North and South Ocean Dredged Material Disposal Sites

This action finalizes the designation of two ocean dredged material sites to the north and south, respectively, offshore of Yaquina Bay. The location of the two ocean dredged material disposal sites (Yaquina North and South ODMD Sites, North and South Sites, or Sites) are bounded by the coordinates, listed below, and shown in Figure 1. The designation of these two Sites will allow the EPA to adaptively manage the Sites to maximize their capacity, minimize the potential for mounding and associated safety concerns, and minimize the potential for any long-term adverse effects to the marine environment.

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

Yaquina North ODMD Site

44°38′17.98″ N, 124°07′25.95″ W
44°38′12.86″ N, 124°06′31.10″ W
44°37′14.33″ N, 124°07′37.57″ W
44°37′09.22″ N, 124°06′42.73″ W

Yaquina South ODMD Site

44°36′04.50″ N, 124°07′52.66″ W
44°35′59.39″ N, 124°06′57.84″ W
44°35′00.85″ N, 124°08′04.27″ W
44°34′55.75″ N, 124°07′09.47″ W

The two Sites are located in approximately 112 to 152 feet of water, and are located to the north and south of the entrance to Yaquina Bay on the central Oregon Coast. The Yaquina North Site is located about 1.7 nautical miles northwest of the entrance to Yaquina Bay and the Yaquina South Site is located about 2.0 nautical miles southwest of the bay's entrance. Both ocean disposal sites are 6,500 feet long by 4,000 feet wide, each about 597 acres in size.

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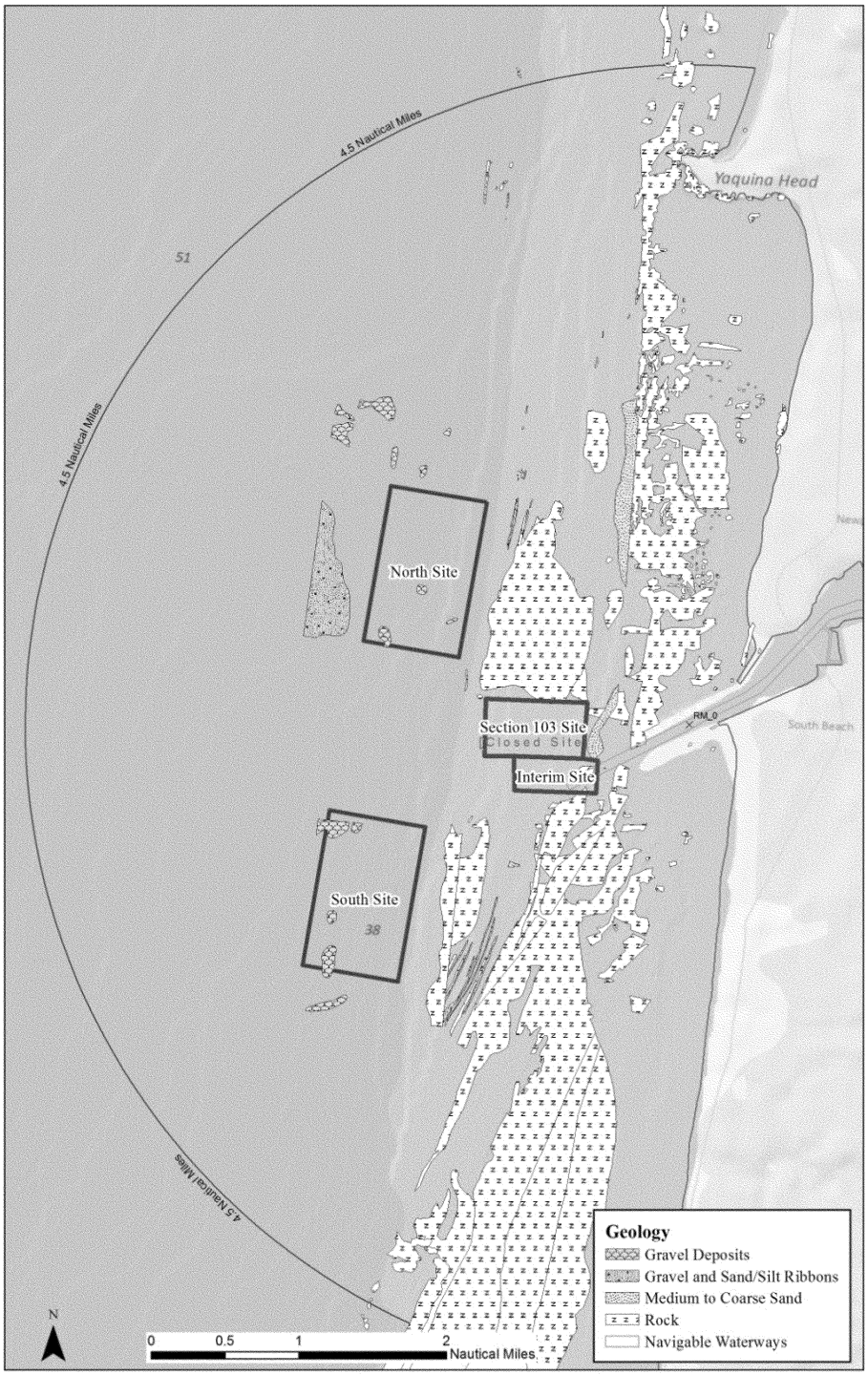

Figure 1. Yaquina North and South ODMD Sites.

The Section 103 site shown in Figure 1is also referred to as the "Adjusted Site".

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c. Response to Comments Received

The EPA received several comments on the proposed site designation during the public comment period which closed on May 7, 2012. Two commenters, while finding the proposed site designation to be thorough and inclusive, questioned whether negative effects from the site designation could be adequately controlled. In response to the concern raised by these commenters, the EPA reviewed the Site Management and Monitoring Plan (SMMP) for the Sites to ensure that controls are in place both to prevent negative effects and to correct impacts from negative effects in the unlikely event such effects occurred.

The final SMMP, found in the docket for this action, includes safeguards to act to prevent negative effects, primarily through ensuring that only material meeting ocean dumping criteria for ocean disposal are allowed to be disposed at the Sites, and through the implementation of adaptive management of the Sites. The EPA can respond to negative impacts, including, for example, having site users adjust disposal amounts, techniques, and timing, and the EPA can shut down the sites on a short term or long term basis if needed, if negative effects are observed or if trends suggest negative impacts could occur. The EPA has authority to condition, terminate or restrict site use with cause.

Another commenter suggested that dumping dredged material at the Sites would result in a large amount of pollution in concentrated areas. In response to this comment, the EPA reiterates that material allowed to be disposed of at the Sites is limited to dredged material deemed to be environmentally acceptable for ocean disposal. As discussed in the proposed designation, and further discussed below, dredged material proposed for disposal would be evaluated prior to disposal. Only dredged material without contaminant concentrations at harmful levels would be deemed suitable for ocean disposal.

This commenter also suggested that less dredging in the waterways would create less need for ocean disposal, while another commenter asked the EPA to consider alternate disposal sites and to facilitate additional discussions with local businesses and residents to discuss the impacts of the designation. The EPA appreciates these concerns. While the Corps, rather than the EPA determines the location and amount of dredging necessary to maintain the waterways of the U.S., the EPA determines, with the Corps' input, how best to dispose of material that must be disposed of in the ocean. Part of that analysis includes a balancing of community and ocean user needs. The EPA finds this site designation to be the best balance of those needs at this time. The EPA will continue to evaluate these local community concerns and will use the SMMP to make adjustments as needed to the extent practicable, to help ensure the needs of the users are balanced against the concerns of the local community.

A commenter raised a concern about the site designations on bar conditions across the Yaquina Bay bar during high swell conditions and asked whether any special analysis was warranted. The EPA and the Corps share the commenter's concern that negative effects on bar crossing safety are unacceptable. The SMMP for the designated North and South Sites is designed with safeguards to help prevent disposal at the Sites from causing or contributing to adverse swell conditions. A primary goal of site management is to avoid the creation of persistent mounds that could negatively impact the wave climate. SMMP safeguards include placement strategies and special management conditions and practices to be implemented, such as ''uniform placement'' of dredged material and annual bathymetric surveys, so as to minimize the potential for mounding that could create or contribute to adverse swell conditions across the sites. Alternating the use of the North and South Sites is an included condition to help ensure minimal impact to the wave climate. Safeguards also include quantity restrictions, and the EPA's annual review of the prior year's dumping and the EPA's review of dump plans for the upcoming year prepared by the Corps. The SMMP sets a threshold condition to require the Corps to re-evaluate disposal impacts on wave climate if bathymetric surveys show elevations at 14 feet above 2001 baseline elevations over more than 30% of the Site. If mounds above this threshold become widespread or persistent, the USACE and the EPA will conduct additional site assessment to determine if site use restrictions, including a change in disposal methodology, or cessation of use, are needed. If necessary, the EPA can direct users to conduct special studies to assess conditions and contributing factors. The EPA is convinced these safeguards combined with the EPA's authority to condition, terminate or restrict site use with cause, are sufficient to address this commenter's concern.

Finally, one commenter asked whether shorebirds in the area would be affected by the site designation. The EPA assessed the potential impact to shorebirds in the Environmental Assessment prepared for the site designation and as part of evaluating the site designation pursuant to the Endangered Species Act. As discussed in the Environmental Assessment and the Biological Assessment, shorebirds are not expected to be affected by the site designation. The U.S. Fish and Wildlife Service (USFWS) concurred with the EPA's finding that the site designation is not likely to adversely affect seabirds because of the presence of abundant suitable foraging habitat and the anticipated temporary nature of minor behavioral changes in flight or foraging during disposal activities at the designated sites. The USFWS concurrence letter is included in the docket for this action.

d. Management and Monitoring of the Sites

The Sites are expected to receive sediments dredged by the Corps to maintain the federally authorized navigation project at Yaquina Bay, Oregon and dredged material from other persons who have obtained a permit for the disposal of dredged material at the Sites. All persons using the Sites are required to follow the Site Management and Monitoring Plan (SMMP) for the Sites. The SMMP includes management and monitoring requirements to ensure that disposal activities will not unreasonably degrade or endanger human health, welfare, the marine environment, or economic potentialities. The SMMP for the Yaquina North and South Sites, in addition to the aforementioned, also addresses management of the Sites to ensure adverse mounding does not occur and to ensure that disposal events minimize interference with other uses of ocean waters in the vicinity of the proposed Sites. The SMMP, which was available for public comment as a draft document, has been finalized and the final document may be found in the Docket.

e. MPRSA Criteria

In designating these Sites, the EPA assessed the Sites according to the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR part 228, to determine whether the site designations satisfied those criteria. The EPA's *Yaquina Bay, Oregon Ocean Dredged Material Disposal Sites Evaluation Study and Environmental Assessment, July 2012* (EA), provided an extensive evaluation of the criteria and other related factors for the designation of these Sites. The EA was available as a draft document for review and comment when the EPA proposed to designate the sites. The EA has been finalized and the final document may be found in the Docket.

General Criteria (40 CFR 228.5)

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

The EPA reviewed the potential for the Sites to interfere with navigation,

recreation, shellfisheries, aquatic resources, commercial fisheries, protected geologic features, and cultural and/or historically significant areas and found low potential for conflicts. The Sites spatially overlap with recreational activities such as boating and whale watching, recreational and commercial finfish or Dungeness crab fishing, tow lane agreements between tow boat operators and Dungeness crab fishermen, and recreational and commercial navigation. However, the Sites are unlikely to cause interference with these or other uses provided close communication and coordination is maintained among users, vessel traffic control and the U.S. Coast Guard. Recreational users are expected to focus their activities on areas that are shoreward of the Sites, such as Yaquina Reef. Commercial fishing, including that for salmon and Dungeness crab, is expected to occur at the Sites, but the EPA does not expect disposal operations at the Sites to conflict with this use because of the limited space and time during which disposal occurs. The SMMP outlines site management objectives, including minimizing interference with other uses of the ocean. Should a site use conflict be identified, site use could be modified according to the SMMP to minimize that conflict.

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

Based on the EPA's review of modeling, monitoring data, sediment quality, and history of use, no detectable contaminant concentrations or water quality effects, e.g., suspended solids, would be expected to reach any beach or shoreline from disposal activities at the Sites. The primary impact of disposal activities on water quality is expected to be temporary turbidity caused by the physical movement of sediment through the water column. All dredged material proposed for disposal will be evaluated according to the ocean dumping regulations at 40 CFR 227.13 and guidance developed by the EPA and the Corps. In general, dredged material which meets the criteria under 40 CFR 227.13(b) is deemed environmentally acceptable for ocean dumping without further testing. Dredged material which does not meet the criteria of 40 CFR 227.13(b) must be further tested as required by 40 CFR 227.13(c).

Disposal of suitable material meeting the regulatory criteria and deemed environmentally acceptable for ocean dumping will be allowed at the Sites. Most of the dredged material (approximately 95%) to be disposed at the Sites is expected to be sandy material, while a small amount of material (up to 5% of the material) would be classified as fine-grained. Hopper dredges, which are typically used for the Corps' annual navigation dredging, are not capable of removing debris from the dredge site. However, specific projects may utilize a clamshell dredge, in which case there is the potential for the occasional placement of naturally occurring debris at the disposal Sites.

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

To ensure that site managers can be responsive to the specifics of each dredging season based on dredge schedules, weather, and bathymetry at the Sites, the EPA has decided to designate both the North and South Sites. The footprints of the Sites are designed to maximize their capacity, helping to assure minimal mounding and to minimize any adverse affects to the wave climate. The presence of Yaquina Reef, close to shore at shallow depths, prevents nearshore designation and dredged material disposal in dispersive locations at depths less than 60 feet. The North Site will be the preferred placement area for disposal of dredged material as was the case when the Site was used as a Section 103 selected site. During some periods, disposal may be alternated between the two Sites. The use of the South Site is more dependent upon wind and wave conditions, particularly in April and May when the typical dredge season starts, and for this reason is expected to be used less frequently than the North Site. Effective monitoring of the Sites is necessary and required. The EPA will require annual bathymetric surveys for each Site to track site capacity and to assess the potential for mounding concerns. These surveys will inform the active management of the Sites.

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

Disposal areas located off of the continental shelf would be at least 20 nautical miles offshore. This distance is well beyond the 4.5 nautical mile haul distance determined to be feasible by the Corps for maintenance of their Yaquina Bay project. Additional disadvantages to off-shelf ocean disposal would be the unknown environmental impacts of disposal on deep-sea, stable, fine-grained benthic communities and the higher cost of monitoring sites in deeper waters and further offshore.

Historic disposal has occurred at or in the vicinity of these Sites receiving final designation. The substrate of the Sites is similar in grain size to the disposal material and the placement avoids the unique habitat features of Yaquina Reef.

Specific Criteria (40 CFR 228.6)

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

The EPA does not anticipate that the geographical position of the Sites, including the depth, bottom topography and distance from the coastline, will unreasonably degrade the marine environment. To help avoid adverse mounding at the Sites, site management will generally include uniform placement, i.e., spreading disposal material throughout the Sites in a manner that will result in a relatively uniform accumulation of disposed material on the bottom over the long-term. Site management will include creating dump plans for each Site where disposal will occur. Dump plans establish cells within the Site to ensure uniform placement. In addition to minimizing mounding, the uniform placement is expected to minimize the thickness of disposal accumulations, which is expected to be less disruptive to benthic communities and aquatic species, such as crabs, that might be present at the Sites during disposal events. Because the Sites are relatively deep, to avoid the nearshore Yaquina Reef, they are not considered dispersive. Material placed in the Sites is not expected to move from the Sites except during large storm events.

(2) Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

The Sites are not located in exclusive breeding, spawning, nursery, feeding or passage areas for adult or juvenile phases of living resources. At and in the immediate vicinity of the Sites, a variety of pelagic and demersal fish species,

including salmon, green sturgeon, and flatfish, as well as Dungeness crab, are found. Studies conducted by the EPA and the Corps at the Sites found the benthic infaunal and epifaunal community to be dominated by organisms that are adapted to a sandy environment. The benthic species, densities and diversities collected during these studies were typical of the nearshore sandy environment along the Oregon coast.

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

The Sites are approximately 2 nautical miles off the beach in water depths greater than 100 feet and beyond the ecologically and economically important Yaquina Reef. Given the depth of these Sites, the material is not expected to disperse from the Sites except during infrequent large storm events. Thus, impacts to beaches or the reef will be avoided. The sand removed from the Newport littoral cell is not expected to affect Newport's beaches because Pacific Northwest beaches tend to respond strongly to storm effects, the episodic nature of which would mask any long-term discrete changes such as disposal at these Sites. Site monitoring and adaptive management are components of the final SMMP to ensure beaches and other amenity areas are not adversely impacted.

(4) Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).

Dredged material found suitable for ocean disposal pursuant to the regulatory criteria for dredged material, or characterized by chemical and biological testing and found suitable for disposal into ocean waters, will be the only material allowed to be disposed at the Sites. No material defined as ''waste'' under the MPRSA will be allowed to be disposed at the Sites. The dredged material to be disposed at the Sites will be predominantly marine sand. Generally, disposal is expected to occur from a hopper dredge, in which case, material will be released just below the surface while the disposal vessel remains under power and slowly transits the disposal location. This method of release is expected to spread material at the Sites to minimize mounding, while minimizing impacts to the benthic community and to aquatic species present at the Sites at the time of a disposal event.

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

The EPA expects monitoring and surveillance at the Sites to be feasible and readily performed from small, surface vessels. The EPA will ensure monitoring of the sites for physical, biological and chemical attributes. Bathymetric surveys will be conducted annually, contaminant levels in the dredged material will be analyzed prior to dumping, and the benthic infauna and epibenthic organisms will be monitored every 5 years, as funding allows.

(6) Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)).

Disposal at the Sites will not degrade the existing wave environment within or outside the Sites. The placement of dredged material may have a minor effect on circulation within or outside the site boundaries. Due to the anticipated size of the mound resulting from the accumulated dredged material (10–14 feet high covering 597 acres over 20 years), it is possible the currents in the vicinity of the Sites may begin to be affected. Any potential effect would not be expected to occur until a substantial amount of dredged material has been placed at the site (4–6 million cubic yards). At that time, the EPA plans to re-assess these assumptions and associated potential effects.

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

The North Site was used for disposal of dredged material from 2001 to 2011. The seafloor elevation at the Site has risen 12 feet in a few locations. Annual bathymetric surveys will continue to be conducted to monitor mounding at the North Site. To date, disposal of dredged material has not changed the benthic infaunal nor epifaunal species expected to inhabit nearshore sandy substrates at this location. The South Site, prior to this designation, was selected by the Corps under their Section 103 authority under the MPRSA and has been used during the current 2012 dredging season. Preferential use of the North Site is expected to resume when this designation becomes effective, but capacity and other factors may result in continued use of the South Site in the future. The final SMMP includes monitoring and adaptive management measures to address potential 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)).

The Sites are not expected to interfere with shipping, fishing, recreation or other legitimate uses of the ocean. Commercial and recreational fishing and commercial navigation are the primary activities that may spatially overlap with disposal at the Sites. This overlap is more likely at the South Site given the South Site's proximity to the commercial shipping lane and in more direct alignment with the entrance channel to Yaquina Bay. The likelihood of direct interference with these activities is low, provided there is close communication and coordination among users, vessel traffic control and the U.S. Coast Guard. The EPA is not aware of any plans for mineral extraction, desalination plants, or fish and shellfish culture operations near the Sites at this time. The Sites are not located in areas of special scientific importance. They are located to the south of the Newport Hydrographic line, south of the proposed Northwest National Marine Renewable Energy Center's nearshore test facility, and west of the Yaquina Reef.

(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)).

The EPA has not identified any potential adverse water quality impacts from the ocean disposal of dredged material at the Sites based on water and sediment quality analyses conducted in the study area of the Sites, and based on past disposal experience at the proposed North Site when it was used as a Section 103 selected site. Benthic grabs and trawl data show the ecology of the area to be that associated with sandy nearshore substrate typical of the Oregon Coast.

(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 Sites. Material expected to be disposed at the Sites will be uncontaminated marine sands similar to the sediment present at the Sites. 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 Sites, no such recruitment is known to have taken place at the North Site while the Site was used as a Section 103 selected site. The final SMMP includes benthic infaunal and epifaunal monitoring requirements, which will act to identify any nuisance species and allow the EPA to direct special studies

and/or operational changes to address the issue if it arises.

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

No significant cultural features have been identified at, or in the vicinity of, the proposed Sites at this time. The EPA coordinated with Oregon's State Historic Preservation Officer and with Tribes in the vicinity of the Sites to identify any cultural features. On July 16, 2012, the State agreed with the EPA that the designation of the North and South Yaquina Sites will have no effect on any known cultural resources. No cultural features or shipwrecks have been observed or documented within the proposed Sites or their immediate vicinity.

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

a. NEPA

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major federal actions significantly affecting the quality of the human environment. NEPA does not apply to the EPA designations of ocean disposal sites under the MPRSA because the courts have exempted the EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. The EPA has, by policy, determined that the preparation of NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. The EPA's ''Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents,'' (Voluntary NEPA Policy), 63 FR 58045, (October 29, 1998), sets out both the policy and procedures the EPA uses when preparing such environmental review documents. The EPA's primary voluntary NEPA document for designating the Sites was the draft *Yaquina Bay, Oregon Ocean Dredged Material Disposal Sites Evaluation Study and Environmental Assessment, (July 2012)* (EA), jointly prepared by the EPA and the Corps. The draft EA and its Technical Appendices, which are part of the docket for this action, were finalized after the close of the public comment period for this action. The information from the final EA is used above, in the discussion of the ocean dumping criteria.

b. MSA and MMPA

The EPA prepared an essential fish habitat (EFH) assessment pursuant to Section 305(b), 16 U.S.C. 1855(b)(2), of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d, and submitted that assessment to the National Marine Fisheries Service (NMFS) on December 19, 2011. The NMFS reviewed the EPA's EFH assessment and Endangered Species Act (ESA) Biological Assessment and addendum thereto for purposes of the Marine Mammal Protection Act of 1972, as amended (MMPA), 16 U.S.C. 1361 to 1389. The NMFS found that that all potential adverse effects to ESA-listed marine mammals, marine turtles, and designated critical habitat for leatherback sea turtles from the EPA's action to designate the Yaquina North and South Sites are discountable or insignificant. Those findings are documented in the Biological Opinion issued by the NMFS to the EPA on July 10, 2012. With respect to EFH, the NMFS concluded that the disposal of dredged material will adversely affect water quality from increased turbidity in the water column, availability of benthic prey species, and safe passage during disposal. The NMFS provided two EFH Conservation Recommendations to avoid or minimize the effects to EFH mentioned above. The NMFS recommends monitoring how fish interact with the disposal plume and conducting surveys to determine seasonal distribution, abundance, and habitat use of EFH species and their prey at the disposal sites. The EPA will respond in a separate written response to the NMFS' recommendations.

c. CZMA

The Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. 1451 to 1465, requires Federal agencies to determine whether their actions will be consistent to the extent practicable with the enforceable policies of approved state programs. The EPA prepared a consistency determination for the Oregon Coastal Management Program (OCMP), the approved state program in Oregon, to meet the requirements of the CZMA and submitted that determination to the Oregon Department of Land Conservation and Development (DLCD) for review on February 17, 2012. The DCLD concurred on May 7, 2012, with the EPA's determination that the designation of the North and South Yaquina ODMD sites is consistent to the maximum extent practicable with the enforceable policies of the OCMP. The DLCD based its concurrence on the information contained in the EPA's consistency determination and supporting materials, and on extensive conversations with the EPA. The Oregon Department of Fish and Wildlife (ODFW) participated in discussions with the EPA and the DLCD concerning the consistency determination and both the ODFW and the DLCD encouraged the EPA to pursue future disposal sites within the littoral zone.

d. ESA

The Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with the NMFS and the U.S. Fish and Wildlife Service (USFWS) to ensure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of any critical habitat. The EPA prepared a Biological Assessment (BA) to assess the potential effects of designating the two proposed Sites on aquatic and wildlife species and submitted that BA to the NMFS and the USFWS on December 19, 2011. The EPA found that site designation does not have a direct impact on any of the identified ESA species, and also found that indirect impacts associated with reasonably foreseeable future disposal activities had to be considered. These anticipated indirect impacts from disposal included a short-term increase in suspended sediment, short-term disruption in avian foraging behavior, modification of bottom topography, loss of benthic prey species from burial, and loss of pelagic individuals during disposal of material through the water column. The EPA concluded that its action may affect, but is not likely to adversely affect 18 ESA-listed species and is not likely to adversely affect designated critical habitat for southern green sturgeon (*Acipenser medirostris)* but is likely to adversely affect Oregon Coast coho salmon (*Oncorhynchus kisutch*). The USFWS concurred on the EPA's finding that the proposed action is not likely to adversely affect listed endangered or threatened species under the jurisdiction of the USFWS.

The NMFS issued a Biological Opinion on July 10, 2012. The NMFS considered disposal by the Corps and all other entities as an interrelated action to the EPA's proposed site designation, thus, the effects from future disposals are indirect effects of the EPA's action. The NMFS concluded that the EPA's action is not likely to jeopardize the

continued existence of Oregon Coast coho salmon, southern distinct population segment (DPS) of North American green sturgeon, southern DPS of Pacific eulachon, or result in the destruction or adverse modification of designated critical habitat for southern DPS North American green sturgeon. The NMFS also concluded that the EPA's proposed action is not likely to adversely affect 18 ESA-listed salmon, sea lions, whales, marine turtles, and critical habitat for southern DPS of North American green sturgeon and leatherback turtles.

The NMFS did not issue an incidental take statement with their Biological Opinion to the EPA. This decision was based upon the following: (1) The adverse effects identified in the Biological Opinion will result from indirect effects of subsequent Federal actions carried out by the Corps and other entities carrying out dredging and disposal; (2) these individual actions are likely to cause take of ESA-listed species, so it is more appropriate to consider exempting take on a case-by-case basis as such actions are proposed in the future; (3) the EPA's action as described in the Biological Opinion does not authorize and will not itself result in disposal of any dredged materials; and (4) the NMFS does not anticipate any take will result from the site designation and adoption of the SMMP. The NMFS further stated that ''any further analysis of the effects of disposal of dredged material at the disposal site and issuance of an incidental take statement with reasonable and prudent measures and non-discretionary terms and conditions to minimize take will be prepared when an ESA consultation on a dredging and disposal action is requested.''

e. NHPA

The EPA initiated consultation with the State of Oregon's Historic Preservation Officer (SHPO) on February 27, 2012, to address the National Historic Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a–2, which requires Federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register. The EPA determined that no historic properties were affected, or would be affected, by designation of the Sites. The EPA did not find any historic properties within the geographic area of the Sites. This determination was based on a review of the National Register of Historic Districts in Oregon, the Oregon National Register list and an assessment of potential cultural resources near the Sites. On July 16, 2012, the State agreed with the EPA that the designation of the North and South Yaquina Sites will have no effect on any known cultural resources.

4. Statutory and Executive Order Reviews

This rule finalizes the designation of two ocean dredged material disposal sites pursuant to Section 102 of the MPRSA. This action complies with applicable executive orders and statutory provisions as follows:

a. Executive Orders 12866 and 13563.

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993). This action is exempt from review under Executive Order 12866 and Executive Order 13563 (76 FR 3821, January 21, 2011).

b. Paperwork Reduction Act

The EPA does not reasonably anticipate collection of information from ten or more people based on the historic use of designated sites. Consequently, the action is not subject to the Paperwork Reduction Act.

c. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 et seq., generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA has determined that this action will not have a significant economic impact on small entities because the rule will only have the effect of regulating the location of sites to be used for the disposal of dredged material in ocean waters. After considering the economic impacts of this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

d. Unfunded Mandates Reform Act

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

e. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicited comment from State and local officials but did not receive comments from State or local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 because the designation of the two ocean dredged material disposal Sites will not have a direct effect on Indian Tribes, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action. Although Executive Order 13175 does not apply to this action the EPA consulted with tribal officials in the development of this action, particularly as the action relates to potential impacts to historic or cultural resources. The EPA specifically solicited comment from tribal officials.

The EPA did not receive comments from tribal officials.

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

The EPA interprets Executive Order 13045 (62 FR 19885) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The action concerns the designation of two ocean dredged material disposal sites and only has the effect of providing designated locations to use for ocean disposal of dredged material pursuant to Section 102(c) of the MPRSA.

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

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

i. National Technology Transfer and Advancement Act

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

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

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

k. Congressional Review Act

Congressional Review Act (CRA), 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 9, 2012.

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: August 27, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

For the reasons set out in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Register as follows:

PART 228—[AMENDED]

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

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

■ 2. Section 228.15 is amended by adding paragraph (n)(15) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(15) Yaquina Bay, OR—North and South Ocean Dredged Material Disposal Sites

(i) North Site.

(A) *Location (NAD 83):* 44°38′17.98″ N, 124°07′25.95″ W; 44°38′12.86″ N, 124°06′31.10″ W; 44°37′14.33″ N, 124°07′37.57″ W; 44°37′09.22″ N, 124°06′42.73″ W.

(B) *Size:* Approximately 1.07 nautical miles long and 0.66 nautical miles wide (0.71 square nautical miles); 597 acres (242 hectares)

(C) *Depth:* Ranges from approximately 112 to 152 feet (34 to 46 meters)

(D) *Primary Use:* Dredged material

(E) *Period of Use:* Continuing use

(F) *Restrictions:* (*1*) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13 from the Yaquina Bay and 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.

(ii) South Site.

(A) *Location (NAD 83):* 44°36′04.50″ N, 124°07′52.66″ W; 44°35′59.39″ N, 124°06′57.84″ W; 44°35′00.85″ N, 124°08′04.27″ W; 44°34′55.75″ N, 124°07′09.47″ W.

(B) *Size:* Approximately 1.07 nautical miles long and 0.66 nautical miles wide (0.71 square nautical miles); 597 acres (242 hectares)

(C) *Depth:* Ranges from approximately 112 to 152 feet (34 to 46 meters)

(D) *Primary Use:* Dredged material

(E) *Period of Use:* Continuing use

(F) *Restrictions:* (*1*) Disposal shall be limited to dredged material determined to be suitable for ocean disposal

according to 40 CFR 227.13, from the Yaquina Bay and 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.

* * * * *

[FR Doc. 2012–22100 Filed 9–6–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Doc. No 120403252–2392–01]

RIN 0648–BC06

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: This action corrects groundfish regulations that were published in three final rules. The first was published on December 15, 2010, and established various provisions of the trawl rationalization program; the second published on May 11, 2011, and established the 2011–2012 harvest specifications and management measures for groundfish; the third published in December 1, 2011, and made revisions to the trawl program. This rules corrects inadvertent errors that, although they will not modify current fishing practices need to be corrected so that the rule text comports with the intent as expressed in the rules' preambles. This rule includes but is not limited to corrections to coordinates defining depth countours that apply to all fisheries, permit renewal dates, observer requirements, recreational regulations, processor obligations in the MS sector, the forms used to transfer an MS/CV endorsement, and others. Each correction is explained below.

DATES: Corrections to regulations at § 660.25(b)(4)(i)(B), 660.140(d)(3)(i)(B) and (e)(3)(i)(B) are effective September 7, 2012. The remaining corrections are effective on September 24, 2012.

FOR FURTHER INFORMATION CONTACT: Sarah Williams (Northwest Region, NMFS), phone: 206–526–4646; fax: 206–526–6736 and email: *sarah.williams@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

This action corrects regulations that were published in three separate final rules for the Pacific Coast groundfish fisheries managed under 50 CFR 660 subparts C through F in order to correctly reflect Council intent. The final rules that are the subject of this correction are as follows: (1) Trawl Rationalization Program Components final rule (program components rule) published on December 15, 2010, (75 FR 78344); (2) 2011–2012 Biennial Harvest Specifications and Management Measures final rule (2011–2012 specifications rule) published on May 11, 2011, (76 FR 28897); and (3) Trawl Program Improvement and Enhancement final rule (PIE rule) published on December 1, 2011, (76 FR 74725). As published, the three final rules contain inadvertent errors that, although they will not modify current fishing practices need to be corrected so that the rule text comports with the intent as expressed in the rules' preambles. Each correction is explained below grouped together by the final rule that originally published the regulations.

None of these changes will result in any vessel or vessel owner having to modify its behavior in order to comply with the rules. In fact, the fishery already complies with the rules as they were intended to be written. Accordingly, these corrections are just that; they make changes necessary to have the rule text reflect both NMFS' original intent—as expressed in the preambles to the rules—as well as to current fishery practice.

Corrections to Regulations Implemented as Part of the Program Components Rule

There are four corrections to the Program Components final rule, as follows:

(1) Correct regulations to specify that all commercial vessels processing groundfish at sea carry an observer. During implementation of Amendment 20 to the Pacific Coast Groundfish Fishery Management Plan (PCGFMP), which restructured the entire groundfish regulations, this existing provision, which required observers on all commercial vessel processing at-sea, was inadvertently changed from applying to all commercial fisheries to only applying to the at-sea whiting fisheries. Nonetheless, all commercial fisheries continued to use observers on board. To bring the rules in line with the original intent, this action modifies the observer requirement language to include all vessels that process groundfish at sea. The affected fisheries are as follows: Shorebased IFQ Program (§ 660.140(h)(1)(i)), the limited entry fixed gear fishery (§ 660.216(a)), and the open access fishery (§ 660.316(a)). See 68 FR 53334 (September 10, 2003) for more history on this requirement.

(2) Correct regulations at § 660.150(g)(2)(i)—the Mothership (MS) program—to clarify that processor obligations are to an MS permit and not to the MS vessel. This change is necessary to make the MS regulations consistent with the processor obligation in the MS Coop Program, as defined under ''processor obligation'' at § 660.111 and specified at § 660.150(c)(7)(i).

(3) Correct language at § 660.114(b), in the third column of the table, which specifies who is required to submit an Economic Data Collection (EDC) form. This change makes the third column of the table consistent with § 660.113(d)(1), and the table now requires owners, lessees, and charterers of a vessel registered to a C/P endorsed limited entry trawl permit to submit an EDC. Vessels subject to this rule, as revised, are already providing the EDCs; this clarification merely corrects the language of the table to make it more clear who needs to submit the EDCs.

(4) Correct language at §§ 660.150(d)(2) and 660.160(d)(2) to specify that if an applicant does not appeal an initial administrative decision (IAD) in the trawl rationalization program within 30 calendar days, that the decision in the IAD becomes the final decision. This correction will make this provision consistent with the limited entry permit regulations at § 660.25(g)(4)(ii) for IADs.

Correction to Regulations Implemented as Part of the PIE Rule

There are four corrections to the PIE rule, as follows:

(1 and 2) Correct language at §§ 660.112 and 660.140 to specify that an observer must be on the vessel while in port unless the observer provides a form to the catch monitor documenting the weight and number of select overfished species (bocaccio, canary rockfish, cowcod, and yelloweye rockfish) retained on board by the vessel during that IFQ trip. The current regulations at § 660.112 and management measures at § 660.140 are unclear on the requirements for