ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–5825–1]

Simultaneous De-designation and Termination of the Mud Dump Site and Designation of the Historic Area Remediation Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing today to de-designate and terminate the New York Bight Dredged Material Disposal Site (also known as the Mud Dump Site) as of September 1, 1997. The Mud Dump Site was designated in 1984 for the disposal of 100 million cubic yards of dredged material from navigational dredging and other dredging projects associated with the Port of New York and New Jersey and nearby harbors. Simultaneous with closure of the Mud Dump Site, the site and surrounding areas that have been used historically as disposal sites for dredged materials will be redesignated under 40 CFR part 228 as the Historic Area Remediation Site. The Historic Area Remediation Site will be managed to reduce impacts of historical disposal activities at the site to acceptable levels (in accordance with 40 CFR 228.11(c)). This amendment will, when finalized, identify for remediation an area in and around the Mud Dump Site which has exhibited the potential for adverse ecological impacts. As discussed further below, the Historic Area Remediation Site will be remediated with uncontaminated dredged material (i.e., dredged material that meets current Category I standards and will not cause significant undesirable effects including through bioaccumulation) (hereinafter referred to as ''the Material for Remediation'' or ''Remediation Material'').

DATES: Comments must be received on or before June 30, 1997. The public hearing dates are as follows:

1. June 16, 1997, at 7:00 PM: Monmouth Beach, New Jersey.
2. June 17, 1997, at 7:00 PM: Long Island, NY.
3. June 18, 1997, at 2:00 PM: New York, New York.

ADDRESSES: Comments on this proposed rule should be addressed to: Mr. Mario P. Del Vicario, Chief, Place Based Protection Branch, U.S. Environmental Protection Agency Region 2, 290 Broadway, New York, NY 10007–1866 (E-mail delvicario.mario@epamail.epa.gov). The official record of this rulemaking is available for inspection at the EPA Region 2 Library, 16th Floor, 290 Broadway, New York, NY 10007–1866. For access to the docket materials, call Karen Schneider at (212) 637–3189 between 9:00 am and 3:30 pm Monday through Friday, excluding legal holidays, for an appointment. The record is also available for viewing at EPA's Region 2 Field Office Library, 2890 Woodbridge Avenue, Building 209, MS–245, Edison, New Jersey 08837. For access to the docket materials, call Ms. Dorothy Szefczyk (908) 321–6762 between 9:00 am and 3:30 pm Monday through Friday, 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.

The public hearing locations are as follows:

1. New Jersey—Monmouth Beach Municipal Auditorium, 22 Beach Road, Monmouth Beach, New Jersey, 07750.
2. Long Island, NY—Social Services Building Auditorium, County Seat Drive, Mineola, Long Island, NY 11501.
3. New York, NY—Oval Room, Port Authority of New York/New Jersey, Floor 43, 1 World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: Mr. Mario P. Del Vicario, Chief, Place Based Protection Branch, US EPA Region 2, 290 Broadway, New York, NY 10007–1866; (212) 637–3781 (delvicario.mario@epamail. epa.gov).

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially affected by this action include those who might have sought permits to dump dredged material into ocean waters at the Mud Dump Site (MDS) or those who might seek to place Remediation Material at the proposed Historic Area Remediation Site (HARS), under the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* (hereinafter referred to as the MPRSA). The rule would primarily be of relevance to entities in the New York-New Jersey Harbor and surrounding area seeking permits from the U.S. Army Corps of Engineers (USACE) for the ocean dumping of dredged material at the Mud Dump Site or those seeking to place Remediation Material at the HARS, as well as the USACE itself. Potentially affected categories and entities seeking to use the Mud Dump Site or the HARS include:

Category	Examples of potentially affected entities
Industry	Ports in NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material. Marinas in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material. Shipyards in the NY/NJ Harbor and surrounding areas seeking MPRSA permits for dredged material. Berth owners in the NY/NJ Harbor and surrounding area seeking MPRSA permits for dredged material.
State/local/ tribal governments.	Local governments owning ports or berths in the NY/NJ Harbor and surrounding area seeking MPRSA permits for dredged material.
Federal	US Army Corps of Engineers for its proposed dredging projects in NY/NJ Harbor and surrounding areas. Federal agencies seeking MPRSA permits for dredged material from NY/NJ Harbor and surrounding areas.

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 EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. 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 provisions of § 220.1 of Title 40 of the Code of Federal Regulations, and you wish to use the site subject to today's proposal. If you have any questions regarding applicability of this action to a particular entity, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Other entities potentially affected by today's proposal would include commercial and recreational fishing interests using New York Bight Apex fishing and shellfish grounds. By providing for remediation of areas adversely impacted by historic disposal activities (see discussion below), today's proposal would be expected to have positive effects on fishery and shellfish resources.

II. Background

Since the 1800s, the New York Bight Apex and surrounding area has been

used for disposal of dredged material and a variety of waste products, including municipal garbage, building materials, sewage sludge, and industrial waste. The New York Bight Apex is defined as the area of approximately 2,000 km² extending along the New Jersey coastline from Sandy Hook south to 40°10′ latitude and east along the Long Island coastline from Rockaway Point to 73°30′ longitude. The New York Bight Apex is a small part of the New York Bight. The New York Bight is an approximately 39,000 km² area extending seaward from Cape May, New Jersey to Montauk Point, New York outward to the edge of the continental shelf. Dredged material placement in the New York Bight Apex began ''officially'' in 1888 at a point 2.5 miles south of Coney Island. At that time, the New York Harbor U.S. Congressional Act of 1888 established that the Supervisor of New York Harbor had the authority to grant permits for ocean disposal. Due to shoaling off Coney Island, the dredged material disposal location was moved in 1900 to a point one-half mile south and eastward of Sandy Hook Lightship. In 1903, the location was moved again, to 1.5 miles east of Scotland Lightship. Dredged material placement continued seaward of this area for the next 70 years.

In 1972, the Congress of the United States enacted the MPRSA to address and control the dumping of materials into ocean waters. Title I of MPRSA authorized the EPA and the USACE to regulate dumping in ocean waters. Since the MPRSA was enacted, and through its subsequent amendments (including the Ocean Dumping Ban Act of 1988, which prohibited ocean dumping of sewage sludge and industrial waste), dumping in the New York Bight has been dramatically reduced through education and implementation actions by EPA, the USACE, the U.S. Coast Guard, and other agencies. In the New York Bight, this has meant permanent closure of the 12-Mile and 106-Mile sewage sludge sites, the Cellar Dirt site, the Acid Waste site, and the Woodburning site.

Regulations implementing the MPRSA are set forth at 40 CFR Parts 220 through 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 issued under the MPRSA. The MPRSA divides permitting responsibility between EPA and the USACE. Under Section 102 of the MPRSA, EPA has responsibility for issuing permits for all materials other than dredged material (e.g., fish wastes, burial at sea). Under Section 103 of the MPRSA, the Secretary of the Army has the responsibility for issuing permits for the ocean dumping of dredged material. This permitting authority has been delegated to the USACE. Determinations to issue MPRSA permits for dredged material are subject to EPA review and concurrence. Sediments proposed for ocean disposal within EPA Region 2 and the USACE New York District (NYD) have been separated into 3 categories (see Supplemental EIS), with Category I being allowed for ocean disposal without capping, Category II allowed for ocean disposal with capping, and Category III prohibited from ocean disposal.

Section 102(c) of the MPRSA also provides that EPA may designate recommended times and sites for ocean dumping, and Section 103(b) further provides that the USACE 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 the authority to designate/de-designate ocean dumping sites for dredged material to the Regional Administrator of the Region in which the site is located. EPA is proposing the de-designation and termination of the Mud Dump Site and simultaneous HARS designation pursuant to the foregoing authorities and 40 CFR 228.5, 228.6, 228.10, and 228.11. Today's proposal consists of a single rulemaking action that would amend § 228.15(d)(6) by deleting existing language that lists the Mud Dump Site as a designated site and simultaneously replacing it with language designating the HARS. It should be noted that MPRSA site designation does not constitute or imply EPA's approval of actual placement of material at the site. Before placement of the Material for Remediation at the HARS may commence, the USACE must evaluate permit applications according to EPA's Ocean Dumping Regulations.

Interested persons may participate in this proposed rulemaking by submitting written comments to the address given above on or before the close of the public comment period specified in the **DATES** section of this Preamble. Because of the September 1, 1997, deadline for completion of this action (see paragraph below), comments must be timely received in order to enable their consideration.

III. Need for Remediation

As stated in a letter to several New Jersey Congressmen, signed by EPA Administrator Carol Browner, then-Secretary of Transportation Federico F. Peña, and Secretary of the Army Togo D. West, Jr. (July 24, 1996, 3-party letter):

''EPA will immediately begin the administrative process for closure of the Mud Dump Site by September 1, 1997. The proposed closure shall be finalized no later than that date. Post-closure use of the site would be limited, consistent with the management standards in 40 CFR 228.11(c). Simultaneous with closure of the Mud Dump Site, the site and surrounding areas that have been used historically as disposal sites for contaminated material will be redesignated under 40 CFR part 228 as the Historic Area Remediation Site. This designation will include a proposal that the site be managed to reduce impacts at the site to acceptable levels (in accordance with 40 CFR 228.11(c)). The Historic Area Remediation Site will be remediated with uncontaminated dredged material (i.e., dredged material that meets current Category I standards and will not cause significant undesirable effects including through bioaccumulation)'' (referred to hereinafter as ''the Material for Remediation'' or ''Remediation Material''). As also stated in the July 24, 1996, 3-Party Letter: ''The designation of the Historic Area Remediation Site will assure long-term use of Category I dredge material.''

As discussed and documented in the Supplemental environmental impact statement (EIS) accompanying today's proposed action (see section IV of preamble, below), field studies of the New York Bight Apex have found undesirable levels of bioaccumulative contaminants and toxicity in the surface sediments of much of the MDS and in sediments immediately surrounding the MDS. Further, it was found that some of these sediments cause toxicity in amphipod bioassays. Amphipods are small-bodied crustaceans that live in the surface layers of sediment, and are important prey items for many coastal marine organisms. These and other organisms are used by EPA and the USACE to evaluate sediment samples from proposed dredging sites.

While it is impossible to quantify how much of New York Bight Apex contamination is the direct result of past dredged material disposal, other ocean dumping activities (e.g., former sewage sludge disposal at the 12-Mile Site), or other sources (e.g., via Hudson River plume or atmospheric deposition), the presence of these degraded sediments in the Apex is cause for concern. Organisms living in or near these degraded surface sediments in

nearshore waters will be continually exposed to contaminants until the contaminants are buried by natural sedimentation, placement of Remediation Material, or otherwise isolated or removed. Exposed sediments can directly and indirectly impact benthic and pelagic organisms. Impacts to terrestrial organisms (including human beings) are also possible if the contaminants were to undergo trophic transfer.

EPA employed several types of evaluations to determine the extent and location of potential environmental impacts in the vicinity of the MDS and historic dredged material disposal areas. These included the type of amphipod bioassays normally conducted on sediment samples from proposed dredging sites, contaminant-bioaccumulation evaluations of infaunal organisms and sediment from the Study Area (a 30 square nautical mile area within the New York Bight Apex encompassing benthic areas that showed evidence of dredged material disposal (presence of craters and mounds)), and evaluation of the benthic community structure in the potentially impacted areas. The results of these evaluations and the main factors that make remediation necessary are summarized below.

Contaminant Toxicity

Potential toxicity of sediments was evaluated using the same 10-day amphipod (*Ampelisca abdita*) bioassay test used as part of the evaluation of the suitability of sediment for ocean disposal by EPA Region 2 and the USACE New York District (NYD). The data from amphipod bioassays of sediments from 1994 Study Area samples indicated widespread toxic conditions in sediment from areas around the MDS. If these surface sediments from the Study Area were from a proposed Region 2/NYD dredging project site, the sediments would have been categorized as Category III and found to not meet the limiting permissible concentration (LPC) in EPA's Ocean Dumping Regulations (40 CFR 227.27), and thus would not be permitted for disposal at the MDS.

Contaminant Bioaccumulation/Trophic Transfer

Contaminant bioaccumulation was evaluated by analyzing the tissues of infaunal worms collected from the Study Area sediments. Infaunal organism bioaccumulation of sediment-associated contaminants can, if accumulated to high enough levels, result in both acute and chronic impacts and eventually transform benthic community structure. Such changes can affect the food source of demersal predators. When demersal predators feed on infauna with contaminated tissues, the contaminants can be transferred to and potentially accumulate in the predator. These contaminants can then potentially be consumed by humans. EPA's evaluation of contaminant bioaccumulation in the Study Area was similar to the national testing manual's (Green Book) Tier IV ''steady-state'' evaluations, which are used in determining compliance with the ocean dumping criteria. The results showed that there were areas in the vicinity of the MDS where these benthic worms were accumulating undesirable levels of contaminants from the sediments.

Contaminants in Sediments

Contaminant concentrations in sediments in the vicinity of the MDS were compared to National Oceanic and Atmospheric Administration (NOAA) ER–L (Effects Range-Low) and ER–M (Effects Range-Median) values which have been derived from a broad range of biological and chemical data collected synoptically from field and laboratory experiments. Although ER–L/ER–M values are not appropriate for regulatory decision making, they are useful in sediment evaluations when considered concurrently with other data. In general, the comparisons of ER–L/ER–M values to contaminant levels in sediments from parts of the Study Area indicated that, based on contaminant levels in the sediment, negative biological effects could be possible at many stations. This conclusion is corroborated by the results of the toxicity and contaminant bioaccumulation tests described above.

Contaminant Levels in Area Lobsters

NOAA tissue data from lobsters that were harvested in the New York Bight Apex in 1994 revealed that PCB and 2,3,7,8–TCDD (dioxin) concentrations in the hepatic tissue (tomalley) of the lobsters were above U.S. Food and Drug Administration consumption guidelines. Other contaminants were also present in the hepatopancreas and other tissues, but the concentrations of these contaminants were within consumption guidelines.

It must be kept in mind that the lobsters analyzed in the NOAA study were harvested from wild stocks in the Apex, whose populations migrate seasonally through the region, including perhaps the SEIS Study Area. Contamination of these animals cannot be definitively linked to specific areas of dredged material disposal, to other past dumping activities, or to other ongoing pollution sources. Nor does the study data indicate that human consumption of lobster muscle tissue (meat) presents health risks. However, the lobster study data do show that contaminants are being accumulated, and that concern about potential human-health risks is warranted. This contaminant data set complements other evidence of benthic contamination in the Bight Apex region.

Solutions to Sediment Degradation in the Study Area

Today's proposal to terminate and de-designate the Mud Dump Site, and simultaneously redesignate the area of that site and surrounding degraded areas as the Historic Area Remediation Site is amply supported by the presence of toxic effects (a Category III sediment characteristic), dioxin bioaccumulation exceeding Category I levels in worm tissue (a Category II sediment characteristic), ER–L/ER–M exceedances in some Study Area sediments, as well as TCDD/PCB contamination in area lobster stocks. Individual elements of the aforementioned data do not prove that sediments within the Study Area are imminent hazards to the New York Bight Apex ecosystem, living resources, or human health. However, the collective evidence presents cause for concern, justifies the conclusion of the July 24, 1996, 3-Party Letter that a need for remediation exists, that the site is Impact Category I (*see,* 40 CFR 228.10), and that the site should be managed to reduce impacts to acceptable levels (*see,* 40 CFR 228.11(c)). Further information on the conditions in the Study Area and the surveys performed may be found in the Supplemental Environmental Impact Statement described immediately below.

IV. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, Section 4321 *et seq.* (NEPA) requires that Federal agencies prepare an environmental impact statement (EIS) on proposals 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 activities have been determined to be ''functionally equivalent'' with NEPA, EPA has voluntarily undertaken to prepare an EIS when designating ocean dumping sites. *See,* 39 FR 16186 (May 7, 1974).

In August 1982, EPA published a final EIS entitled, ''Environmental Impact Statement for the New York Dredged

Material Disposal Site Designation.'' The EIS assessed the environmental impacts of establishing an ocean disposal site for 100 million cubic yards (mcy) of dredged materials generated within the Port of New York and New Jersey. After completion of the environmental studies and publication of the EIS, EPA designated the Mud Dump Site as an Impact Category I disposal site on May 4, 1984 at 49 FR 19012 (*see,* 40 CFR 228.10(c)). The resulting rule specifying the Mud Dump Site established a capacity of 100 mcy (*see,* 40 CFR 228.15(d)(6)). Approximately 68 mcy of dredged material has been disposed of at the Mud Dump Site since that designation; the remaining capacity of the Mud Dump Site is affected by a variety of factors, including disposal strategies and mound height restrictions for dredged material. Consistent with the need for remediation and the above-quoted provision of the July 24, 1996, 3-Party letter, on September 11, 1996, EPA announced the following actions: (1) Modification of the scope of the existing supplemental environmental impact statement (EIS) by eliminating the proposal to expand the Mud Dump Site for Category II dredged material disposal; and (2) implementation of the July 24, 1996, 3-Party letter by closing the Mud Dump Site by September 1, 1997, and simultaneously designating the HARS for the purpose of remediation. Accordingly, EPA has prepared a Supplemental EIS entitled, ''Supplement to the Environmental Impact Statement on the New York Dredged Material Disposal Site Designation for the Designation of the Historic Area Remediation Site (HARS) in the New York Bight Apex.'' The document addresses the environmental considerations relevant to the HARS, and identifies the Priority Remediation Area (PRA) within the HARS. Anyone desiring a copy of the Supplemental EIS may obtain one from the address given above.

The action discussed in the Supplemental EIS is the simultaneous termination/de-designation of the Mud Dump Site and designation of the HARS. The appropriateness of placing specific material at a designated site is determined on a case-by-case basis as part of the process of issuing permits under the MPRSA. The Category II capacity of the existing Mud Dump Site will be reached by September 1, 1997. The basis for this limit is explained in the Mud Dump Site Management and Monitoring Plan (SMMP), which can be obtained by contacting Douglas A. Pabst, EPA Region 2, at (212) 637–3797 (E-mail pabst.douglas@epamail.epa.gov) or Brian May, USACE-New York District (NYD), at (212) 264–1853 (E-mail: Brian.May@NAN01.USACE.Army.Mil).

The following alternatives were evaluated in detail in the Supplemental EIS:

1. No Action

Under this alternative, there would be no designation of a HARS in the New York Bight Apex for the placement of Remediation Material. With the no action alternative, Category II dredged material capacity will be reached by September 1, 1997; no Category II disposal will be allowed at the Mud Dump Site after capacity is reached. The disposal of Category I dredged materials would continue until the capacity of the Mud Dump Site is reached (i.e., 31 mcy of Category I). There would be no change to the size or management of the present Mud Dump Site. EPA has not selected the no action alternative because this alternative does not allow for any remediation of the degraded sediments outside the Mud Dump Site.

2. Closure of the Mud Dump Site With No Designation of the HARS

Under this alternative, the Mud Dump Site would be closed/de-designated by September 1, 1997, and there would be no designation of the HARS. Similar to the no action alternative, this option does not allow for any remediation of degraded sediments inside or outside of the Mud Dump Site, and thus was not selected.

3. Remediation (Preferred Alternative)

Under the remediation alternative (which is the subject of today's proposed rule), there would be simultaneous closure/de-designation of the Mud Dump Site and designation of the HARS by September 1, 1997. The proposed HARS, which will include the 2.2 square nautical mile area of the Mud Dump Site, would be an approximately 15.7 square nautical mile area located approximately 3.5 nautical miles east of Highlands, New Jersey and 7.7 nautical miles south of Rockaway, New York. The Mud Dump Site is located approximately 5.3 nautical miles east of Highlands, New Jersey and 9.6 nautical miles south of Rockaway, New York. The proposed HARS will include the following three areas (See Figure 1):

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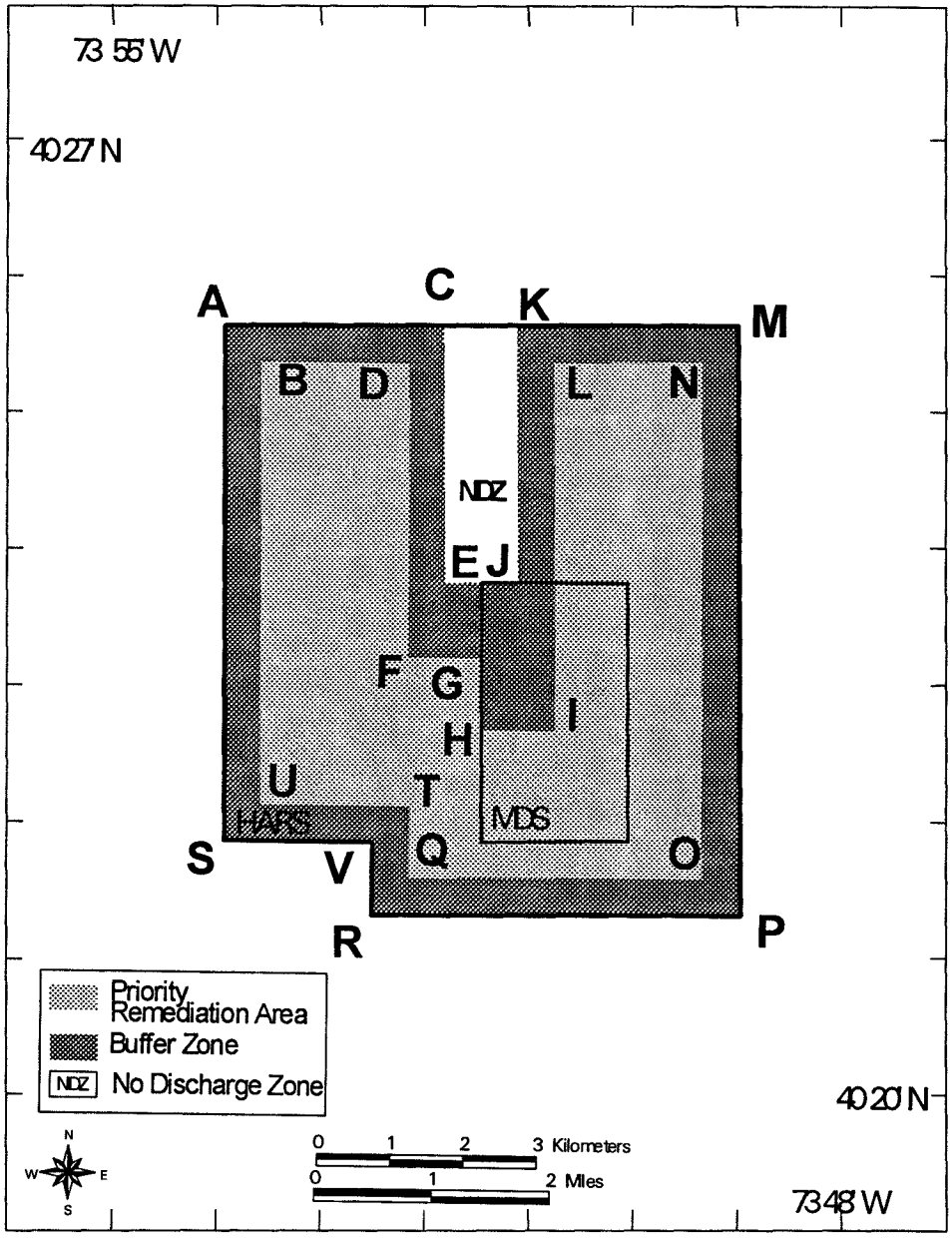
HISTORIC AREA REMEDIATION SITE



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Priority Remediation Area (PRA): A 9.0 square nautical mile area to be remediated with at least 1 meter of Remediation Material. The PRA encompasses the area of degraded sediments as described in greater detail in the Supplemental EIS.

Buffer Zone: An approximately 5.7 square nautical mile area (0.27 nautical mile wide band around the PRA) in which no placement of the Material for Remediation will be allowed, but may receive Material for Remediation that incidentally spreads out of the PRA.

No Discharge Zone: An approximately 1.0 square nautical mile area in which no placement or incidental spread of Material for Remediation is allowed.

Remediation would be accomplished by covering all areas within the PRA, prioritized by the degree of degradation, with at least a 1 meter cap (minimum required cap thickness) of the Material for Remediation.

The Supplemental EIS selects remediation as the preferred alternative following a comparison of the four proposed project alternatives. The remediation alternative would reduce the toxicity of area sediments to sensitive marine organisms and would decrease the contaminant bioavailability and possible sublethal effects to fish and shellfish resources, thereby reducing potential trophic transfer of contaminants to piscivorous marine birds, mammals and human beings. As stated in the July 24, 1996, 3-Party letter: ''Simultaneous with closure of the MDS, the site and surrounding areas that have been used historically as disposal sites for contaminated material will be redesignated under 40 CFR part 228 as the Historic Area Remediation Site. This designation will include a proposal that the site be managed to reduce impacts at the site to acceptable levels (in accordance with 40 CFR 228.11(c)).'' As further stated in the July 24, 1996, 3-Party Letter: ''The designation of the Historic Area Remediation Site will assure long-term use of category I dredge material.'' A draft SMMP for the HARS has been prepared and may be obtained by contacting Douglas A. Pabst, EPA Region 2, at (212) 637–3797 (E-mail: pabst.douglas@epamail.epa.gov) or Brian May, USACE-New York District (NYD), at (212) 264–1853 (E-mail: Brian.May@NAN01.USACE.Army.Mil).

4. Restoration

Under the restoration alternative, there would be the simultaneous closure/de-designation of the Mud Dump Site and designation of the HARS by September 1, 1997. The HARS would include the present area of the Mud Dump Site and areas outside the Mud Dump Site found to be degraded by historical dredged material disposal. The restoration work would be conducted by covering degraded sediment areas with at least a one meter cover of sandy Material for Remediation (0 to 10% fines). Restoration work would be prioritized by the degree of degradation—that is, areas exhibiting the greatest degradation would be restored first. EPA did not select this alternative since it would have contributed to a loss of mud, and muddy sand habitats, with possible negative effects to living resources (e.g., lobster and winter flounder). Further, there is limited availability of sandy Material for Remediation from New York-New Jersey Harbor and surrounding areas, and no dedicated funding for obtaining suitable material from other sources (e.g., inlet projects or mining sites). This could make restoration infeasible or result in a much longer restoration period than Alternative 3, with continued exposure of degraded sediments to the biotic zone of the New York Bight. In addition, one of the objectives of the July 24, 1996, 3-Party letter is that the designation of the Historic Area Remediation Site assures long-term use of Category I dredged material.

V. Proposed Action

Today's proposal would implement Alternative 3 of the Supplemental EIS. The proposed HARS (which includes the 2.2 square nautical mile Mud Dump Site) is a 15.7 square nautical mile area located approximately 3.5 nautical miles east of Highlands, New Jersey, and 7.7 nautical miles south of Rockaway, New York, and bounded by the coordinates shown in Table 1.

In order to reduce adverse effects that have occurred within the HARS (*see,* 40 CFR 228.11(c)), use of the site would be limited to the placement of Remediation Material. Remediation Material, as provided in the July 24, 1996, 3-party letter, is ''uncontaminated dredged material (i.e., dredged material that meets current Category I standards and will not cause significant undesirable effects, including through bioaccumulation)''. Based upon evaluation for environmental impact under 40 CFR part 227, subpart B, material to be used for remediation must satisfy the criteria of 40 CFR 227.6 and 227.27 and not indicate a potential for short term (acute) impacts or long term (chronic) impacts. Consistent with achieving the objective of remediating the HARS to acceptable levels of impact, material to be used for remediation will possess characteristics that demonstrably contribute to the improvement of conditions within the area in which they are to be placed so as to enable development of sustainable and diverse communities of healthy benthic marine life.

If at any time remediation operations at the site cause significant adverse environmental impacts, EPA will place such additional limitations on site use as are necessary to reduce the impacts to acceptable levels, particularly taking into account the following factors: movement of materials into estuaries or marine sanctuaries, or onto oceanfront beaches, or shorelines; movement of materials toward productive fishery or shell fishery areas; absence from the HARS of pollution-sensitive biota characteristic of the general area; progressive, non-seasonal changes in water quality or sediment composition at the HARS, when these changes are attributable to material placed at the HARS; progressive, non-seasonal changes in composition or numbers of pelagic, demersal, or benthic biota at or near the HARS, when these changes are attributable to the material placed at the HARS; and accumulation of constituents from the material in marine biota near the HARS. *See,* 40 CFR 228.10.

VI. Site Designation Criteria

Under 40 CFR 228.5, five general criteria are used in the selection and approval of sites under section 102 of the MPRSA for continuing use. Pursuant to § 228.5(a), sites are selected so as to minimize interference with other marine activities, particularly avoiding areas of existing fisheries or shell fisheries, and areas of heavy navigational use. For additional information on § 228.5(a) see sections 3.5, 4.0, 4.1, 4.2, 4.2.1, 4.2.2, and 4.2.4 of the Supplemental EIS. Pursuant to § 228.5(b), sites are situated such that temporary water quality perturbations caused by site operations would be expected to be reduced to normal ambient levels before reaching any beach shoreline, sanctuary or geographically limited fishery area. For additional information on § 228.5(b) see Sections 3.2.4, 4.2.2, 4.2.3, and 5.0 of the Supplemental EIS. Pursuant to § 228.5(c), if site designation studies show that any interim site does not meet the site selection criteria, use of such site shall be terminated as soon as an alternate site can be designated. Pursuant to § 228.5(d), site size is limited in order to localize for identification and control any immediate adverse impacts, and to facilitate effective monitoring for long-range effects. For additional information

on § 228.5(d) see Section 5.0 of the Supplemental EIS. Pursuant to § 228.5(e), EPA will, wherever feasible, designate sites beyond the edge of the continental shelf or sites that have been historically used. For additional information on § 228.5(e) see Sections 3.2.1 and 3.2.2 of the Supplemental EIS.

As described in Chapter 4 of the Supplemental EIS, today's proposal complies with the general criteria of § 228.5. Specifically, the HARS, which will be remediated to improve its current condition, is not in a geographically limited fishery area, is not in a major navigation area and otherwise has no geographically limited resource values that are not abundant in other parts of this coastal region. The Material for Remediation placed at the site will not reach any significant areas such as a marine sanctuary, beach, or other important natural resource area (i.e., the buffer zone ensures that transport beyond the HARS boundaries during initial mixing is avoided). Neither the HARS nor the existing Mud Dump Site are interim sites, and the HARS has an appropriately limited size that will allow for effective monitoring and localize impacts. Although the site is not located off the Continental Shelf, it is located in an area previously affected by historical dredged material disposal. Use of a site off the Continental Shelf is not feasible because a major underlying purpose of the HARS designation is to provide for remediation of such historically used areas, and these areas are located on the continental shelf.

Section 228.6 of the Ocean Dumping Regulations also lists eleven specific factors used in evaluating a proposed site. These 11 specific criteria were also considered in developing today's proposed rule, as described below, and documented in the Supplemental EIS.

1. *Geographical position, depth of water, bottom topography and distance from coast (40 CFR 228.6(a)(1):* The HARS (which includes the 2.2 square nautical area of the mile Mud Dump Site) is a 15.7 square nautical mile area located approximately 3.5 nautical miles east of Highlands, New Jersey and 7.7 nautical miles south of Rockaway, New York, bounded by the following coordinates:

TABLE 1

Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
A	40°25′39″ N	73°53′55″ W	40°25.65′ N	73°53.92′ W
M	40°25′39″ N	73°48′58″ W	40°25.65′ N	73°48.97′ W
P	40°21′19″ N	73°48′57″ W	40°21.32′ N	73°48.95′ W
R	40°21′19″ N	73°52′30″ W	40°21.32′ N	73°52.50′ W
S	40°21′52″ N	73°53′55″ W	40°21.87′ N	73°53.92′ W
V	40°21′52″ N	73°52′30″ W	40°21.87′ N	73°52.50′ W

DMS = Degrees, Minutes, Seconds
DDM = Degrees, Decimal Minutes

The proposed HARS includes the following 3 areas:

Priority Remediation Area (PRA): 9.0 square nautical mile area to be remediated with at least 1 meter of Remediation Material, bounded by the following coordinates:

TABLE 2

Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
B	40°25′23″ N	73°53′34″ W	40°25.38′ N	73°53.57′ W
D	40°25′22″ N	73°52′08″ W	40°25.37′ N	73°52.13′ W
F	40°23′13″ N	73°52′09″ W	40°23.22′ N	73°52.15′ W
G	40°23′13″ N	73°51′28″ W	40°23.22′ N	73°51.47′ W
H	40°22′41″ N	73°51′28″ W	40°22.68′ N	73°51.47′ W
I	40°22′41″ N	73°50′43″ W	40°22.68′ N	73°50.72′ W
L	40°25′22″ N	73°50′44″ W	40°25.37′ N	73°50.73′ W
N	40°25′22″ N	73°49′19″ W	40°25.37′ N	73°49.32′ W
O	40°21′35″ N	73°49′19″ W	40°21.58′ N	73°49.32′ W
Q	40°21′36″ N	73°52′08″ W	40°21.60′ N	73°52.13′ W
T	40°22′08″ N	73°52′08″ W	40°22.13′ N	73°52.13′ W
U	40°22′08″ N	73°53′34″ W	40°22.13′ N	73°53.57′ W

DMS = Degrees, Minutes, Seconds
DDM = Degrees, Decimal Minutes

Water depths within this area range from 40 feet (12 meters) to 138 feet (42 meters). The bottom topography is characterized by mounds from previous disposal activities that gradually slope downward toward the southeast near the Hudson Shelf Valley.

Buffer Zone: an approximately 5.7 square nautical mile area (0.27 nautical mile wide band around the PRA) in which no placement of the Material for Remediation will be allowed, but which may receive Remediation Material that incidentally spreads out of the PRA, bounded by the following coordinates:

TABLE 3

Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
A	40°25′39″ N	73°53′55″ W	40°25.65′ N	73°53.92′ W

TABLE 3—Continued

Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
B	40°25′23″ N	73°53′34″ W	40°25.38′ N	73°53.57′ W
C	40°25′39″ N	73°51′48″ W	40°25.65′ N	73°51.80′ W
D	40°25′22″ N	73°52′08″ W	40°25.37′ N	73°52.13′ W
E	40°23′48″ N	73°51′48″ W	40°23.80′ N	73°51.80′ W
F	40°23′13″ N	73°52′09″ W	40°23.22′ N	73°52.15′ W
G	40°23′13″ N	73°51′28″ W	40°23.22′ N	73°51.47′ W
H	40°22′41″ N	73°51′28″ W	40°22.68′ N	73°51.47′ W
I	40°22′41″ N	73°50′43″ W	40°22.68′ N	73°50.72′ W
J	40°23′48″ N	73°51′06″ W	40°23.80′ N	73°51.10′ W
K	40°25′39″ N	73°51′06″ W	40°25.65′ N	73°51.10′ W
L	40°25′22″ N	73°50′44″ W	40°25.37′ N	73°50.73′ W
M	40°25′39″ N	73°48′58″ W	40°25.65′ N	73°48.97′ W
N	40°25′22″ N	73°49′19″ W	40°25.37′ N	73°49.32′ W
O	40°21′35″ N	73°49′19″ W	40°21.58′ N	73°49.32′ W
P	40°21′19″ N	73°48′57″ W	40°21.32′ N	73°48.95′ W
Q	40°21′36″ N	73°52′08″ W	40°21.60′ N	73°52.13′ W
R	40°21′19″ N	73°52′30″ W	40°21.32′ N	73°52.50′ W
S	40°21′52″ N	73°53′55″ W	40°21.87′ N	73°53.92′ W
T	40°22′08″ N	73°52′08″ W	40°22.13′ N	73°52.13′ W
U	40°22′08″ N	73°53′34″ W	40°22.13′ N	73°53.57′ W
V	40°21′52″ N	73°52′30″ W	40°21.87′ N	73°52.50′ W

DMS = Degrees, Minutes, Seconds
DDM = Degrees, Decimal Minutes

No Discharge Zone: an approximately 1.0 square nautical mile area in which no placement or incidental spread of the Material for Remediation is allowed, bounded by the following coordinates:

TABLE 4

Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
C	40°25′39″ N	73°51′48″ W	40°25.65′ N	73°51.80′ W
E	40° 23′ 48″ N	73° 51′ 48″ W	40° 23.80′ N	73° 51.80′ W
J	40° 23′ 48″ N	73° 51′ 06″ W	40° 23.80′ N	73° 51.10′ W
K	40° 25′ 39″ N	73° 51′ 06″ W	40° 25.65′ N	73° 51.10′ W

DMS = Degrees, Minutes, Seconds
DDM = Degrees, Decimal Minutes

For additional information see Sections 3.1, 3.2.2, 3.3.1, 3.3.4, 4.1, 4.2, 4.2.9 of the Supplemental EIS.

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)): There are substantial living marine resources that breed, spawn, feed and transit the proposed HARS in both juvenile and adult phases. These biological resources are utilized by commercial and recreational fishermen. Placement of the Material for Remediation at the HARS is intended to help improve the sediment conditions in the area, and thus should be beneficial to marine life.

Approximately 30 species of whales, seals, and dolphins are observed in the mid-Atlantic area in the course of their migration. Three endangered and two threatened species of sea turtles are found in the mid-Atlantic. Two of the five, the Kemp's ridley and loggerhead turtle, are known to occur near shore. Fin and humpback whales occur in both near shore and offshore waters. Several species of seabirds breed in the middle Atlantic states, with New Jersey and Long Island harboring the largest nesting areas. Of particular concern are the least tern, roseate tern, and the black skimmer, as the present populations of these species are greatly reduced over historic population sizes. The HARS lies within the Atlantic Flyway through which over three million migratory waterfowl travel annually. Although these activities occur in the vicinity of the proposed HARS, no feature of the life history of valuable organisms is known to be unique to the area.

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). The USFWS concurred with EPA's determination that species under its jurisdiction would not likely be adversely affected by the proposed action. EPA prepared a Biological Assessment of the proposed action on four species under NMFS jurisdiction: Kemp's ridley sea turtle, loggerhead sea turtle, humpback whale, and the fin whale. The Biological Assessment, which concludes that the proposed action is not likely to affect these four species, is available upon request by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section. For additional information see Sections 3.4, 3.5, 4.2.2, 4.3.1.4, 4.3.2.4, 4.3.3.4 of the Supplemental EIS.

3. *Location in relation to beaches and other amenity areas* (40 CFR 228.6(a)(3)): There are heavily used beaches, public shorelines and recreational facilities on the southern coast of Long Island, New York, and the Atlantic shore of New Jersey. The HARS encompasses all benthic areas that EPA has determined are appropriate for remediation and show evidence of dredged material disposal and/or historical ocean dumping activities as found within the 30 square nautical mile Study Area evaluated in the SEIS. Portions of the ocean front beaches in

New Jersey will be as close as 3.5 nautical miles west of the HARS; amenity areas in Long Island, New York, will be 7.4 nautical miles from the HARS. Given the rapid dissipation characteristics of dredge plumes (i.e., plume dilution after two hours, based on total suspended solids, ranged from approximately 64,000:1 to 557,000:1) and that virtually all released materials settle to the bottom near the release point, the Material for Remediation placed in the HARS would not adversely affect beaches or similar amenities. For additional information see Sections 3.1, 4.2.1, 4.2.3 of the Supplemental EIS.

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)): Approximately 41 mcy of the Material for Remediation will be placed at the HARS. This estimate is based upon the placement of a 1 meter cap (minimum required cap thickness) of the Material for Remediation on sediments within the PRA. This volume is an estimate; past capping experience suggests that the actual remediation volume will be higher due to settling and mounding of the material. The Material for Remediation will be generated through the maintenance and development of navigation channels and berthing areas in the Port of New York and New Jersey and surrounding areas, and could also be generated as a result of non-navigational dredging. All of the materials would be transported to the HARS by dump scow or hopper dredge. The Material for Remediation placed in the HARS would not be containerized or packaged. For additional information see Sections 3.2.3, 3.2.4, and 5.0 of the Supplemental EIS.

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—USACE New York District , and the U.S. Coast Guard. The EPA has developed a draft HARS SMMP which covers post-closure activities at the Mud Dump Site and remediation activities within the HARS upon its designation (see below for information on obtaining the HARS SMMP). The HARS will be managed to reduce impacts at the site to acceptable levels (in accordance with 40 CFR 228.11 (c)). For additional information see Sections 3.2.4, 4.3.1.7, 4.3.2.7, 4.3.3.7, 4.3.4.7, and 5.0 of the Supplemental EIS.

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)): Prevailing long-term currents in the New York Bight, which includes the area of the HARS, are to the southwest at mean speeds of approximately 3.7 cm/second, with an occasional clockwise eddy in the Bight Apex. Surface waves are generally less than 2 meters in height except during major storms which occur most frequently in the fall and winter seasons. Wave-induced near bottom currents are greater than 20 cm/second only when surface wave heights exceed 3 meters, wave periods are in excess of 10 seconds, and storm centers are to the east or southeast. These wave conditions are encountered less than 3% of the time in the fall and winter, and less than 1% of the time in the spring and summer. Near bottom oscillatory currents at the HARS are relatively weak with maximum speeds on the order of 10 cm/s. Mean currents are also weak, with direction that is dependent upon location, water depth, and bottom topography.

Short term dispersion in the water column is a function of tidal forces and currents at the time of placement. Deposited Remediation Material sediments are relatively stable under non-storm conditions. Resuspension and dispersion after deposition is primarily caused by major storm activity and the most intense storms can resuspend and transport sandy sediments deposited in less than 20 m of water. Any potential for transport of the Material for Remediation to beaches and amenities is negligible. For additional information see Sections 3.3.3, 3.3.4, 3.3.5, 3.3.6, 3.3.7, 3.3.8, and 4.2.3 of the Supplemental EIS.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects)* (40 CFR 228.6(a)(7)): The NY Bight Apex has been historically utilized for ocean disposal of dredged material and a variety of waste products since the 1800's (e.g., building materials, sewage sludge, industrial waste). Ocean disposal of garbage was eliminated in 1934; other industrial waste product disposal practices ended as a result of the passage of the Ocean Dumping Ban Act (sewage sludge disposal ended in 1992). The size of the PRA within the HARS is 9.0 square nautical miles. For additional information see Sections 3.2.1, 3.2.2, 3.2.3, 4.3.1.1, 4.3.2.1, and 4.3.3.1 of the Supplemental EIS.

As previously discussed in today's preamble and further explained in Chapters 1 and 3 of the Supplemental EIS accompanying today's proposal, field surveys have identified areas of sediments exhibiting unacceptable toxicity to amphipods and elevated levels of bioaccumulative contaminants within the MDS and surrounding areas. Although precise quantification of the sources of such contamination is not possible (with potential sources including historical dredged material disposal, former 12-Mile Site sewage sludge dumping, the Hudson River Plume, and atmospheric deposition), the presence of degraded sediments exhibiting unacceptable toxicity and/or unacceptable bioaccumulation is cause for concern. Bathymetric and side scan data show evidence of dredged material disposal mounds in the Supplemental EIS study area. The available information, as documented in the accompanying Supplemental EIS, supports both the closure of the MDS and designation and remediation of the HARS.

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 site is located in the entrance to New York Harbor. It is within the precautionary zone established by the U.S. Coast Guard for commercial and recreational ship traffic. Discussions with local harbor pilots indicate that the proposed activities at the HARS will not interfere with commercial navigation activity. Neither desalination nor fish or shellfish culture occurs near the site. This action is intended to help improve sediment conditions in the area, and thus should be beneficial to fishing. Sand mining in the area of the HARS has been precluded by a 1996 statement of policy from the Minerals Management Service (MMS). In a related matter, the MMS has stated that areas of low petroleum potential in the vicinity of the site are under moratorium for oil and gas exploration. The HARS is not a scientifically important area. For additional information see Sections 3.5, 4.2.1, 4.2.2, 4.2.4, 4.2.5, 4.2.5.1, 4.2.5.2, 4.2.6, and 4.2.8 of the Supplemental EIS.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys* (40 CFR 228.6(a)(9)): From 1994 to 1996, EPA Region 2 and the USACE NYD conducted a variety of oceanographic surveys within an approximately 30 square nautical mile study area (including the 15.7 square nautical mile HARS). Water quality in and near the HARS meets applicable Federal marine water quality criteria; the water quality can be affected by Hudson River outflow/plume and

natural seasonal cycles. With respect to site ecology, demersal and pelagic fish are abundant in the site. Two benthic infaunal communities (i.e., sandy and fine grain) occur in the site. Abundance of both benthic communities is high, diversity is moderate. Neither of the benthic communities is detectably impaired by contaminants in the sediments. Studies conducted by EPA, however, indicate that when sediments from the HARS area are removed and brought back to the laboratory for subsequent toxicity testing using standard 10-day amphipod (ampelisca abdita) acute toxicity test procedures, sediment toxicity is observed in sediments from many areas of the HARS. These studies revealed levels of toxicity within the HARS that would fail the ocean disposal criteria and qualify as Category III dredged material. Analyses conducted on worm tissue collected from the HARS revealed levels of dioxin in excess of Category I levels but below Category III levels. For additional information see Section 3.3.10, 3.4, and 3.5.2 of the Supplemental EIS.

10. *Potential for the development or recruitment of nuisance species in the site* (40 CFR 228.6(a)(10)): Based on the available evidence, including monitoring studies of the New York Bight Apex and the Mud Dump Site, the Material for Remediation is not a potential source for the development or recruitment of nuisance species in the HARS. Monitoring results and available data indicate that placement of dredged material at the Mud Dump Site has not extended the range of undesirable living organisms or pathogens or degraded uninfected areas, or introduced viable non-indigenous species into the area. For additional information see sections 3.3, 3.4.1.1, 4.3.2.4, and 4.3.3.4 of the Supplemental EIS.

11. *Existence at or in close proximity to the site of any significant natural or cultural feature of historical importance* (40 CFR 228.6(a)(11)): The site is located approximately 7.7 nautical miles from the Gateway National Recreational Areas in Rockaway, NY, and 3.5 nautical miles from Sandy Hook, NJ. It is also near a number of important features of historic importance, including the Marconi Twin Lights (3.5 nautical miles away). Dredged material placed at the nearby Mud Dump Site has not been found to affect state or national parks, beaches, or features of historical importance. A cultural resources survey of the study area was conducted as part of the development of the Supplemental EIS; 15 shipwrecks were located within the study area. EPA has determined to avoid (i.e., no placement within 500 meters of a wreck) four of the vessels that are located in the PRA that have potential eligibility to the National Register of Historic Places. Avoidance ensures that the wrecks are available for further investigation and determination for eligibility for nomination should any future federal action be planned in the area. For additional information see Sections 3.5.7, 4.3.1.5, 4.3.2.5, 4.3.3.5, and 4.3.4.5 of the Supplemental EIS.

In conclusion, the available information, as documented in the accompanying SEIS, supports both the closure of the MDS and designation and remediation of the HARS.

VII. Summary

Today's proposal would de-designate the Mud Dump Site and simultaneously redesignate the area of that site and surrounding degraded areas as the Historic Area Remediation Site. The proposed HARS is compatible with the general criteria and specific factors used for site evaluation. EPA thus is proposing the designation of the HARS as an EPA approved site under authorities contained in MPRSA Section 102(c). Management of this site is delegated to the Regional Administrator of EPA Region 2. Today's proposal would revise § 228.15(d)(6) to de-designate the Mud Dump Site and simultaneously designate the HARS.

The proposed action would provide for remediation of the area containing sediments exhibiting Category II and III characteristics. These areas will be remediated with at least a 1 meter cap of Remediation Material in order to isolate the areas from the marine environment, thus assuring the potential effects of historical dumping in the HARS are reduced to acceptable levels.

VIII. Compliance With Other Acts and Orders

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Today's proposed action, which would simultaneously de-designate the Mud Dump Site and designate the HARS, is not a significant regulatory action. The de-designation of the Mud Dump Site would not affect the disposal of Category II material, because the Mud Dump Site will reach capacity for Category II materials in the next few months (before September 1, 1997) due to already existing technical limitations on the height of the mound. This would occur regardless of whether the Agency goes forward with today's proposed action. With regard to Category I material, the proposed HARS would continue to provide an EPA-designated site for the placement of ''uncontaminated dredged material (i.e., dredged material that meets current Category I standards and will not cause significant undesirable effects including through bioaccumulation)'' (July 24,1996, 3-party letter). It thus has been determined that this rule is not a ''significant regulatory action'' under the terms of the Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) provides that, whenever an agency proposes a rule subject to notice and comment requirements under 5 U.S.C. 553, it must prepare an initial regulatory flexibility analysis unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 604 and 605). Today's proposal is not likely to impact a substantial number of small entities. Even if small pier and berth owners and small marinas might be economically affected, such economic effects would be slight because although today's proposal would terminate the Mud Dump Site, it also would simultaneously designate an area (the HARS) for the placement of Material for Remediation. As provided in the July 24, 1996, 3-Party letter, such material is ''* * * uncontaminated dredged material (i.e., dredged material that meets current Category I standards and will not cause significant undesirable effects, including through bioaccumulation).'' Thus, today's

proposal will help assure the ''* * * long-term use of category 1 dredge material.'' from NY/NJ Harbor and surrounding areas. With respect to Category II dredged material, the capacity of the Mud Dump Site to receive Category II material will be used up by September 1, 1997 as a result of pre-existing constraints, even in the absence of today's proposal. For all of these reasons, the Regional Administrator certifies, pursuant to Section 605(b) of the RFA, that the rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget. Since this rule does not establish or modify any information or record-keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

D. 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.

This rule contains no Federal mandates (under the regulatory provisions of the UMRA) for State, local, or tribal governments or sections 205 and 205 of the UMRA. As is explained elsewhere in this preamble, the proposed rule de-designates the Mud Dump Site, and designates instead an area in the ocean suitable for the placement of Remediation Material. Accordingly, it imposes no new enforceable duty on any State, local or tribal governments or the private sector. Even if this rule did contain a Federal mandate, it would not result in annual expenditures of $100 million or more for State, local or tribal governments in the aggregate, or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

For the foregoing reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, the requirements of section 203 of UMRA also do not apply to this rule.

E. 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).

EPA initiated its consultation process with the U.S. Fish and Wildlife Service on April 6, 1995. The consultation process was concluded with them on July 28, 1995, with their concurrence that EPA's action was not likely to adversely affect federally listed species under U. S. Fish and Wildlife Service jurisdiction. EPA initiated threatened and endangered species consultation with the National Marine Fisheries Service on April 4, 1996. Based on this coordination, EPA concluded that the preparation of a biological assessment was warranted for the Kemp's ridley and loggerhead sea turtles, and the humpback and fin whales within the Mud Dump Site and surrounding areas. The National Marine Fisheries Service concurred with this approach on May 8, 1996, and EPA sent them a Biological Assessment in May, 1997, which concluded that there are unlikely to be any effects on the threatened or endangered species or their critical habitat.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: May 6, 1997.

William J. Muszynski,

Acting Regional Administrator, EPA Region 2.

In consideration of the foregoing, EPA is proposing to amend part 228 of title 40 as set forth below.

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

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

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

2. Section 228.15 is amended by revising paragraph (d)(6) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(d) * * *

(6) Historical Area Remediation Site (HARS) Designation/Mud Dump Site Termination.

(i) *Status of Former Mud Dump Site:* The Mud Dump Site, designated as an Impact Category I site on May 4, 1984, is terminated.

(ii) *Location:* (A) The HARS (which includes the 2.2 square nautical mile area of the former Mud Dump Site) is a 15.7 square nautical mile area located approximately 3.5 nautical miles east of Highlands, New Jersey and 7.7 nautical miles south of Rockaway, Long Island. The HARS consists of a Primary Remediation Area (PRA), a Buffer Zone, and a No Discharge Zone. The HARS is bounded by the following coordinates:

Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
A	40°25′39″ N	73°53′55″ W	40°25.65′N	73°53.92′ W
M	40°25′39″ N	73°48′58″ W	40°25.65′N	73°48.97′ W
P	40°21′19″ N	73°48′57″ W	40°21.32′N	73°48.95′ W
R	40°21′19″ N	73°52′30″ W	40°21.32′N	73°52.50′ W
S	40°21′52″ N	73°53′55″ W	40°21.87′N	73°53.92′ W
V	40°21′52″ N	73°52′30″ W	40°21.87′N	73°52.50′ W

DMS = Degrees, Minutes, Seconds
DDM = Degrees, Decimal Minutes

(B) The PRA, is a 9.0 square nautical mile area to be remediated with at least a 1 meter cap of the Material for Remediation. The PRA is bounded by the following coordinates:

Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
B	40°25′23″ N	73°53′34″ W	40°25.38′ N	73°53.57′ W
D	40°25′22″ N	73°52′08″ W	40°25.37′ N	73°52.13′ W
F	40°23′13″ N	73°52′09″ W	40°23.22′ N	73°52.15′ W
G	40°23′13″ N	73°51′28″ W	40°23.22′ N	73°51.47′ W
H	40°22′41″ N	73°51′28″ W	40°22.68′ N	73°51.47′ W
I	40°22′41″ N	73°50′43″ W	40°22.68′ N	73°50.72′ W
L	40°25′22″ N	73°50′44″ W	40°25.37′ N	73°50.73′ W
N	40°25′22″ N	73°49′19″ W	40°25.37′ N	73°49.32′ W
O	40°21′35″ N	73°49′19″ W	40°21.58′ N	73°49.32′ W
Q	40°21′36″ N	73°52′08″ W	40°21.60′ N	73°52.13′ W
T	40°22′08″ N	73°52′08″ W	40°22.13′ N	73°52.13′ W
U	40°22′08″ N	73°53′34″ W	40°22.13′ N	73°53.57′ W

DMS = Degrees, Minutes, Seconds
DDM = Degrees, Decimal Minutes

(iii) *Size:* 15.7 square nautical miles.

(iv) *Depth:* Ranges from 12 to 42 meters.

(v) *Restrictions on Use:*

(A) The site will be managed so as to reduce impacts within the PRA to acceptable levels in accordance with 40 CFR 228.11(c). Use of the site will be restricted to dredged material suitable for use as the Material for Remediation. This material shall be selected so as to ensure it will not cause significant undesirable effects including through bioaccumulation or unacceptable toxicity, in accordance with 40 CFR 227.6.

(B) Placement of Material for Remediation will be limited to the PRA. Placement of Material for Remediation within the PRA is not allowed in a 0.27 nautical mile radius around the following coordinates due to the presence of shipwrecks: 40°25.30′ W , 73°52.80′ N; 40°25.27′ W, 73°52.13′ N; 40°25.07′ W, 73°50.05′ N; 40°22.46′ W, 73°53.27′ N.

(C) No placement of material may take place within the Buffer Zone, although this zone may receive material that incidentally spreads out of the PRA. The Buffer Zone is an approximately 5.7 square nautical mile area (0.27 nautical mile wide band around the PRA), which is bounded by the following coordinates:

Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
A	40°25′39″N	73°53′55″W	40°25.65′N	73°53.92′W
B	40°25′23″N	73°53′34″W	40°25.38′N	73°53.57′W
C	40°25′39″N	73°51′48″W	40°25.65′N	73°51.80′W
D	40°25′22″N	73°52′08″W	40°25.37′N	73°52.13′W
E	40°23′48″N	73°51′48″W	40°23.80′N	73°51.80′W
F	40°23′13″N	73°52′09″W	40°23.22′N	73°52.15′W
G	40°23′13″N	73°51′28″W	40°23.22′N	73°51.47′W
H	40°22′41″N	73°51′28″W	40°22.68′N	73°51.47′W
I	40°22′41″N	73°50′43″W	40°22.68′N	73°50.72′W
J	40°23′48″N	73°51′06″W	40°23.80′N	73°51.10′W
K	40°25′39″N	73°51′06″W	40°25.65′N	73°51.10′W
L	40°25′22″N	73°50′44″W	40°25.37′N	73°50.73′W
M	40°25′39″N	73°48′58″W	40°25.65′N	73°48.97′W
N	40°25′22″N	73°49′19″W	40°25.37′N	73°49.32′W
O	40°21′35″N	73°49′19″W	40°21.58′N	73°49.32′W
P	40°21′19″N	73°48′57″W	40°21.32′N	73°48.95′W
Q	40°21′36″N	73°52′08″W	40°21.60′N	73°52.13′W
R	40°21′19″N	73°52′30″W	40°21.32′N	73°52.50′W
S	40°21′52′N	73°53′55″W	40°21.87′N	73°53.92′W
T	40°22′08″N	73°52′08″W	40°22.13′N	73°52.13′W
U	40°22′08″N	73°53′34″W	40°22.13′N	73°53.57′W
V	40°21′52″N	73°52′30″W	40°21.87′N	73°52.50′W

DMS = Degrees, Minutes, Seconds
DDM = Degrees, Decimal Minutes

(D) No placement or incidental spread of the material is allowed within the No Discharge Zone, an approximately 1.0 square nautical mile area, bounded by the following coordinates:

Point	Latitude DMS	Longitude DMS	Latitude DDM	Longitude DDM
C	40°25′39″ N	73°51′48″ W	40°25.65′ N	73°51.80′ W
E	40°23′48″ N	73°51′48″ W	40°23.80′ N	73°51.80′ W
J	40°23′48″ N	73°51′06″ W	40°23.80′ N	73°51.10′ W
K	40°25′39″ N	73°51′06″ W	40°25.65′ N	73°51.10′ W

DMS = Degrees, Minutes, Seconds
DDM = Degrees, Decimal Minutes

(vi) *Period of Use:* Continuing use until EPA determines that the PRA has been sufficiently capped with at least 1 meter of the Material for Remediation. At that time, EPA will undertake any necessary rulemaking to de-designate the HARS.

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