

implement the emission guidelines for MSW landfills. The primary mechanism used by ODEQ to implement the emission guidelines for existing MSW landfills under state jurisdiction is through incorporation by reference of 40 CFR part 60, subpart Cf requirements into OAR 340-236-500. The changes ODEQ has made to the language in the emission guidelines were made to convert the language in the Emission Guidelines to enforceable requirements. These regulations will be applicable to MSW landfills in the state of Oregon under the plan upon the EPA's approval of the plan by final rulemaking.<sup>2</sup> A detailed explanation of the rationale behind this proposed approval is available in the Technical Support Document (TSD).

### III. Proposed Action

The EPA is proposing to approve the ODEQ section 111(d) plan for MSW landfills submitted pursuant to 40 CFR part 60, subpart Cf. Therefore, the EPA is proposing to amend 40 CFR part 62, subpart MM to reflect this action. This approval is based on the rationale previously discussed in this document and in further detail in the TSD associated with this action. The scope of the proposed approval of the section 111(d) plan is limited to the provisions of 40 CFR parts 60 and 62 for existing MSW landfills, as referenced in the emission guidelines, subpart Cf.

The EPA Administrator continues to retain authority for approval of alternative methods to determine the nonmethane organic compound concentration or a site-specific methane generation rate constant (k), as stipulated in 40 CFR 60.30f(c).

As discussed in our previous approval of Oregon's MSW Landfill Plan, because the five-day notice provision in the Oregon Revised Statutes (ORS) 468.126(1) could preclude enforcement of the plan in some instances, application of the notice provision would disqualify the plan for EPA approval. Accordingly, pursuant to ORS 468.126(2)(e) and consistent with a letter from the state of Oregon, the five-day notice requirement of ORS 468.126(1) does not apply in the case of violations of the MSW Landfill Plan, even if requirements of the plan are incorporated into a permit. 63 FR 34816, 34817 (June 26, 1998).

<sup>2</sup> In its submittal, ODEQ demonstrated that the Lane Regional Air Protection Agency, a local clean air agency in Lane County, has authority adequate to implement and enforce the section 111(d) plan, but states that, at this time, there are no affected sources in Lane County.

### IV. Incorporation by Reference

In this document, the EPA is proposing to incorporate by reference ODEQ rules regarding MSW landfills discussed in section II of this preamble in accordance with the requirements of 1 CFR 51.5. The EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov>, Docket ID No. EPA-R10-OAR-2020-0074, and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### V. Statutory and Executive Order Reviews

In reviewing state plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed approval of the ODEQ plan submittal for existing MSW landfills does not apply in Indian Country. Therefore, the state plan does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Landfills, Incorporation by reference, Intergovernmental relations, Methane, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 28, 2020.

**Chris Hladick,**

*Regional Administrator, Region 10.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[EPA-R04-OW-2020-0056; FRL-10006-07-Region 4]

### Ocean Dumping: Modification of an Ocean Dredged Material Disposal Site Offshore of Port Everglades, Florida

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a modification of the existing EPA designated ocean dredged material disposal site (ODMDS) offshore of Port Everglades, Florida (referred to hereafter as the existing Port Everglades ODMDS) pursuant to the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). The primary purpose for the site modification is to enlarge the site to serve the long-term need for a location to dispose of suitable material dredged from the Port Everglades Harbor and for the disposal of suitable dredged material for persons who receive a MPRSA permit for such disposal. The modified site will be subject to monitoring and management to ensure continued protection of the marine environment.

**DATES:** Written comments must be received on or before April 13, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OW-2020-0056, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments and accessing the docket and materials related to this proposed rule.
- *Email: OceanDumpingR4@epa.gov*.
- *Mail: Wade Lehmann, U.S.*

Environmental Protection Agency, Region 4, Water Division, Oceans and Estuarine Management Section, 61 Forsyth Street SW, Atlanta, Georgia 30303.

*Instructions:* Direct your comments to Docket ID No. EPA-R04-OW-2020-0056. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* website is an "anonymous access" system, which

means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy during normal business hours from the regional library at the EPA, Region 4 Library, 9th Floor, 61 Forsyth Street SW, Atlanta, Georgia

30303. For access to the documents at the Region 4 Library, contact the Region 4 Library Reference Desk at (404) 562-8190, between the hours of 9:00 a.m. to 12:00 p.m., and between the hours of 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays, for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Wade Lehmann, U.S. Environmental Protection Agency, Region 4, Water Division, Oceans and Estuarine Management Section, 61 Forsyth Street SW, Atlanta, Georgia 30303; phone number (404) 562-8082; email: *Lehmann.Wade@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Potentially Affected Persons**

Persons potentially affected by this action include those who seek or might seek permits or approval to dispose of dredged material into ocean waters pursuant to the MPRSA, 33 U.S.C. 1401 to 1445. The EPA's proposed action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Port Everglades, Florida. Currently, the U.S. Army Corps of Engineers (USACE) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal Government .....	USACE 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 proposed action. For any questions regarding the applicability of this proposed action to a particular entity, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**II. Background**

*a. History of Disposal Sites Offshore of Port Everglades, Florida*

There is currently one designated ODMDS off the coast of Port Everglades, Florida. The existing Port Everglades ODMDS is located three nautical miles offshore of Fort Lauderdale. It is currently 1.43 square nautical miles (nmi<sup>2</sup>) in size. The Port Everglades ODMDS received final designation in 2005.

The USACE Port Everglades District and the EPA Region 4 have identified a

need to either designate a new ODMDS or modify the existing Port Everglades ODMDS. The need for modifying current ocean disposal capacity is based on future capacity requirements, historical dredging volumes, estimates of dredging volumes for future proposed projects, and limited capacity of upland confined disposal facilities (CDFs) in the area.

The EPA is proposing to modify, by expansion, the existing Port Everglades ODMDS rather than designate a new site off the coast of Port Everglades for ocean disposal of dredged material. The proposed modification of the existing Port Everglades ODMDS for dredged material does not mean that the USACE or the EPA has approved the use of the existing Port Everglades ODMDS or a modified Port Everglades ODMDS for open water disposal of dredged material from any specific project. Before any person can ocean dump dredged material at the existing Port Everglades

ODMDS or a modified Port Everglades ODMDS, the EPA and the USACE must evaluate the project according to the ocean dumping regulatory criteria (40 CFR 227) and the USACE must authorize the disposal. Under section 103 of the MPRSA, the USACE is the federal agency that decides whether to issue a permit authorizing the ocean disposal of dredged materials. In the case of federal navigation projects, the USACE may implement the MPRSA directly in the USACE projects involving ocean disposal of dredged materials. The USACE relies on the EPA's ocean dumping criteria when evaluating permit requests for (and implementing federal projects involving) the transportation of dredged material for the purpose of dumping it into ocean waters. MPRSA permits and federal projects involving ocean dumping of dredged material are subject to the EPA's review and concurrence in accordance with 33 U.S.C. 1413(c). The

EPA may concur with or without conditions or decline to concur (*i.e.*, non-concur) on the permit. If the EPA concurs with conditions, the final permit or authorization must include those conditions. If EPA declines to concur, the USACE cannot issue the permit for ocean dumping of dredged material or authorize the disposal. This action is supported by a Draft Environmental Assessment (DEA), which was provided for public notice and comment in February 2020 and is accessible at: <https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notice>.

*b. Location and Configuration of the Proposed Modified Port Everglades ODMDS*

This action proposes the modification of the existing Port Everglades ODMDS. The proposed modified ODMDS is in -587 to -761 feet of water (-179 to -232 meters). The proposed modified ODMDS would expand the existing Port Everglades ODMDS from a size of approximately 1.34 nmi<sup>2</sup> to 3.21 nmi<sup>2</sup> in size. The location of the proposed modified ODMDS is bounded by the coordinates listed below. The proposed coordinates for the site are in North American Datum 83 (NAD 83):

Proposed Modified Port Everglades ODMDS

- (A) 26°08.750' N, 80°01.000' W
- (B) 26°08.750' N, 80°02.578' W
- (C) 26°06.500' N, 80°02.578' W
- (D) 26°06.500' N, 80°01.000' W

The proposed modification of the existing ODMDS will allow the EPA to adaptively manage the site to maximize its capacity, minimize the potential for mounding and loss of fine sediments outside of the site, and minimize the potential for any long-term adverse effects to the marine environment.

*c. Management and Monitoring of the Site*

The proposed modified ODMDS is expected to receive dredged material from the Federal navigation project at Port Everglades Harbor, Florida, and dredged material from other applicants who obtain a permit for the disposal of dredged material at the proposed modified ODMDS. All persons using the site will be required to follow the Site Management and Monitoring Plan (SMMP) for the ODMDS that is specifically developed for the proposed modified ODMDS. A draft SMMP for the proposed modified ODMDS was noticed for public review in January 2020 along with the DEA and is accessible at: [https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-](https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notice)

*notice*. The SMMP will be finalized by the EPA Region 4 and the USACE Jacksonville District following the consideration of comments received. The SMMP includes management and monitoring requirements to ensure that dredged materials disposed at the proposed modified ODMDS are suitable for disposal in the ocean and that adverse impacts of disposal, if any, are addressed to the maximum extent practicable. This includes provisions to avoid and minimize potential impacts to coral reefs present near Port Everglades. The SMMP for the proposed modified ODMDS also addresses management of the site to ensure adverse mounding and dispersal of fine sediments does not occur and ensures that disposal events minimize interference with other uses of ocean waters near the proposed modified ODMDS.

*d. MPRSA Criteria*

In evaluating the proposed modified ODMDS, the EPA assessed the site according to the criteria of the MPRSA, with emphasis on the general and specific regulatory criteria of 40 CFR part 228, to determine whether the proposed site designation satisfies those criteria. The EPA's DEA provides an extensive evaluation of the criteria and other related factors for the modification of the existing ODMDS.

General Criteria (40 CFR 228.5)

*(a) 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)).*

Historically, an interim site located approximately 1.6 nautical miles from shore was used for ocean disposal of dredged material from Port Everglades Harbor but was discontinued in the 1980s due to potential impacts of sediments on nearby coral reef resources. The existing Port Everglades Harbor ODMDS was designated in 2005 under Section 103 of the MPRSA, as there was no nearby EPA-designated ODMDS. The evaluation for the 2005 designation included considerations of potential interference with other activities in the marine environment including avoiding areas of existing critical fisheries or shellfisheries, and regions of heavy commercial or recreational navigation. These evaluations were reconsidered from 2010 through to the present time as the proposed modified ODMDS continued to be assessed.

*(b) 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)).*

The proposed ODMDS modification area will be used for disposal of suitable dredged material as determined by Section 103 of the MPRSA. Based on the USACE and EPA sediment testing and evaluation procedures, disposal of dredged maintenance material and proposed new work material is not expected to have any long-term impact on water quality. The existing Port Everglades ODMDS and proposed modified ODMDS are located sufficiently far from shore and fisheries resources to allow temporary water quality disturbances caused by disposal of dredged material to be reduced to ambient conditions before reaching any environmentally sensitive areas.

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

The location, size, and configuration of the proposed modified ODMDS provides long-term capacity, while also permitting effective site management, site monitoring, and limiting environmental impacts to the surrounding area to the greatest extent practicable.

Based on projected new work and maintenance dredging, and permitted dredged material disposal needs, it is estimated that the proposed modified ODMDS should be approximately 3.21 nmi<sup>2</sup> in size to meet the anticipated long-term disposal needs of the area. This would provide the proposed modified ODMDS with an estimated capacity of approximately 6.7 million cubic yards, which is sufficient to manage risk, account for future unknown disposal operations from private entities, and provide a margin of navigation safety.

By adding approximately 2.2 nmi<sup>2</sup> to the existing Port Everglades ODMDS, the total area of the proposed modified Port Everglades ODMDS would be 3.21 nmi<sup>2</sup>. An ODMDS of this size and capacity will provide a long-term ocean disposal option for the greater Port Everglades area.

When determining the size of the proposed site, the ability to implement effective monitoring and surveillance programs was considered to ensure that the environment of the site could be protected, and that navigational safety would not be compromised by the mounding of dredged material. An SMMP is being developed and will be implemented to determine if disposal at the site is significantly affecting adjacent areas and to detect the presence of adverse effects. At a minimum, the monitoring program will consist of bathymetric surveys, sediment grain size analysis, chemical analysis of constituents of concern in the sediments, and an assessment of the constitution of the benthic community.

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

The existing Port Everglades ODMDS and proposed expansion of the ODMDS are beyond the edge of the continental shelf.

#### 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 proposed modified ODMDS is on the Florida Continental Slope, four nautical miles offshore of Fort Lauderdale, Florida. Water depths range from -179 to -232 meters (-587 to -761 feet), with an average depth of 207 meters (-678 feet). Sediments consist of sand with various mixtures of sand and silts with scattered rubble hardbottom. The DEA contains a map of the proposed ODMDS modification. The expansion retains the ODMDS off the continental shelf in a range that is not expected to allow sediments to travel to nearby shore-associated coral reef habitat.

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

The proposed modified ODMDS has been selected to avoid the presence of any exclusive breeding, spawning, nursery, feeding, or passage areas for adult or juvenile phases of living resources.

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

The center of the proposed modified ODMDS is several miles from any beaches or amenity areas. No significant impacts to beaches or amenity areas associated with the existing Port

Everglades ODMDS have been detected. The U.S. Navy has facilities south of the ODMDS and were consulted to verify that no impediments will exist with the expanded ODMDS.

##### (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))

Only suitable dredged material that meets the Ocean Dumping Criteria in 40 CFR 220–228 and receives a permit or is otherwise authorized for dumping by the USACE will be disposed in the proposed modified ODMDS. Dredged materials dumped in this area will be primarily sand and rock with some fines that originate from the Port Everglades Harbor. Average yearly disposal of dredged maintenance material into the proposed modified ODMDS is expected to be approximately 30,000 cubic yards and variable volumes of new work dredged material up to 6.7 million cubic yards. None of the material is packaged in any manner.

Under section 103 of the MPRSA, the USACE is the federal agency that decides whether to issue a permit authorizing the ocean disposal of dredged materials. In the case of federal navigation projects involving ocean disposal of dredged materials, the USACE is subject to MPRSA, but does not require a USACE permit. The USACE relies on the EPA's ocean dumping criteria when evaluating permit requests for (and implementing federal projects involving) the transportation of dredged material for the purpose of dumping it into ocean waters. MPRSA permits and federal projects involving ocean dumping of dredged material are subject to the EPA's review and concurrence. The EPA may concur, with or without conditions, or decline to concur on the permit, *i.e.* non-concur. If the EPA concurs with conditions, the final permit must include those conditions. If the EPA declines to concur (non-concurs) on an ocean dumping permit for dredged material, the USACE cannot issue the permit.

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

The EPA expects monitoring and surveillance at the proposed modified ODMDS to be feasible and readily performed from ocean or regional class research vessels. The area of the proposed modified ODMDS has been surveyed and sampled in 2004, 2007 and 2014. The EPA will monitor the site for physical, biological and chemical attributes as well as for potential

impacts. Bathymetric surveys will be conducted routinely, and benthic infauna and epibenthic organisms will be monitored, as described in the SMMP for the site.

##### (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))

Current velocities vary throughout the water column and are subject to wind and the Florida Current based circulations which is generally northerly with eddies occurring that drive currents south. Currents measured at nearby sites are predominantly to the north or south on the order of 1–4 knots (50–200 centimeters per second).

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

Previous disposal of dredged material in the existing Port Everglades ODMDS has resulted in temporary increases in suspended sediment concentrations during disposal operations, burial of benthic organisms within the site, and slight changes in the abundance and composition of benthic assemblages. Short-term, long-term, and cumulative effects of dredged material disposal in the proposed modified ODMDS would be similar to those for the existing Port Everglades ODMDS, which are expected to be temporary and return to baseline over time.

##### (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))

There will be minor, short-term interferences with commercial and recreational boat traffic during the transport of dredged material to the proposed modified ODMDS. The site has not been identified as an area of special scientific importance. There are no aquaculture areas near the site. There may be recreational fishing in the area. The likelihood of direct interference with these activities is low, provided there is close communication and coordination among users of the ocean resources. The U.S. Navy, Fort Lauderdale Branch, Naval Surface Warfare Center range is located south of the existing and proposed expanded ODMDS. There will be no impact to either U.S. Navy operations due to the expansion of the ODMDS. The SMMP for the proposed modified ODMDS contains provisions for corrective

measures if impacts to potential hardbottom habitat related to dredged material disposal are identified.

(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))

Water quality of the existing site is typical of the Florida coast. Water and sediment quality analyses conducted in the vicinity of the proposed modified ODMDS and experience with past disposals in the existing Port Everglades ODMDS have not identified any adverse water quality impacts from ocean disposal of dredged material. The site supports benthic and epibenthic fauna characteristic of the region.

(10) Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the proposed modified ODMDS. Disposal of dredged material, as well as monitoring, has been ongoing for the past 14 years. Nuisance species have not been found. The dredged material to be disposed at the ODMDS is expected to be from similar locations to those dredged previously; therefore, it is expected that any benthic organisms transported to the site would be relatively similar in nature to those already present.

(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))

A maritime survey of this site was conducted in 2013 to identify areas of potential hardbottom resources as well as any historical artifacts. These efforts showed the presence of only two anomalies that when investigated were not likely to be indicative of potential historical or natural features. Wreckage from one modern sailing vessel was potentially identified in the northeast corner of the site. Scattered rubble hardbottom habitat was potentially identified within the expanded footprint.

The SMMP for the ODMDS contains measures to monitor potential identified resources.

### III. Environmental Statutory Review

#### *a. National Environmental Policy Act (NEPA)*

The EPA's primary voluntary NEPA document for expanding the existing Port Everglades ODMDS is the DEA, prepared by the EPA in cooperation with the USACE and issued for public

review and comment in January 2020. Anyone desiring a copy of the DEA may access it at <https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notice>, or obtain a copy from the address given above. The DEA issued in January 2020 amends a DEA that was previously issued for public review and comment in August 2013 to capture prior corresponding agency comments. Any comments received regarding the DEA issued in January 2020 will be provided in the Final Environmental Assessment for this proposed action. The DEA and its Appendices provide the threshold environmental review for modification of the ODMDS. The information from the DEA is used above in the discussion of the ocean dumping criteria.

The proposed action discussed in the DEA is the permanent designation of a modified ODMDS offshore Port Everglades, Florida. The purpose of the proposed action is to provide an environmentally acceptable option for the ocean disposal of dredged material. The need for the proposed modified ODMDS is based on a demonstrated USACE need for ocean disposal of dredged material from the Port Everglades Harbor Federal Navigation Project, including the deepening and widening portions of the Project. The need for ocean disposal for these and other future projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the USACE process for reviewing ocean disposal actions and a public review process for its own actions to ocean dump dredged material from federal projects. These permit/authorization evaluations will include evaluation of disposal alternatives.

The DEA discusses the need for the proposed modified ODMDS and examines ocean disposal site alternatives to the proposed actions. The need for expanding the existing Port Everglades ODMDS is based on future capacity modeling, movement of fine sediments in the Miami ODMDS which correlate to this site, estimated dredging volumes for proposed projects, and limited capacity of upland disposal facilities in the area. Other options were considered nearer to the Port, but the other options were discarded due to potential impacts to protected coral resources. The following three ocean disposal alternatives were considered in the DEA.

#### No Action Alternative

The No Action Alternative is defined as not modifying the size of the existing Port Everglades ODMDS. Implementation of this alternative

would not address the need for an adequately sized ocean dump site to accommodate future ocean disposal of dredging projections. As a result, the No Action Alternative does not meet the proposed action's purpose and need. However, the No Action Alternative was evaluated in the DEA as a basis to compare the effects of the other alternatives considered.

**Alternative 1: Modification of the Existing Port Everglades ODMDS To Encompass a 3.21 nmi<sup>2</sup> Area in a North-South Orientation (Preferred Alternative)**

Modification of the existing Port Everglades ODMDS to encompass a 3.21 nmi<sup>2</sup> area as described above is the environmentally and operationally preferred alternative and considered the most viable option. The existing Port Everglades ODMDS is relatively small and has a limited capacity. Modifying the existing Port Everglades ODMDS to increase capacity would sustain the disposal needs associated with: The federally authorized Port Everglades Harbor sand bypass and navigation projects; authorized maintenance dredging; and potential future private interests. It is the most feasible option based on containing dredged material from disposal operations while impacting the least potential hardbottom habitat. A detailed justification for this preferred alternative is included in Section 2 in the DEA.

**Alternative 2: Modification of the Existing Port Everglades ODMDS To Encompass a 2.89 nmi<sup>2</sup> Area in an East-West Orientation**

In order to inform viable options for expanding the existing site, the EPA evaluated the data and information included in the September 2013 *Evaluation of Dredged Material Behavior at the Port Everglades Harbor Federal Project Ocean Dredged Material Disposal Site*. The EPA specifically considered the option of expanding the site in an east-west orientation. Although designating an expanded ODMDS in an east-west orientation would provide adequate site capacity, there is the possibility that disposal to a site within this orientation would result in a higher level of impact to hardbottom habitat. As described in the DEA, a site more adequately protective of potential hardbottom areas was selected as the preferred alternative (Alternative 1).

#### *b. Magnuson-Stevens Act*

The USACE, in conjunction with EPA, submitted 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, to the National Marine Fisheries Service (NMFS). The USACE determined that the modification of the existing Port Everglades ODMDS will not significantly affect managed species or EFH; however, underwater surveys are being conducted to verify conclusions. Discussions with the NMFS are ongoing, and consultation will be completed prior to finalization of the rule.

#### *c. Coastal Zone Management Act*

Pursuant to an Office of Water policy memorandum dated October 23, 1989, the EPA has evaluated the proposed site designations for consistency with the State of Florida's (the State) approved coastal zone management program. On behalf of the EPA, the USACE, Jacksonville District determined that the proposed action is consistent with the Florida Coastal Management Program to the maximum extent practicable. Florida Department of Environmental Protection (FLDEP) issued Coastal Zone Consistency for the Port Everglades ODMDS on April 29, 2011. The EPA is communicating with the State of Florida to determine appropriate next steps to ensure consistency with the Coastal Zone Management Act.

#### *d. Endangered Species Act*

The Endangered Species Act (ESA), as amended, 16 U.S.C. 1531 to 1544, requires federal agencies to consult with NMFS and the U.S. Fish and Wildlife Service 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 is opting to address consultation pursuant to ESA Section 7(d) due to the expected publication of an updated Biological Opinion for the South Atlantic District of the U.S. Army Corps of Engineers, which is expected to address the species to which this action may apply.

#### *e. National Historic Preservation Act*

The National Historic Preservation Act (NHPA), 16 U.S.C. 470 to 470a-2, requires federal agencies to consider the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register of Historic Places (NRHP). The depths of the ODMDS (greater than 700 feet depth) exclude potential habitation or resources related to human settlements. In a letter dated

February 4, 2013, the Florida Department of State concurred with the determination that no historic properties would be affected by the expansion of the ODMDS. The EPA is in communication with the State of Florida to determine whether any additional information has become available that may warrant changes to their 2013 determination.

#### **IV. Statutory and Executive Order Reviews**

This rule proposes to modify the Port Everglades ODMDS pursuant to Section 102 of the MPRSA. This proposed action complies with applicable executive orders and statutory provisions as follows:

##### *a. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

##### *b. Executive Order 13089: Coral Reef Protection*

This proposed action considers Executive Order 13089 on Coral Reef Protection "to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment." Conditions are present in the SMMP which are designed to reduce potential impacts from sediments during transit to the ODMDS.

##### *c. Paperwork Reduction Act*

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This proposed site designation, does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a federal agency.

##### *d. Regulatory Flexibility Act*

The Regulatory Flexibility Act generally requires federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small

governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA determined that this proposed action will not have a significant economic impact on small entities because the proposed rule will only have the effect of regulating the location of site to be used for the disposal of dredged material in ocean waters. After considering the economic impacts of this proposed rule, the EPA certifies that this proposed action will not have a significant economic impact on a substantial number of small entities.

##### *e. Unfunded Mandates Reform Act*

This proposed 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 proposed action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this proposed action is not subject to the requirements of sections 202 or 205 of the UMRA. This proposed 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.

##### *f. Executive Order 13132: Federalism*

This proposed 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 proposed 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 comments on this proposed action from State and local officials.

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

This proposed action does not have tribal implications, as specified in Executive Order 13175 because the modification of the existing Port Everglades ODMDS will not have a direct effect on Indian Tribes, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes. In addition, the depths of the ODMDS (greater than 700 feet depth) exclude potential habitation or resources related to human settlements. Thus, Executive Order 13175 does not apply to this action. However, the EPA specifically welcomes comments on this proposed action from tribal officials and any comments related to this Executive Order.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. However, the EPA welcomes comments on this proposed action related to this Executive Order.

*i. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This proposed 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. However, we welcome comments on this proposed action related to this Executive Order.

*j. 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 Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed action includes environmental monitoring and measurement as described in the EPA’s proposed SMMP. The EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the proposed modified ODMDS. The Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the SMMP. The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this proposed action.

*k. 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 proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The EPA has assessed the overall protectiveness of modifying the existing Port Everglades ODMDS against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent

practicable. The EPA welcomes comments on this proposed action related to this Executive Order.

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

Environmental protection, Water pollution control.

**Authority:** This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: February 18, 2020.

**Mary S. Walker,**

*Regional Administrator, EPA Region 4.*

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

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

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

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

■ 2. Section 228.15 is amended by revising paragraphs (h)(14)(i) through (iii) and (vi) to read as follows:

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

\* \* \* \* \*

(h) \* \* \*

(14) \* \* \*

(i) *Location:* Corner Coordinates (NAD 1983) 26° 06.500′, 80° 01.000′; 26° 06.500′, 80° 02.578′; 26° 08.750′, 80° 02.578′; 26° 08.750′, 80° 01.000′.

(ii) *Size:* Approximately 2.31 square nautical miles in size.

(iii) *Depth:* Ranges from approximately 587 to 761 feet (179 to 232 meters).

\* \* \* \* \*

(vi) *Restrictions:* (A) Disposal shall be limited to dredged material from the Port Everglades, Florida area;

(B) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 220–228;

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

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

\* \* \* \* \*

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