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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[EPA-R10-OW-2018- 0284; FRL-9979-31-Region 10]

### Ocean Dumping; Withdrawal of Designated Disposal Site; Grays Harbor, Washington

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

**ACTION:** Direct final rule.

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**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to withdraw from EPA regulation and management one designated ocean dredged material disposal site, the Grays Harbor Eight Mile Site, located near the mouth of Grays Harbor, Washington. This action is pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended. The disposal site was designated by the EPA for a specific one-time use in 1990. The Grays Harbor Eight Mile Site fulfilled its intended purpose in 1990 as a single-use disposal site, and monitoring indicates that there will be no unacceptable adverse impacts to the marine environment once the EPA relinquishes management of the site. Five other open-water dredged material disposal sites remain in close proximity to the mouth of Grays Harbor. These sites remain available for use for the disposal of suitable dredged material and are not affected by this withdrawal.

**DATES:** This rule is effective on [Insert date 90 days after date of publication in the Federal Register] without further notice, unless the EPA receives adverse comment by [Insert date 30 days after date of publication in the Federal Register]. If the EPA receives adverse comment,

the Agency will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. [**EPA-R10-OW-2018-0284; FRL-9979-31-Region 10**], at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets> .

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

Although listed in the index, some information may not be publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

Publicly available docket materials are available either electronically in

<http://www.regulations.gov/> or in hard copy at the EPA Region 10 Library, 1200 Sixth Avenue Seattle, Washington 98101. The EPA Region 10 Library is open from 9:00 a.m. to noon, and

1:00 to 4:00 p.m. Monday through Friday, excluding federal holidays. The EPA Region 10 Library telephone number is (206) 553-1289.

**FOR FURTHER INFORMATION CONTACT:** Bridgette Lohrman, Office of Environmental Review and Assessment, U.S. Environmental Protection Agency, Region 10, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, OR, 97205; (503) 326-4006, [lohrman.bridgette@epa.gov](mailto:lohrman.bridgette@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**1. Why is the EPA Using a Direct Final Rule?**

The EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. In 1990, the EPA designated the Grays Harbor Eight Mile Site for the single purpose of serving as an ocean dredged material disposal site (ODMDS) for dredged material from the deepening of the Grays Harbor Federal Navigation Channel by the United States Army Corps of Engineers, Seattle District (USACE). The disposal site served this purpose in 1990, and the EPA is now taking the administrative action of withdrawing the site from regulation and relinquishing future management of the site. The site has not been used for disposal of dredged material since 1990 because such an action would require the EPA to re-designate the disposal site for a changed purpose. The EPA has not received any requests from the dredging community to use this site since 1990. Five other open-water dredged material disposal/placement sites remain in close proximity to the mouth of Grays Harbor. These five sites remain available for use, and are not affected by this withdrawal. The

ability of the USACE, the Port of Grays Harbor, and other interested parties to find suitable dredged material disposal options will not be changed by this action. Post-disposal monitoring at the Grays Harbor Eight Mile Site shows that the site does not have now and will not have unacceptable adverse effects on the marine environment into the future.

## **2. Does This Action Apply to Me?**

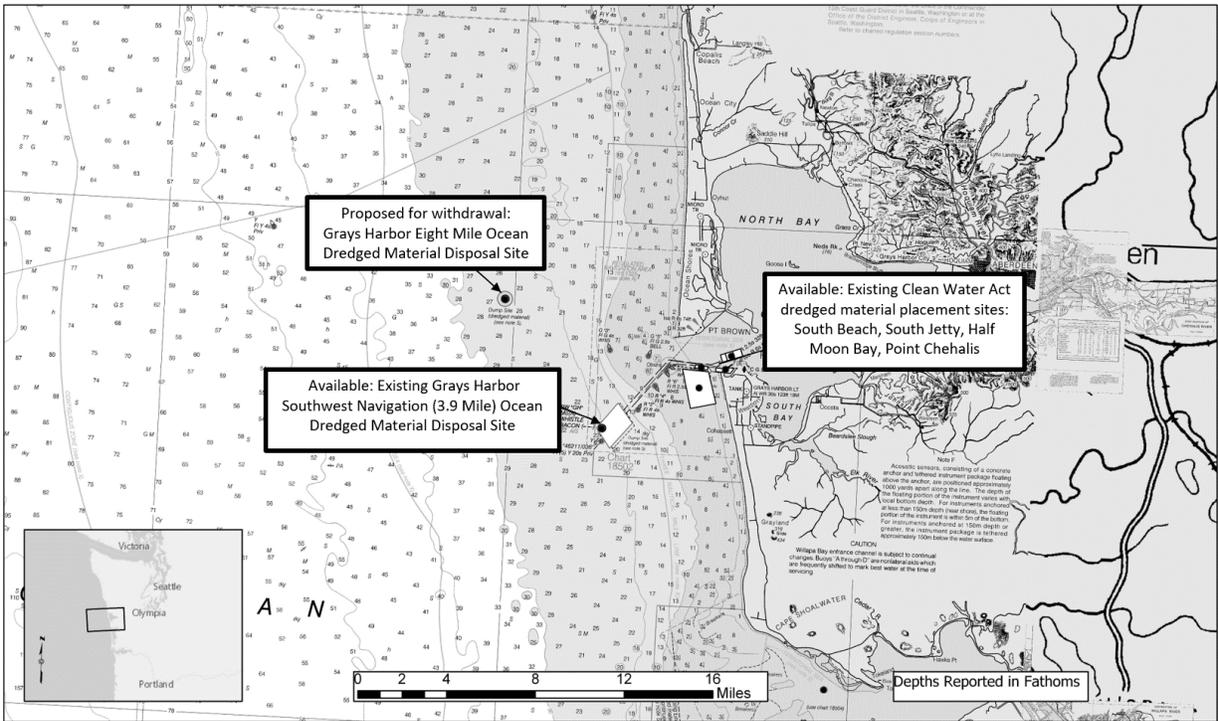
In 1990, the EPA designated the Grays Harbor Eight Mile Site to be used for a single purpose, to receive dredged material from the deepening of the Grays Harbor Federal Navigation Channel in 1990. The site has served its intended purpose and has not been available for use since 1990. If an interested party wanted to use the Grays Harbor Eight Mile Site for the ocean disposal of dredged material, the EPA would need to administratively withdraw the site, designate the site with the new purpose, and provide for public comment. Thus, the current action to remove this ODMDS from EPA regulation and management does not affect any person seeking an open-water location to dispose of suitable dredged material. In addition, post-disposal monitoring at the Grays Harbor Eight Mile Site, conducted by the EPA and the USACE, demonstrates that the monitoring requirements set forth in the Site Management and Monitoring Plan (SMMP) of 1990 have been met, and that the EPA relinquishing management of the site will not cause an unacceptable adverse impact to the marine environment. For any questions regarding the applicability of this action to a particular person or entity, please refer to the contact person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

## **3. Background**

### **a. History of Disposal Sites near Grays Harbor, Washington**

EPA Region 10 designated both the Grays Harbor Eight Mile Site and the Southwest Navigation, or 3.9-Mile Site, on July 5, 1990, for the disposal of dredged material removed during the deepening of the Grays Harbor Federal Navigation Channel by the USACE in Grays Harbor, Washington. While the Southwest Navigation Site was designated for indefinite use, the Grays Harbor Eight Mile Site was designated for the single purpose of accommodating materials from the Federal navigation channel project, which was expected to occur over a two-to-three-year period beginning in 1990. The USACE disposed of 2.8 million cubic yards of dredged material at the Grays Harbor Eight Mile Site in 1990, and the site has not been used for the ocean disposal of dredged material since that time.

The Grays Harbor Eight Mile Site is approximately 7.1 nautical miles (8 statute miles) offshore and west/northwest of the entrance to Grays Harbor (Figure 1). The Site is circular, with a radius of 0.40 nautical miles on a central coordinate of 46° 57' N and 124° 20.06' W. The site covers an area of approximately 0.5 square nautical miles. Water depths at the Grays Harbor Eight Mile Site range from 140 to 160 feet. The disposal site is characterized as being located on offshore relict gravel deposits, which contain no significant benthic fish or invertebrate communities.



**Figure 1.** The location of the Grays Harbor Eight Mile Site in relation to other sites available for the disposal of dredged material.

In the final rule (55 FR 27634, July 5, 1990) designating the Grays Harbor Eight Mile Site, the EPA stated: “EPA intends to de-designate the site after dumping at the site has been completed and monitoring indicates that the material has stabilized.” This action stated that de-designation would occur within the five years following completion of disposal and monitoring activities. The USACE conducted two post-disposal surveys of the ODMDS in 1991 and 1992 in accordance with the SMMP of 1990. The results of those two surveys did not satisfy all requirements of the SMMP. Additionally, the chemical analysis of the sediments at the disposal site at that time provided conclusive data documenting the presence of dioxins/furans and other contaminants at the Grays Harbor Eight Mile Site. Dioxin concentrations at the disposal site

ranged from 0.49 to 1.88 [parts per trillion (pptr) dry weight TEQ (toxicity equivalent)]. These concentrations were not considered a risk to the marine environment at that time, and as a point of comparison, are well below the current marine screening level of 4 pptr dry weight TEQ, used for screening the suitability of open-water disposal of dredged material in Puget Sound today. The remote sensing data were inconclusive about the disposal mound height and areal extent. These two parameters were identified in the Grays Harbor Eight Mile Site designation documents and SMMP as indicators of stabilization. The EPA determined that additional data were warranted to assess whether the disposed material from the Grays Harbor Navigation Channel Deepening Project had stabilized.

#### **b. Recent Events**

The EPA conducted a survey of the Grays Harbor Eight Mile Site on July 19, 2016 to assess the physical attributes of the site in preparation for formal withdrawal of the disposal site from EPA regulation and management. The main objective of the survey was to conduct a high-resolution multi-beam echo sounder survey to assess the bathymetry and surficial geology within and around the disposal site. The survey focused on characterizing sediments in and around the Grays Harbor Eight Mile Site to determine whether dredged material had spread beyond the site boundaries or created a mound that could impact navigation. The survey area was rectangular, containing the ODMDS and a 500-foot buffer area.

The 2016 survey revealed a disposal mound, ranging 1 to 7 feet above ambient seafloor elevations, within the ODMDS. This mound confirmed that dredged material was disposed within the ODMDS boundaries in 1990. The survey also revealed the appearance of dredged

material slightly outside the northeast portion of the ODMDS. This is likely the result of movement of sediment by near-bottom currents on the seafloor after disposal was completed.

The Grays Harbor Eight Mile SMMP predicted a mound on the seafloor of 10 to 15 feet from the disposal. Since the observed mound was only 1 to 7 feet high, it is likely that the seafloor currents have suspended the disposed material and redeposited it, either off the center of the mound or beyond the boundaries of the ODMDS, over time. This redistribution of disposed material from the original mound has not caused mounding of significance beyond the disposal site boundaries, based on the bathymetric survey results.

The seafloor substrate within the Grays Harbor Eight Mile Site is a mix of unconsolidated to consolidated sediments, likely ranging from mud and silts to coarse sand. The 2016 bathymetric survey indicated that the disposal mound within the ODMDS consists of softer, probably fine-grained sediments. At the peak of this mound, the sediments appear to be coarser, which may be an indication of seafloor scour or fine-grained material not settling on the seafloor but rather staying re-suspended in the water column. The grain size within the ODMDS is different from ambient grain sizes surrounding the disposal site. This is likely the result of disposal activities, and is limited to a small, discrete area within the site. Thus, any potential lasting effects on benthic infauna, or the epibenthic organisms which feed on these infauna, are negligible.

### **c. This Action**

This action is an administrative procedure to formally remove the Grays Harbor Eight Mile Site from regulation (40 CFR 228) and EPA management. The EPA will continue to manage the Grays Harbor Southwest Navigation Site, located 3.9 nautical miles from the mouth

of Grays Harbor. The Grays Harbor Eight Mile Site that will be removed from regulation and EPA management is a circle with radius 0.40 statute miles, centered at:

46°57' N, 124°20.06' W, based upon the North American Datum of 1927.

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

a. NEPA

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires Federal agencies to prepare an Environmental Impact Statement for major federal actions significantly affecting the quality of the human environment. NEPA does not apply to this action because the courts have exempted the EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. The EPA has, by policy, determined that where the preparation of NEPA documents for certain EPA regulatory actions, including action under the MPRSA, is appropriate, the EPA will prepare an environmental review document. The EPA's "Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents" (63 FR 58045, October 29, 1998), sets out both the policy and procedures the EPA uses when preparing such environmental review documents. The EPA has determined that no environmental review document is necessary for withdrawal of the Grays Harbor Eight Mile Site.

b. MSA and MMPA

The EPA has found no evidence that the disposal of dredged material has affected the physical, chemical, or biological attributes of the Site which would impact Essential Fish Habitat (EFH) under Section 305(b) of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1855(b)(2), nor affect marine mammals protected under the Marine Mammal Protection Act of 1972, as amended (MMPA), 16 U.S.C. 1361 to 1389.

c. CZMA

The Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. 1451 to 1465, requires Federal agencies to determine whether their actions will be consistent to the maximum extent practicable with the enforceable policies of approved state programs. The EPA's withdrawal of the Grays Harbor Eight Mile Site from regulation will have no effect on the State of Washington's coastal zone because the disposal site is approximately four nautical miles seaward of the State's territorial sea and the EPA found no evidence that the disposal of dredged material has impacted the biological community, navigation safety, or ocean use inside or outside the disposal site.

d. ESA

The Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with the National Marine Fisheries Service 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 or threatened species or result in the destruction or adverse modification of any critical habitat. The withdrawal from regulation of the Grays Harbor Eight Mile Site will have no effect on listed or threatened species or on any critical habitat. The post-disposal monitoring conducted by EPA and the

USACE indicates that the site will have no physical, chemical, or biological impacts to benthic marine species.

e. NHPA

The National Historic Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a-2, requires Federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register. This site withdrawal will not affect any historic properties. The withdrawal of the Grays Harbor Eight Mile Site from EPA regulation means that management of the site by the EPA will be relinquished.

**5. Statutory and Executive Order Reviews.**

This rule withdraws one designated ocean dredged material disposal site pursuant to Section 102 of the MPRSA and 40 CFR 228.11. This action complies with applicable executive orders and statutory provisions as follows:

a. *Executive Orders 12866 and 13563.*

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

b. *Paperwork Reduction Act*

This action does not impose an information collection burden under the Paperwork Reduction Act (PRA). The EPA does not reasonably anticipate collection of information from ten or more people based on the lack of use of the site since 1990. Consequently, the direct final action is not subject to the PRA.

c. *Regulatory Flexibility*

This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). This action will not impose any requirements on small entities. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 et seq., generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA has determined that this action will not have a significant economic impact on small entities because the rule will only have the effect of withdrawing one site that had fulfilled its stated purpose when EPA designated the site in 1990.

*d. Unfunded Mandates Reform Act*

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538, and does not significantly affect small governments. The action imposes no new enforceable duty on any state, local or tribal governments or the private sector.

*e. Executive Order 13132: Federalism*

This action does not have federalism implications. It does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175, because the withdrawal from EPA regulation of the Grays Harbor Eight Mile Site will not have a direct effect on Indian Tribes, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action. Although Executive Order 13175 does not apply to this action, the EPA consulted with tribal officials in the development of this action, particularly as it relates to potential impacts to tribal trust resources and tribal operations within the Quinault Indian Nation's Usual and Accustomed Area. The Quinault Indian Nation responded to EPA's request for Tribal Consultation on April 5, 2018, stating this action does not require government-to-government consultation.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in Section 3. Background, a. History of Disposal Sites near Grays Harbor, Washington.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*i. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in Section 5. Statutory and Executive Order Reviews, f. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*.

*k. Congressional Review Act*

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**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: May 24, 2018.

Chris Hladick,

Regional Administrator, Region 10.

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

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

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

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

**§ 228.15 [Amended]**

2. Section 228.15 is amended by removing and reserving paragraph (n)(10).

[FR Doc. 2018-13715 Filed: 6/25/2018 8:45 am; Publication Date: 6/26/2018]