

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-140930-02]

RIN 1545-BB15

#### Testimony or Production of Records in a Court or Other Processing; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains proposed amendments to the existing regulation that establishes the procedures to be followed by IRS officers and employees upon receipt of a request or demand for disclosure of IRS records or information.

**DATES:** This correction is effective July 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** David Fish (202) 622-4590 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The proposed regulations that are the subject of this correction are under section 301 of the Internal Revenue Code.

##### Need for Correction

As published on July 9, 2003 (68 FR 40850), the notice of proposed rulemaking (REG-140930-02) contains errors that may prove to be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-140930-02), which was the subject of FR Doc. 03-17230, is corrected as follows:

On page 40851, column 1, in the preamble, under the subject heading "Paperwork Reduction Act", third paragraph from the bottom, last line of

the paragraph, the language "responses: 1,400." is corrected to read "responses: On occasion."

**Cynthia E. Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).*

[FR Doc. 03-23318 Filed 9-11-03; 8:45 am]

BILLING CODE 4830-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Chapter 1

[FRL-7556-5]

#### Advisory Committee for Regulatory Negotiation Concerning All Appropriate Inquiry; Meeting

**AGENCY:** Environmental Protection Agency.

**ACTION:** Meeting of Negotiated Rulemaking Committee on all appropriate inquiry.

**SUMMARY:** The Environmental Protection Agency, as required by the Federal Advisory Committee Act (Pub. L. 92-463), is announcing the date and location of an upcoming meeting of the Negotiated Rulemaking Committee on All Appropriate Inquiry.

**DATES:** A meeting of the Federal Advisory Committee on Regulatory Negotiation on All Appropriate Inquiry is scheduled for October 14 and October 15, 2003. The location for the meeting is provided below. Dates and locations of subsequent meetings will be announced in later documents.

**ADDRESSES:** The meeting will take place at the EPA East Building, 1201 Constitution Avenue NW., Washington, DC 20460. The meeting is scheduled to begin at 8:30 a.m. and end at 4:30 p.m. on both October 14 and October 15.

**FOR FURTHER INFORMATION CONTACT:** Persons needing further information should contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment, 1200 Pennsylvania Ave., NW., Mailcode 5105T, Washington, DC 20460, (202) 566-2774, or [overmeyer.patricia@epa.gov](mailto:overmeyer.patricia@epa.gov).

**SUPPLEMENTARY INFORMATION:** Under the Small Business Liability Relief and Brownfields Revitalization Act, EPA is required to develop standards and

practices for carrying out all appropriate inquiry. The Federal Advisory Committee meeting is for the purpose of negotiating the contents of a proposed regulation setting federal standards and practices for conducting all appropriate inquiry. At its meeting on October 14 and 15, 2003, the Committee's agenda will include a continuation of substantive deliberations on the proposed rulemaking including discussions on recommendations for proposed regulatory language for addressing each of the criteria established by Congress in the Small Business Liability Relief and Brownfields Revitalization Act amendments to CERCLA (101)(35)(B)(iii).

All meetings of the Negotiated Rulemaking Committee are open to the public. There is no requirement for advance registration for members of the public who wish to attend or make comments at the meeting. Opportunity for the general public to address the Committee will be provided starting at 2:30 p.m. on both October 14 and October 15, 2003.

Dated: September 4, 2003.

**Thomas P. Dunne,**

*Associate Assistant Administrator, EPA Office of Solid Waste and Emergency Response.*

[FR Doc. 03-23273 Filed 9-11-03; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[FRL-7553-9]

#### Ocean Disposal; Proposed Designation of Dredged Material Disposal Sites in the Central and Western Portions of Long Island Sound, CT

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA today proposes to designate two dredged material disposal sites; Central Long Island Sound (CLIS) and Western Long Island Sound (WLIS) located offshore from New Haven and Stamford, Connecticut, respectively, for the disposal of suitable dredged material removed from the central and western

portions of the Long Island Sound region of Connecticut, New York and other nearby harbors or dredging sites. This action is necessary to provide long-term dredged material disposal sites for the current and future disposal of this material. The proposed site designations are for an indefinite period of time. The sites are subject to continuing monitoring to ensure that unacceptable, adverse environmental impacts do not occur. The proposed action is described in the Draft Environmental Impact Statement (DEIS), and the monitoring plans are described in the CLIS and WLIS Site Management and Monitoring Plans (SMMPs). The SMMPs are provided as appendix J of the DEIS. Site designation does not itself actually authorize the disposal of any particular dredged material at a site. Proposals to dispose of dredged material at a designated site is subject to project-specific reviews and authorization and still must satisfy the criteria for ocean dumping.

**DATES:** Comments must be received by 5 p.m. on October 27, 2003. Public hearings dates:

1. September 30, 2003 in NY from 1 p.m.—5 p.m. and 6 p.m.—10 p.m.
1. October 1, 2003 in CT from 1 p.m.—5 p.m. and 6 p.m.—10 p.m.

**ADDRESSES:** Written comments should be sent to: Ms. Ann Rodney, U.S. Environmental Protection Agency New England Region, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023 or electronically to [Rodney.Ann@epa.gov](mailto:Rodney.Ann@epa.gov).

*The Public Hearing locations are:*

1. September 30, 2003—New York SUNY at Stony Brook, Stony Brook, NY 11794–1603. The meeting will be held inside the “Charles B. Wang Asian-American Center”.

2. October 1, 2003—Westin Stamford, One First Stamford Place, Stamford, CT 06902.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ann Rodney, U.S. Environmental Protection Agency New England Region, One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023, telephone (617) 918–1538, electronic mail: [Rodney.Ann@epa.gov](mailto:Rodney.Ann@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

*Public Review of Documents:* The file supporting this proposed designation is available for inspection at the following locations:

1. In person. The Proposed Rule and the Draft Environmental Impact Statement (DEIS) which includes the SMMPs (Appendix J), are available for inspection at the following locations: A. EPA New England Library, 11th Floor,

One Congress Street, Suite 1100 (CWQ), Boston, MA 02114–2023. For access to the documents, call Peg Nelson at (617) 918–1991 between 10 a.m. and 3 p.m. Monday through Thursday, excluding legal holidays, for an appointment. B. Mamaroneck Public Library Inc., 136 Prospect Ave., Mamaroneck, NY. C. Port Jefferson Free Library, 100 Thompson Street, Port Jefferson, NY. D. Bridgeport Public Library, 925 Broad Street, Bridgeport, CT. E. Milford City Library, 57 New Haven Ave., Milford, CT. F. New Haven Free Public Library, 133 Elm Street, New Haven, CT. G. New London Public Library, 63 Huntington Street, New London, CT. H. Norwalk Public Library, 1 Belden Ave., Norwalk, CT. I. Acton Public Library, 60 Old Boston Post Road, Old Saybrook, CT. J. Ferguson Library, 752 High Ridge Road, Stamford, CT.

2. Electronically. You also may review and/or obtain electronic copies of these documents and various support documents from the EPA home page at the **Federal Register** <http://www.epa.gov/fedrgstr/>, or on the EPA New England Region's homepage at <http://www.epa.gov/region1/eco/lisldreg/>

#### **A. Background**

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA authority to designate sites where ocean disposal, also referred to interchangeably as ocean dumping, may be permitted. On October 1, 1986, the Administrator delegated authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the EPA Region in which the sites are located. The CLIS and WLIS sites are located within New England (EPA New England); therefore, this action is being taken pursuant to the Regional Administrator's delegated authority. EPA regulations (40 CFR 228.4(e)(1)) promulgated under the MPRSA require, among other things, that EPA designate ocean dumping sites (ODMDS) by promulgation in 40 CFR part 228. Designated ocean dumping sites are codified at 40 CFR 228.15. This rule proposes to designate two sites for open water disposal of dredged materials. These sites are currently being used under the authority of MPRSA Section 103 and are located in the western and central regions of Long Island Sound.

The primary authorities that govern the aquatic disposal of dredged material in the United States are the CWA and the MPRSA. All dredged material disposal activities in Long Island Sound, whether from Federal or non-

Federal projects of any size, are subject to the requirements of section 404 of the CWA, 33 U.S.C. 1344. In 1980, the MPRSA was amended to add Section 106(f) to the statute. 33 U.S.C. 1416(f). This provision is commonly referred to as the “Ambro Amendment,” named after Congressman Jerome Ambro. MPRSA section 106(f), 33 U.S.C. 1416(f), was itself amended in 1990. As a result of this provision, the disposal of dredged material in Long Island Sound from both Federal projects (projects carried out under the Corps civil works program or the actions of other Federal agencies or from non-Federal projects involving more than 25,000 cubic yards (19,114 cubic meters) of material must satisfy the requirements of both CWA section 404 and the MPRSA. Disposal from non-Federal projects involving less than 25,000 cubic yards (19,114 cubic meters) of material, however, are subject to CWA section 404 only.

The two dredged material disposal sites in Long Island Sound being proposed in this action are necessary to provide long-term disposal options for the Corps to maintain deep-draft, international commerce and navigation through authorized federal navigation projects and to ensure safe navigation for public and private entities. One of the proposed sites is in the central portion of the sound, while the other is in the western portion of the sound.

The sites will be subject to continuing site management and monitoring to ensure that unacceptable, adverse environmental impacts do not occur. The management of the sites is further described in the draft Site Monitoring and Management Plans (SMMPs) for CLIS and WLIS (appendix J of the DEIS). Documents being made available for public comment by EPA at this time include this proposed rule, DEIS, and Draft SMMPs (appendix J of DEIS).

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

#### **B. Regulated Entities**

Entities potentially regulated by the proposed rule are persons, organizations, or government bodies seeking to dispose of dredged material in waters of Long Island Sound, under the MPRSA and its implementing regulations. This proposed rule is expected to be primarily of relevance to (a) parties seeking permits from the Corps to transport dredged material for the purpose of disposal into the waters of the central and western regions of Long Island Sound, and (b) to the Corps itself for its own dredged material

disposal projects. Potentially regulated categories and entities that may seek to use the proposed dredged material

disposal sites and would be subject to this Rule may include:

Category	Examples of potentially regulated entities
Federal Government .....	U.S. Army Corps of Engineers Civil Works Projects, and Other Federal Agencies.
Industry and General Public .....	Port Authorities, Marinas and Harbors, Shipyards, and Marine Repair Facilities, Berth Owners.
State, local and tribal governments .....	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table lists the types of entities that could potentially be regulated should the proposed rule become a final rule. EPA notes that nothing in this proposed rule alters the jurisdiction or authority of EPA or the types of entities regulated under the MPRSA. Questions regarding the applicability of this proposed rule to a particular entity should be directed to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### C. EIS Development

Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting environmental quality. The objective of NEPA is to build into agency decision-making process careful consideration of all environmental aspects of proposed actions, including evaluation of reasonable alternatives to the proposed action. While NEPA does not apply to EPA activities in designating ocean disposal sites under the MPRSA, EPA has voluntarily agreed as a matter of policy to conduct a NEPA environmental review in connection with ocean dumping site designations. (See 63 FR 58045 (October 29, 1998), "Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act (NEPA) Documents.") Consistent with this policy, EPA, in cooperation with the U.S. Army Corps of Engineers, has prepared a DEIS entitled, "Draft Environmental Impact Statement for the Designation of Dredged Material Disposal Sites in Central and Western Long Island Sound, Connecticut and New York, dated August 2003" which considers the environmental aspects of site designation in central and western LIS. A Notice of Availability of the DEIS for public review and comment is being published concurrently with this Proposed Rule in today's **Federal Register**. Anyone wishing to review a

copy of the DEIS may do so in one of the ways described above (see **ADDRESSES**). The public comment period for this DEIS will close on October 27, 2003. The public comment period on the Proposed Rule Publication will also close on October 27, 2003. Comments may be submitted by one or more of the methods described above.

The purpose of the proposed action is to designate open water disposal sites that will meet long-term dredged material disposal needs in LIS. The appropriateness of open water disposal for any specific, individual dredging project is determined on a case-by-case basis under the permit/authorization process governing the open water disposal of dredged material.

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

Proposals for the open water disposal of dredged materials from individual projects are evaluated by EPA New England and the Corps' New England District on a case-by-case basis, taking into account all the alternatives

available at the time of permitting. Beneficial reuse alternatives will be preferred over open water disposal whenever they are practicable.

The DEIS describes the purpose and need for the proposed action and evaluates a number of alternatives to this action. EPA's analysis of alternatives considered several different potential open water disposal sites for dredged material from Connecticut and surrounding harbors, as well as potential alternative means of managing these dredged materials other than open water disposal. As described in the DEIS, the initial screening effort was established to consider the most environmentally sound, economically and operationally feasible area site designation. Alternatives evaluated included various marine sites, upland disposal, beneficial uses, and the no action alternative.

In addition to considering reasonable distances to transport dredged material, the open water disposal analysis considered areas of critical resources as well as areas of incompatibility for use as a disposal site. This included but was not limited to such factors as the sensitivity and value of natural resources, geographically limited habitats, fisheries and shellfisheries, natural resources, shipping and navigation lanes, physical and environmental parameters, and economic and operational feasibility. The analysis was carried out in a tiered process. The final tier involved further analysis of the no action alternative and the following four open water alternative sites: Central LIS (CLIS), Milford, Bridgeport and Western LIS (WLIS). These sites were evaluated and two sites were selected as preferred alternatives for potential site designation. Management strategies were developed for the preferred alternatives and are described in the SMMPs.

To obtain public input during the process, EPA and the Corps held public workshops and scoping meetings, as well as convened an EIS working group.

The purpose of the working group was to assist in identifying and evaluating the best long-term dredged material disposal options for Long Island Sound. Representatives from state, local, tribal and federal agencies were invited to participate in the working group as well as individuals representing other interests. The working group assembled for a series of five meetings between July 2000 and November 2002. Comments received were factored into the development of the DEIS. The NEPA process led to the current proposal that CLIS and WLIS be designated as open water dredged material disposal sites.

#### D. Proposed Sites Descriptions

The two sites, CLIS and WLIS, are proposed for designation. Draft SMMPS have been prepared for the two proposed open water disposal sites and are available for review and comment by the public. (Copies may be obtained by request from the **FURTHER INFORMATION CONTACT** listed in the introductory section to this proposed rule.) Use of newly-designated open water disposal sites would be subject to any restrictions included in the site designation and the approved SMMPS. These restrictions will be based on a thorough evaluation of the proposed sites pursuant to the Ocean Dumping Regulations and potential disposal activity as well as consideration of public review and comment.

*Central Long Island Sound (CLIS).* The CLIS site proposed for long-term designation by EPA is currently in operation under the Corps' short-term site selection authority. It has been one of the most active dredged material disposal sites in New England. Overall, CLIS has received close to 14 million cubic yards (11 million cubic meters) since 1941. The site was used prior to enactment of MPRSA in 1972 and continued to be used thereafter. Between 1982 and 2001 CLIS received approximately 7 million cubic yards (5.4 million cubic meters), with an average annual volume of 350,000 cubic yards (268,000 cubic meters). The site is a rectangular area, approximately 2 nautical miles by 1 nautical mile, located 5.6 nautical miles south of South End Point near East Haven, Connecticut, in water depths from 59 to 74 feet (18 to 22.5 meters). The sediments at the site are predominately uniform clayey silt with an area of mixed sand, clay and silt. These sediments are typical of those found in fine-grained depositional environments of the central basin of Long Island Sound. This proposed rule would designate the CLIS site with boundaries slightly changed from the current site.

The CLIS boundary was reconfigured so that the northern boundary was moved by 700 feet (215 meters) and the eastern boundary was moved by 1,230 feet (375 meters) in order to include two previously used disposal mounds (FVP, CS2) which are currently outside of the existing site boundaries. This reconfiguration will allow for management and monitoring of the FVP and CS2 mounds. The coordinates (North American Datum 1983: NAD 83) for the proposed CLIS site, are as follows:

#### CLIS

41° 09'5" N., 72° 54'4" W.  
41° 09'5" N., 72° 51'5" W.  
41° 08'4" N., 72° 54'4" W.  
41° 08'4" N., 72° 51'5" W.

#### *Western Long Island Sound (WLIS).*

The WLIS site proposed for long-term designation by EPA is currently in operation under the Corps' short-term site selection authority.

The site is a rectangular area, 1.2 by 1.3 square nautical miles (2.2 by 2.4 kilometers) that has been used for dredged material disposal since 1982. After completion of an EIS, the site was established in 1982 as a regional dredged material disposal site to serve the needs of the western area of Long Island Sound. Between 1982 and 2001, WLIS received 1.7 million cubic yards (1.3 million cubic meters), with an average annual volume of 85,000 cubic yards (65,000 cubic meters). The site is located 2.7 nautical miles north of Lloyd Point, New York and 2.5 nautical miles (4.6 kilometers) south of Long Neck Point near Noroton, Connecticut, in water depths of 79 to 118 feet (24 to 30 meters). The sediments at the site are heterogeneous, with clay silt in the northeast corner and a mixture of sand-silt-clay in the center and southeast corner. These sediments are typical of those found in fine-grained depositional environments of the western basin of Long Island Sound. In addition to the ambient silts from this region, there are deposits of material of mixed grain sizes dredged from harbors and navigation channels throughout the western basin. This proposed rule would designate the WLIS site with boundaries which have been slightly reconfigured. The WLIS boundaries have been shifted to the west by approximately 1,106 feet (337 meters) and to the north by 607 feet (185 meters). This shift move will relocate the WLIS site out of a rapidly shoaling area. The coordinates (North American Datum 1983: NAD 83) for the proposed WLIS site, are as follows:

#### WLIS

41° 00'1" N., 73° 29'8" W.

41° 00'1" N., 73° 28'0" W.  
41° 58'9" N., 73° 29'8" W.  
41° 58'9" N., 73° 28'1" W.

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

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

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

1. *Minimize interference with other activities, particularly avoiding fishery areas or major navigation areas.* The first of the five general criteria requires that a determination be made as to whether the site or its use will minimize interference with other uses of the marine environment. For this proposed rule, a determination was made to overlay individual uses and resources over GIS bathymetry and disposal site locations. This process was used to visually determine the maximum and minimum interferences with other uses of the marine environment that could be expected to occur. Both the CLIS and WLIS disposal sites showed minimum interference with other activities. The proposed sites do not interfere with lobster or fishing activities, although the areas surrounding the disposal sites provide good lobster habitat. The two proposed sites are also not located in shipping lanes or major navigation areas and otherwise have been selected to minimize interference with fisheries, shellfisheries and regions of commercial or recreational navigation.

2. *Minimize Changes in Water Quality. Temporary water quality perturbations (during initial mixing) caused by disposal operations would be reduced to normal ambient levels before reaching areas outside of the disposal site.* The second of the five general criteria requires that locations and boundaries of disposal sites be selected so that temporary changes in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within a site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching beaches, shorelines, sanctuaries, or geographically limited fisheries or shellfisheries. The proposed sites will be used only for dredged material disposal of suitable sediments as determined by application of MPRSA sediment quality criteria. No significant contaminant or suspended solids releases are expected. Based on data evaluated as part of the DEIS, disposal of either sandy or fine-grained material

would have no long-term impact on water quality at the proposed sites. In addition, dredged material deposited at the sites and water quality perturbations are not expected to reach any marine sanctuary, beach, or other important natural resource area.

3. *Interim Sites Which Do Not Meet Criteria.* There are no interim sites to be considered under this criterion. The CLIS and WLIS proposed sites are not interim sites as defined under the Ocean Dumping regulations. 0

4. *Size of sites.* The fourth general criterion requires that the size of open water disposal sites be limited to localize for identification and control any immediate adverse impacts and to permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. Size, configuration and location is to be determined as part of the disposal site evaluation. For this proposed rule, EPA has determined, based on the information presented in the DEIS, that the sites have been sized to provide sufficient capacity to accommodate material dredged from the harbors and channels of Long Island Sound. The existing site boundaries of the CLIS site have been reconfigured to include two previously used disposal (FVP and CS2) mounds that were outside of the existing boundary. Inclusion of these mounds within the CLIS disposal site boundary will allow for management and monitoring of the mounds. The WLIS site has also been reconfigured. The WLIS boundaries were moved to the north west to avoid a rapidly shoaling area. The management and monitoring plans are described in the CLIS and WLIS SMMPs (Appendix J of the DEIS).

5. *EPA must, wherever feasible, designate dumping sites beyond the edge of the continental shelf and where historical disposal has occurred.* The fifth criterion requires EPA, wherever feasible, to designate ocean dumping sites beyond the edge of the continental shelf and at other such sites that have historically been used. Sites beyond the edge of the continental shelf are not economically feasible due to the extended travel time and associated expense. In addition, the proposed sites, if designated, encompass the footprint of historically used sites. Thus, the proposed disposal sites are consistent with this criterion.

As discussed briefly above, EPA has found that the CLIS and WLIS disposal sites satisfy the five general criteria described in 40 CFR 228.5 of the EPA Ocean Dumping Regulations. More detailed information relevant to these

criteria can be found in the DEIS and SMMPs.

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

#### *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 CLIS site is a rectangular area approximately 2 nautical miles by 1 nautical mile, located 5.6 nautical miles south of South End Point near East Haven, Connecticut, in water depths from 59 to 74 feet (18 to 22.5 meters). The sediments at the site are predominately uniform clayey silt with an area of mixed sand, clay and silt. The seafloor at CLIS slopes from northwest to southeast. The proposed WLIS site is a rectangular area, of approximately 1 square nautical mile. The site is located 2.7 nautical miles north of Lloyd Point, New York and 2.5 nautical miles (4.6 kilometers) south of Long Neck Point near Noroton, Connecticut, in water depths of 79 to 118 feet (24 to 30 meters). The sediments at the site are heterogeneous, with clay silt in the northeast corner and a mixture of sand-silt-clay in the center and southeast corner. These sediments are typical of those found in fine-grained depositional environments of the western basin of Long Island Sound. The seafloor at WLIS is a gentle downward sloping plane from north to south and is bisected by an axial depression that runs from east to west, dipping to 118 feet (36 meters) in one quarter of the site in the southern half. EPA anticipates that disposal of dredged material placed at either of these sites would adhere to mound configuration. Each site will be managed based on its unique environmental conditions.

2. *Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).* The Corps and EPA has initiated ESA and EFH consultation with publication of the DEIS in coordination with the National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS). Through coordination with the New York Department of Environmental Conservation, the

Connecticut Department of Environmental Protection, NMFS and USFWS, data has been obtained on current threatened or endangered species in Long Island Sound. The many organisms at the proposed sites include zooplankton (copepods, tintinnids) and phytoplankton. These organisms display a range of abundance by season. The populations at or near the proposed sites are not unique to the sites and are present over most of the sound. It is expected that although small, short-term entrainment losses may occur immediately following disposal, no long term, adverse impacts to organisms in the water column will occur.

The benthic community at these sites is comprised primarily of Annelida, Mollusca, and Crustacea. Abundance was greater at the WLIS site. It is expected that short-term reduction in abundance and diversity at the sites may occur immediately following disposal, but long term, adverse impacts to benthic organisms are not expected to occur.

The sites are located off shore in a semi-enclosed estuary that is occupied by more than 83 fish species. Species richness did not vary change significantly among sites. Some fish species found to dominate the areas include winter flounder, windowpane flounder and scup. The American lobster is a primary shellfish resource in the sound. At the CLIS site, longfin squid were also abundant. It is expected that impacts to finfish resources will consist of short-term, local disruptions and the potential loss of some individual fish of certain non-migratory species. Most of the finfish species are migratory. It is expected that impacts to lobster will be short-term and associated with disposal, burial and loss of habitat or food.

The coast supports a large number of resident and migratory marine and coastal birds. Dozens of marine and coastal birds migrate through Long Island Sound annually. In addition, LIS provides limited habitat for most marine mammals and reptiles. The species that are frequent or occasional visitors to the sound are harbor porpoises, long-finned pilot whales, seals and sea turtles (Kemp's ridley, loggerhead, leatherback and hawksbill).

The federally listed threatened and endangered species or species of "special concern" which may occur within the area of the proposed sites include: humpback, fin, and right whales; loggerhead, green, Kemp's ridley, and hawksbill sea turtles; Atlantic and Shortnose sturgeons. No endangered birds are expected to occur in the area of the proposed sites.

Occurrence of these species varies by season. Use of the sites by whales and endangered birds would be incidental. The presence of sea turtles may occur in this area of the proposed sites during the summer and fall. It is not expected that dredging activities would have any significant adverse effect on these species or their critical habitat. Disposal at both of the proposed sites is expected to result in the mortality of benthic organisms as an immediate result of material burying organisms on the seafloor. However, recolonization at the disposal sites is expected to occur within a year or more after a disposal event. With respect to the other living resources that use the proposed CLIS and WLIS sites, the sites are not being located in areas that provide limited or unique breeding, spawning, nursery, feeding, or passage areas.

**3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).** The CLIS and WLIS disposal sites are within the semi-enclosed Long Island Sound estuary. The closest beaches, refuges, sanctuaries or areas of special concern are at least two nautical miles from either disposal site. The CLIS and WLIS disposal sites are approximately 6 nautical miles (11 kilometers) from the closest beaches (Short Beach and Calf Pasture Beach, respectively). For the CLIS disposal site, the closest refuge or sanctuary (approximately seven nautical miles) is the Outer Island Unit of the Stewart B. McKinney National Wildlife Refuge. Areas of special concern at the CLIS site include Quinnipiac River Marsh Wildlife Management Area, Great Harbor, Wildlife Management Area and Wild wood State Park. For the WLIS disposal site, the closest refuge or sanctuary is the Stewart B. McKinney National Wildlife Refuge, Caumsett State Park and Target Rock National Wildlife Refuge. It is expected that impacts would not occur to beaches, areas of special concern, parks, natural resources, sanctuaries or refuges since they are either land-based or further than two nautical miles from either proposed disposal site. Therefore, EPA has determined that dredged material disposal at the preferred disposal site locations should not have any adverse effect on beaches or other amenity areas, including wildlife refuges or other areas of biological or recreational significance.

**4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).** The typical composition of dredged material to be disposed at the sites is expected to range from predominantly "clay-silt" to

"mostly sand." This expectation is based on data from historical projects from the Central and Western Regions of Long Island Sound. The disposal of this material shall occur at designated buoys and would be expected to be placed so as to concentrate material from each disposal. This placement is expected to help minimize bottom impacts to benthic organisms. Suitability determinations will be made before authorization for disposal under MPRSA section 103 and CWA section 404 will be issued. The sites that are proposed to be designated will receive dredged materials determined to be suitable for ocean disposal that are transported by either government or private contractor hopper dredges or ocean-going bottom-dump barges towed by tugboat. Both types of equipment release the material at or very near the surface.

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

**5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).** Monitoring and surveillance are expected to be feasible at both proposed sites. Both sites are readily accessible for bathymetric surveys and have undergone monitoring, including side-scan sonar. If field monitoring of the disposal activities is required because of a future concern for habitat changes or limited resources, a management decision will be made by EPA New England and the Corps' New England District who share the responsibilities of managing and monitoring the disposal sites. Once the proposed sites are designated, monitoring shall be completed in accordance with the then-current SMMPs. It is expected that revisions to the SMMPs may be made periodically; revisions will be circulated for review, coordinated with the affected states and become final when approved by EPA New England Region in conjunction with the Corps' New England District. See 33 U.S.C. 1413 (c)(3).

**6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current**

**Direction and Velocity, if any (40 CFR 228.6(a)(6)).** The interactions of bathymetry, wind-generated waves, and river and ocean currents are complex. Tidal currents are the dominant source of water movement in LIS. Tidal currents generally run east-west parallel to the axis of the Sound and are substantially stronger in the eastern portion of the sound. At the CLIS site, average peak ebb and peak flood currents run 20 to 30 centimeters/second (depth-averaged), with the spring tides 20 to 40 percent stronger. The dominant flow direction is east-west. Also observed is a net west-southwestward flow of approximately 2.5 centimeters/second. The wind fetch at both sites is limited by the semi-enclosed nature of LIS and wave height was recorded in the spring of 2001 at 5 feet. However, wave heights can be developed at the site by winds from storms. A northeast storm with a return period of 2 years will generate waves of 8 feet. Storms with a return period of 10 years will generate waves of 10 feet. At the WLIS site, average peak ebb and peak flood currents run 20 to 30 centimeters/second (depth-averaged), with the spring tides 20 to 30 percent stronger. Based on studies conducted historically, flows directed to the west-southwest run from 30 to 45 centimeters/second 5 percent of the time. The wind fetch is limited at this site, however wave height was recorded in the spring of 2001 at 6.5 feet. A northeast storm with a return period of 2 years will generate waves of 9 feet. Storms with a return period of 10 years will generate waves of 11 feet.

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

**7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)).** The CLIS and WLIS disposal sites are currently being used for disposal activity pursuant to the Corps' short-term site selection authority under section 103(b) of the MPRSA. 33 U.S.C. 1413(b). These sites have also been used historically under prior legal regimes. These past disposal operations at these sites have been managed and material disposal has been monitored. Past use of these sites generally makes them preferable to more pristine sites that have either not been

used or have been used in the more distant past. See 40 CFR 228.5(e). Beyond this, however, EPA's evaluation of data and modeling results indicates that these past disposal operations have not resulted in unacceptable or unreasonable environmental degradation, and that there should be no significant adverse cumulative environmental effects from continuing to use these sites on a long-term basis.

8. *Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean* (40 CFR 228.6(a)(8)). In evaluating whether disposal activity at the sites could interfere with shipping, fishing, recreation, mineral extraction, desalination, areas of scientific importance and other legitimate uses of the ocean, EPA considered both the direct effects from depositing dredged material on the ocean bottom at the proposed sites and the indirect effects associated with increased vessel traffic that will result from transportation of dredged material to the disposal sites. Commercial fishing activities occur throughout LIS. Commercial fish trawling occurs in the vicinity of the CLIS proposed site and is the only area within the western and central Sound that fishermen can trawl successfully due to the abundance of lobster pots in other areas of the Sound. Commercial fishing is not affected at the WLIS site since it is not currently used due to harvesting restrictions. While lobstering occurs at both proposed sites, WLIS is a more active lobstering site than CLIS. Recreational fishing most frequently occurs from spring to fall in areas with reefs and other areas of high relief. Recreational fishing occurs at several reefs in LIS that are within two to five nautical miles of the proposed disposal sites. Fish and shellfish areas, occur in nearshore areas and, therefore, are not impacted by this action. A USCG lightering area overlays the northeast corner of the CLIS site. The Corps will coordinate with the USCG to shift the designated anchorage boundary to ensure that existing mounds and future disposed dredged material is not disturbed. The proposed sites are not located in shipping lanes. Energy resources are located near the proposed sites, but no pipelines or cables are within their boundaries. While at the time of this evaluation only three pipelines were in place, development of several new pipelines is anticipated.

Furthermore, neither site is an area of special scientific importance, desalination, fish and shellfish culture or mineral extraction. Accordingly,

depositing dredged material at the sites will not interfere with any of the activities mentioned in this criterion. Increased vessel traffic involved in the transportation of dredged material to the proposed disposal sites should not impact shipping or activities discussed above.

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

10. *Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Sites* (40 CFR 228.6(a)(10)). Local opportunistic benthic species characteristic of disturbed conditions are expected to be present and abundant at any ODMDS in response to physical deposition of sediments. However, no recruitment of nuisance species or species capable of harming human health or the marine ecosystem is expected to occur at the sites.

11. *Existence at or in Close Proximity to the Sites of any Significant Natural or Cultural Feature of Historical Importance* (40 CFR 228.6(a)(11)). Due to the location of the proposed sites in LIS, the cultural resource that has the greatest potential for impact would be shipwrecks. A review of the existing NOAA and Warren C. Reiss Marine shipwrecks databases illustrated a total of 39 shipwrecks in LIS. Although none of the known shipwrecks of historical significance are located within the boundaries of the proposed sites, the Central LIS region is known to have at least twelve shipwrecks and the western LIS region is known to have at least four shipwrecks. Undiscovered shipwrecks could occur in the area. As additional sidescan sonar surveys are conducted in the future, and if potential shipwrecks are identified, EPA New England and the Corps' New England District will take appropriate action.

The Connecticut State Historic Preservation Officer has determined there are no known historic shipwrecks nor any known aboriginal artifacts at the CLIS and WLIS disposal sites. Two of the region's Indian tribes were included as cooperating agencies during the development of the EIS. The Indian tribes have not identified natural or cultural features of historical significance at either site proposed for designation in this rule.

## E. Proposed Action

The DEIS concludes that the proposed sites may appropriately be designated for long-term use as open water dredged material disposal sites. The proposed sites are compatible with the general and specific factors used for site evaluation.

EPA is publishing this Proposed Rule to propose the designation of the CLIS and WLIS disposal sites as EPA-approved open water disposal sites. The monitoring and management of requirements that will apply to these sites is described in the draft SMMPs. Management of these sites will be carried out by EPA New England in conjunction with the Corps' New England District.

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

## F. Statutory and Executive Order Reviews

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

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

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

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

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

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



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

## 2. Paperwork Reduction Act

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

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business based on the Small Business Administration's (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant impact on small entities because the proposed open water disposal site designation will only have the effect of providing long term environmentally-acceptable disposal options for dredged materials. This action also provides options which are safe for marine traffic (navigation hazards) on a continuing basis. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

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

Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

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

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

## 5. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government."

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

In addition, and consistent with Executive Order 13132 and EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have Tribal implications" are defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

The proposed action does not have Tribal implications. If finalized, the proposed action would not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This proposed rule designates open water dredged material disposal sites and does not establish any regulatory policy with tribal implications. EPA specifically solicits additional comment on this proposed rule from tribal



officials. Thus, Executive Order 13175 does not apply to this rule.

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

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

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

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

**9. National Technology Transfer Advancement Act**

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

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

**11. National Environmental Policy Act of 1969**

Section 102(c) of the National Environmental Policy Act of 1969, section 4321 *et seq.* (NEPA) requires Federal agencies to prepare environmental impact statements (EIS) for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. Although EPA ocean dumping program activities have been determined to be “functionally equivalent” to NEPA, EPA has a voluntarily policy to follow NEPA procedures when designating ocean dumping sites. See, 63 FR 58045 (Oct. 29, 1998). In addition to the Notice of Intent published in the **Federal Register** in June 1999 (64 FR 29865 (1999)), EPA and the Corps published legal notices in local newspapers and issued a press release inviting the public to participate in DEIS scoping meetings. Three formal scoping meetings were conducted in June 1999. In addition EPA and the Corps have held public workshops and several working group meetings. As discussed above, EPA is issuing a DEIS for public review and comment in

conjunction with publication of this proposed rule.

In addition, EPA and the Corps will submit Coastal Zone Consistency determinations to the states of New York and Connecticut for publication in the Final EIS. Coordination efforts with NMFS and USFWS for ESA and EFH consultation was initiated during the DEIS process.

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

Environmental protection, Water pollution control.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

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

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

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

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

2. Section 228.15 is amended by removing and reserving paragraphs (b) (1), and (b) (2); and adding paragraphs (b) (3) and (b) (4) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) [Reserved]

(2) [Reserved]

(3) Central Long Island Sound Dredged Material Disposal Site (CLIS):

(i) *Location:* Corner Coordinates (NAD 1983) 41° 09'5" N., 72° 54'4" W.; 41° 09'5" N., 72° 51'5" W.; 41° 08'4" N., 72° 51'5" W.; 41° 08'4" N., 72° 54'4" W.

(ii) *Size:* 2 square nautical miles.

(iii) *Depth:* range from 18 to 23.5 meters.

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

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

(vi) *Restriction:* Disposal shall be limited to dredged material from Long Island Sound and vicinity.

(4) Western Long Island Sound Dredged Material Disposal Site (WLIS)

(i) *Location:* Corner Coordinates (NAD 1983) 41° 00'1" N., 73° 29'8" W.; 41° 00'1" N., 73° 28'0" W.; 41° 58'9" N., 73° 29'8" W.; 41° 58'9" N., 73° 28'1" W.

(ii) *Size:* 1.2 by 1.3 nautical mile rectangular area.

(iii) *Depth:* range from 24 to 30 meters.

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

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

(vi) *Restriction*: Disposal shall be limited to dredged material from Long Island Sound and vicinity.

\* \* \* \* \*

[FR Doc. 03-22645 Filed 9-11-03; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Chapter I

[WT Docket No. 03-187; FCC 03-205]

#### Effects of Communications Towers on Migratory Birds

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission ("Commission") initiates an inquiry to gather comment and information on the impact that communications towers may have on migratory birds. The Commission seeks information that is supported by evidence concerning the number of migratory bird collisions with communications towers and the role that specific factors associated with communications towers may have in increasing or decreasing the incidence of such collisions. The Commission further requests information on whether any current or proposed research may provide useful data regarding the subjects of this inquiry, and what other actions may be necessary to spur additional, necessary research. The Commission also seeks comment on whether certain measures might minimize any adverse impacts of communications tower siting and construction on migratory birds, whether any such measures are supported by adequate and reliable empirical and/or scientific evidence, and how the use of such measures may affect the ability of licensees and other parties to provide efficient and reliable communications services.

**DATES:** Comments are due on or before November 12, 2003 and reply comments are due on or before December 11, 2003.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:** G. William Stafford at (202) 418-0563.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Notice of Inquiry ("NOI") in WT Dkt. No. 03-187, FCC 03-205, adopted August 8, 2003, and

released August 20, 2003. The NOI seeks comment and information on the impact that communications towers may have on migratory birds. The full text of the NOI is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The Notice of Inquiry may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). To request the NOI in accessible formats for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (tty).

#### I. Introduction

1. The Commission is initiating the inquiry to gather comment and information on the impact that communications towers may have on migratory birds. As explained, we seek information that is supported by evidence concerning the number of migratory bird collisions with communications towers and the role that specific factors associated with communications towers may have in increasing or decreasing the incidence of such collisions. Such factors may include lighting, height, and particular type of antenna structure (including guyed and unguyed structures), meteorological conditions, location, physiographic features of sites, and known migratory bird migration corridors. We further request information on whether any current or proposed research may provide useful data regarding the subjects of this inquiry, and what other actions may be necessary to spur additional, necessary research. We also seek comment on whether certain measures might minimize any adverse impacts of communications tower siting and construction on migratory birds, whether any such measures are supported by adequate and reliable empirical and/or scientific evidence, and how the use of such measures may affect the ability of licensees and other parties to provide efficient and reliable communications services. Depending on the record developed in this proceeding, the Commission will consider whether the current state of research would support further action by the Commission in this area, including possible amendments of its environmental rules. See 47 CFR 1.1301-1.1319.

2. This inquiry is designed to gather comments on scientific research and other related data relevant to migratory bird collisions with communications towers, and on whether such research would support changes within the structure of our current rules and processes specifically related to protection of migratory birds.

#### II. Background

3. Communications towers and other structures that support antennas provide the infrastructure for services licensed by the Commission, including broadcast television and radio, cellular, Personal Communications Service (PCS), Specialized Mobile Radio (SMR), and other advanced and emerging services. Communications towers also are used for the provision of private radio services used by business and government, and for public safety purposes.

4. Migratory birds breed throughout the United States and Canada and, in the fall of each year, migrate to the southern United States, Mexico, and Central and South America for the winter. Currently, 836 species are on the list of migratory birds maintained by the United States Fish and Wildlife Service (FWS). Birds that have been documented as vulnerable to collisions with communications towers include approximately 350 species of neotropical migratory songbirds, which generally migrate at night and may be most susceptible to collisions with lit towers on nights with low visibility due to fog, rain, or low cloud ceilings. At least one researcher has suggested that an estimated four to five million birds or more may be killed each year due to collisions with communications towers. Reports of bird deaths at single locations on a single day have included instances involving hundreds or even thousands of birds. However, to our knowledge there have been no studies sufficient to support a reliable estimate of the number of migratory birds that may have died as a result of collisions with an extensive number of communications towers located, for example, over wide geographic areas. In addition, while some literature suggests that certain factors—such as tower height, lighting systems, type of antenna support structure, and location—may increase or decrease the hazards that towers pose to migratory birds, there does not appear to be systematic research on an adequate scale regarding exactly how and to what extent, if at all, these factors contribute to any risk to migratory birds.