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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–9955-13-Region 1]

Ocean Disposal; Designation of a Dredged Material Disposal Site in Eastern Region of Long Island Sound; Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With the publication of this Final Rule, the Environmental Protection Agency (EPA) is designating the Eastern Long Island Sound Disposal Site (ELDS), located offshore from New London, Connecticut, for the disposal of dredged material from harbors and navigation channels in eastern Long Island Sound and Little Narragansett Bay in the states of Connecticut, New York, and Rhode Island. This action is necessary to provide a long-term, open-water dredged material disposal site as an alternative for the possible future disposal of such material. This disposal site designation is subject to restrictions designed to support the goal of reducing or eliminating the disposal of dredged material in Long Island Sound.

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The basis for this action is described herein and in the Final Supplemental Environmental Impact Statement (FSEIS) released by EPA on November 4, 2016 on the EPA Region 1 website: https://www.epa.gov/ocean-dumping/final-supplemental-environmental-impact-statement-eastern-long-island-sound in conjunction with this Final Rule. The FSEIS identifies designation of the ELDS as the preferred alternative from the range of options considered.

today

DATES: This final rule is effective on [insert date 30 days after date of publication in the **Federal Register**].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OW-2016-0239. All documents in the docket are listed on the *http://www.regulations.gov* website. Publically available docket materials are also available from EPA's website *https://www.epa.gov/ocean-dumping/dredged-material-management-long-island-sound*

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SUPPLEMENTARY INFORMATION: Organization of this document. The following outline is provided to aid in locating information in this preamble.

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I. Final Action

EPA is publishing this Final Rule to designate the ELDS to provide an environmentally sound, open-water disposal option for possible use in managing dredged material from harbors and navigation channels in eastern Long Island Sound and its vicinity in the states of Connecticut, New York, and Rhode Island. The site designation is effective for an indefinite period of time. The use of the site is subject to restrictions designed to reduce or eliminate open-

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water disposal of dredged material in Long Island Sound, and to ensure protection of the environment if and when the site is used.

The site designation process has been conducted consistent with the requirements of the Marine Protection, Research, and Sanctuaries Act (MPRSA), National Environmental Policy Act (NEPA), Coastal Zone Management Act (CZMA), and other applicable federal and state statutes and regulations. Compliance with these requirements is described in detail in Section VIII ("Compliance with Statutory and Regulatory Requirements"). The basis for this federal action is further described in an FSEIS that identifies EPA designation of the ELDS as the preferred alternative. The FSEIS was released on November 4, 2016 and is provided as a supporting document in the docket for the publication of this Final Rule.

See 40 CFR 1506.10. This Final Rule also serves as EPA's Record of Decision (ROD) for the NEPA review supporting the designation of this site.

Dredged material disposal sites designated by EPA under the MPRSA are subject to detailed management and monitoring protocols to track site conditions and prevent the occurrence of unacceptable adverse effects. The management and monitoring protocols for the ELDS are described in the Site Management and Monitoring Plan (SMMP) that is incorporated into the FSEIS as Appendix I. *See* 33 U.S.C. 1412(c)(3). EPA is authorized to close or limit the use of these sites to further disposal activity if their use causes unacceptable adverse impacts to the marine environment or human health.

The designation of this disposal site does not constitute or imply EPA's approval of open-water disposal of dredged material at the site from any specific project. Disposal of dredged material from federal projects, or non-federal projects involving more than 25,000 cubic yards

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(cy) of material, will not be allowed at the ELDS until the proposed disposal operation first receives, among other things, proper authorization from the U.S. Army Corps of Engineers (USACE) under MPRSA section 103. (Proposals to dispose of material from non-federal projects involving less than 25,000 cy yards of material are subject to regulation under Section 404 of the Clean Water Act.) In addition, any authorization by the USACE under MPRSA section 103 is subject to EPA review under MPRSA section 103(c), and EPA may concur, concur with conditions, or decline to concur with the authorization as a result of such review. In order to properly obtain authorization to dispose of dredged material at the ELDS under the MPRSA, the dredged material proposed for disposal must first satisfy the applicable criteria for testing and evaluating dredged material specified in EPA regulations at 40 CFR part 227, and it must be determined in accordance with EPA regulations at 40 CFR part 227, subpart C, that there is a need for open-water disposal (i.e., that there is no practicable dredged material management alternative to open-water disposal with less adverse environmental impact). In addition, any proposal to dispose of dredged material under the MPRSA at the designated site will need to satisfy all the site restrictions included in the Final Rule as part of the site designation. *See* 40 CFR 228.8 and 228.15(b)(6).

II. Background

On April 27, 2016, EPA published in the **Federal Register** (81 FR 24748) a proposed rule (the Proposed Rule) to designate an Eastern Long Island Sound Dredged Material Disposal Site (ELDS), located offshore from New London, Connecticut. EPA's Proposed Rule also stated that two other alternative sites, the Niantic Bay and Cornfield Shoals disposal sites and CSDS), met

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the site selection criteria in the Ocean Dumping Regulations and could be designated for long-term use. EPA indicated that it was not proposing to designate those two alternative sites but requested public comment on the advisability of using those sites.

On July 7, 2016, EPA published in the **Federal Register** (81 FR 44220) a final rule to amend the 2005 rule that designated the Central and Western Long Island Sound dredged material disposal sites (CLDS and WLDS, respectively). The rule amendments established new restrictions on the use of those sites to support the goal of reducing or eliminating open-water disposal in Long Island Sound. The restrictions include standards and procedures to promote the development and use of practicable alternatives to open-water disposal, including establishment of an interagency "Steering Committee" and "Regional Dredging Team" that will oversee implementation of the rule. As explained in the Proposed Rule for the ELDS, the restrictions applicable to the CLDS and WLDS also will be applied to use of the ELDS.

III. Purpose

The purpose of EPA's action is to provide a long-term, environmentally acceptable dredged material disposal option for potential use by the USACE and other federal, state, county, municipal, and private entities that must dredge channels, harbors, marinas, and other aquatic areas in eastern Long Island Sound in order to maintain conditions for safe navigation for marine commerce and recreation, and for military and public safety operations. This action is necessary because: (1) periodic dredging is needed to maintain safe navigation and occasionally improve ports and harbors to maintain competitiveness and support a changing economy, and open-water dredged material disposal is necessary when practicable alternative means of managing the

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material are not available; (2) EPA determined that dredged material disposal/handling needs in the eastern region of Long Island Sound exceed the available disposal/handling capacity in that region; (3) the two currently used disposal sites in this region, the New London Disposal Site (NLDS) and CSDS, are only authorized for use until December 23, 2016; (4) there are currently no disposal sites designated for long-term use in the eastern Long Island Sound region; and (5) under the MPRSA, an EPA designation is required for any long-term open-water dredged material disposal site in Long Island Sound.

In addition, the closest designated sites outside the eastern Long Island Sound region are the Central Long Island Sound Disposal Site (CLDS) and the Rhode Island Sound Disposal Site (RISDS), and both are too far from dredging centers in the eastern region of the Sound to be reasonable alternatives to the proposed site designation. For example, the distance from New London Harbor to the CLDS is 34.7 nautical miles (nmi) and to the RISDS is 44.5 nmi. The Western Long Island Sound Disposal Site (WLDS) is approximately 59 nmi west of New London Harbor, making it an even less feasible alternative.

While the CLDS, WLDS, and RISDS have all been determined to be environmentally sound sites for receiving suitable dredged material, proposing to use any of them for suitable dredged material from the eastern region of Long Island Sound would be problematic, and EPA would consider them to be options of last resort. Using the CLDS or RISDS would greatly increase the transport distance for, and duration of, open-water disposal for dredging projects from the eastern Long Island Sound region. This, in turn, would greatly increase the cost of such projects and would likely render many dredging projects too expensive to conduct. For example, maintenance dredging of the U.S. Navy Submarine Base berths planned for 2016-2020 is

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expected to generate about 75,000 cy of suitable material; the estimated cost of disposal at the ELDS is $31/cy for a total cost of $2,325,000, while disposal at the CLDS is estimated at $64/cy for a total of $4,800,000. An improvement (deepening) project to accommodate a larger class of submarine planned for 2016-2025 is expected to generate about 350,000 cy; the estimated cost of disposal at the ELDS is $26/cy for a total cost of $9,100,000, while disposal at the CLDS is estimated at $57/cy for a total of $19,950,000 (USACE, 2016b). Thus, the longer haul distance more than doubles the cost to the public for the federal government to dredge the same project.

Furthermore, the greater transport distances would be environmentally detrimental, in that they would entail greater energy use, increased air emissions, and increased risk of spills and short dumps (FSEIS, Section 2.1). Regarding air emissions, increased hauling distances might require using larger scows with more powerful towing vessels, which would use more fuel and cause more air pollution. Longer haul distances also may increase the amount of time necessary to complete a dredging project, resulting in an extended period of disruption to the areas being dredged.

In its Long Island Sound Dredged Material Management Plan (DMMP), the USACE projected that dredging in eastern Long Island Sound would generate approximately 22.6 million cubic yards (mcy) of dredged material over the next 30 years. Of the total amount of 22.6 mcy, approximately 13.5 mcy was projected to be fine-grained sediment that meets MPRSA and Clean Water Act (CWA) standards for aquatic disposal (i.e., "suitable" material), and 9.1 mcy was projected to be coarse-grained sand that also meets MPRSA and CWA standards for aquatic disposal (i.e., also "suitable" material). In addition, the DMMP projected that approximately 80,900 cy of material from eastern Long Island Sound would be fine-grained sediment that does not meet MPRSA and CWA standards for aquatic disposal (i.e., "unsuitable" material).

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In response to comments asserting that no disposal site is needed in the eastern region of Long Island Sound, and comments urging that the size of any site be reduced or minimized, EPA asked the USACE to revisit once more its estimate of disposal capacity needs and to revise the figures, if appropriate. Although the values from the DMMP reflected substantial analysis and public input, the USACE agreed to reassess the capacity needs in coordination with EPA. This reassessment has resulted in a projected disposal capacity need of approximately 20 mcy, which still supports the conclusion that a disposal site is needed in the eastern region of the Sound. The reassessment of capacity needs is discussed further in Sections V ("Disposal Site Description") and VI ("Summary of Public Comments and EPA's Responses") of this document and in Section 5.8 of the FSEIS.

The detailed assessment of alternatives to open-water disposal in the USACE's DMMP determined that, while the sand generated in this region may be able to be used beneficially to nourish beaches, there are not practicable alternatives to open-water disposal with sufficient capacity to handle the projected volume of fine-grained sediment. As described in the Proposed Rule and in Section IX of the Final Rule itself, EPA has placed restrictions on the use of all Long Island Sound dredged material disposal sites that are designed to facilitate and promote the use of practicable alternatives to open-water disposal whenever available, but EPA has determined that one designated open-water disposal site is needed in eastern Long Island Sound.

Given the need to provide an open-water disposal site as an option for dredged material management, EPA designation of a long-term dredged material disposal site(s) provides environmental benefits. First, when a site being used under the USACE's short-term site selection authority is due to expire, designation by EPA is the only way to authorize continued

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use of that site, even if the site is environmentally suitable or even environmentally preferable to all other sites. With the NLDS and CSDS closing in December 2016, EPA's site designation studies were designed to determine whether these or any other sites should be designated for continued long-term use. Congress has directed that the disposal of dredged material should take place at EPA-designated sites, rather than USACE-selected sites, when EPA-designated sites are available (*see* MPRSA 103(b)). Consistent with that Congressional intent, EPA's policy is that it is generally environmentally preferable to concentrate any open-water disposal at sites that have been used historically and at fewer sites, rather than relying on the selection by the USACE of multiple sites to be used for a limited time, *see* 40 CFR 228.5(e).

Second, MPRSA criteria for selecting and designating sites require EPA to consider previously used disposal sites, with active or historically used sites given preference in the evaluation (40 CFR 228.5(e)). This preference will concentrate the effects, if any, of open-water disposal of dredged material to discrete areas that have already received dredged material, and avoid distributing any effects over a larger geographic area. Finally, unlike USACE-selected sites, EPA-designated sites require a SMMP that will help ensure environmentally sound monitoring and management of the sites.

Designating an environmentally sound open-water disposal site to allow for and facilitate necessary dredging in the eastern region of Long Island Sound also will yield a number of public benefits. First, designating an environmentally sound disposal site will yield economic benefits. There are a large number of important navigation-dependent businesses and industries in the eastern Long Island Sound region, ranging from shipping (especially the movement of petroleum fuels and the shipping of bulk materials), to recreational boating-related businesses, marine transportation, commercial and recreational fishing, interstate ferry operations, ship building, and

military and public safety operations, such as those associated with the U.S. Naval Submarine Base in Groton and the U.S. Coast Guard facilities in New London. These businesses and industries contribute substantially to the region's economic output, the gross state product (GSP) of the bordering states, and tax revenue. Continued access to navigation channels, harbors, berths, and mooring areas is vital to ensuring the continued economic health of these industries, and to preserving the ability of the region to import fuels, bulk supplies, and other commodities at competitive prices. Second, preserving navigation channels, marinas, harbors, berthing areas, and other marine resources, improves the quality of life for residents and visitors to the eastern Long Island Sound region by facilitating recreational boating and associated activities, such as fishing and sightseeing. Finally, by facilitating dredging needed to support U.S. Navy and Coast Guard operations, designation of an open-water dredged material disposal site also supports national defense planning and operations as well as public safety.

IV. Potentially Affected Entities

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material in waters of eastern Long Island Sound, subject to the requirements of the MPRSA and/or the CWA and their implementing regulations. This rule is expected to be primarily of relevance to: (a) private parties seeking permits from the USACE to transport more than 25,000 cubic yards of dredged material for the purpose of disposal into the waters of eastern Long Island Sound; (b) the USACE for its own dredged material disposal projects; and (c) other federal agencies seeking to dispose of dredged material in eastern Long Island Sound. Potentially affected entities and categories of entities that may seek to use the designated dredged material disposal site and would be subject to the proposed rule include:

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Category	Examples of potentially affected entities
Federal government	USACE (Civil Works Projects), and other federal agencies
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.
Industry and general public	Port authorities, shipyards and marine repair facilities, marinas and boatyards, and berth owners.

This table is not intended to be comprehensive, but rather provides a guide for readers regarding the types of entities that could potentially be affected by this Final Rule. EPA notes that nothing in this rule alters the jurisdiction or authority of EPA, the USACE, or the types of entities regulated under the MPRSA and/or CWA. Questions regarding the applicability of this Final Rule to a particular entity should be directed to the contact person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

V. Disposal Site Description

This rule designates the ELDS, but with site boundaries modified from those in the Proposed Rule, for open-water disposal of dredged material for several reasons. First, the entire ELDS is a containment site, which will protect the environment by retaining the dredged material within the site and, accordingly, will also support effective site management and monitoring. Second, the NLDS, which is immediately to the east of the ELDS, has been used for dredged material

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disposal for over 60 years, and monitoring of the NLDS over the past 35 years has determined that past and present management practices have been successful in minimizing short-term, long-term, and cumulative impacts to water quality and benthic habitat in this vicinity. EPA has determined that the ELDS also can be successfully managed. Third, designating the ELDS, which is immediately adjacent to the NLDS, would be consistent with USEPA's ocean disposal regulations, which indicate a preference for designating disposal sites in areas that have been used in the past, rather than new, relatively undisturbed areas (40 CFR 228.5(e)).

Finally, in response to public comments, which are described further in Section VI ("Summary of Public Comments and EPA's Responses"), EPA is designating an ELDS that has been relocated farther to the west and is smaller in size than the preferred alternative described in the Proposed Rule. Thus, the boundaries of the ELDS have been redrawn for this Final Rule. For the Proposed Rule, EPA proposed an ELDS with an estimated capacity of 27 mcy based on an estimated need for disposal capacity of approximately 22.6 mcy for material from the eastern region of the Sound, which in turn was based on the dredging needs assessment from the DMMP. *See* 81 FR 24750. EPA received comments stating that there was no need for a disposal site to be designated in the eastern region of Long Island Sound. As part of its consideration of, and response to, these comments, EPA requested the USACE prepare a more refined estimate of the dredged material disposal capacity needed for sediments projected to be dredged from the eastern region of the Sound. The USACE undertook this analysis and projected that a disposal capacity of approximately 20 mcy (based on water volume below a depth of 59 feet [18 meters] and slope calculations, with a buffer zone) would likely be sufficient. This estimate reflects a variety of factors, some of which involve an unavoidable degree of uncertainty. These factors

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include the following: specific dredging projects currently projected within the region (including possible "improvement projects" to further deepen channels or berthing areas); how much of each type of material (e.g., sand, suitable and unsuitable fine-grained material) is estimated to be generated by each project; how much of this material is estimated to require open-water disposal; the possibility of increased dredging needs caused by larger-than-normal storms; and a "bulking factor" of approximately 10 percent. More specifically, the revised projected disposal capacity need of approximately 20 mcy is based on the need to accommodate approximately 12.5 mcy of suitable fine-grained sediment; 2.8 mcy from potential improvement (deepening) dredging projects; 1.8 mcy of shoal material resulting from extreme storm events; 1.1 mcy of sand (recognizing that beach nourishment may not be a practicable alternative for all 9.1 mcy of the projected sand); and 160,000 cy for the excavation of Confined Aquatic Disposal cells (for material unsuitable for open-water disposal); for a total of 18,364,500 cy; and a bulking factor of approximately 10 percent of the total, which brings the total to about 20 mcy. The "bulking factor" assumes that dredged material placed at a disposal site is relatively unconsolidated and, thus, will require more capacity when it is placed at a disposal site than it occupied when in it was in a consolidated state on the seafloor prior to dredging. EPA discussed this disposal capacity needs analysis with the USACE before, during, and after its development, and EPA has also independently assessed it. Based on all of this, EPA regards the disposal capacity needs analysis to be reasonable, especially in light of the unavoidable uncertainty associated with some of its elements.

EPA also received comments opposing designation of the ELDS but expressing a willingness to accept the NBDS site, lying farther in Connecticut waters. EPA regards these comments to be

at least suggestive of a desire to move the site farther from New York waters, while recognizing that such comments do not necessarily indicate an acceptance of an ELDS relocated to lie exclusively in Connecticut waters. In addition, EPA received comments supporting the ELDS but urging that its eastern boundary be pushed westward farther away from the submarine transit corridor in that area of the Sound. Finally, EPA received several comments opposing designation of the NBDS due to its proximity to the Millstone Power Plant.

Taking all of these comments and the above dredged material disposal capacity needs analysis into account, EPA has redrawn the boundaries of the ELDS. The site has been moved to the west so that it avoids the submarine transit corridor. The entire site now also lies in Connecticut waters approximately 0.2 nm from New York waters. In addition, the northern and southern site boundaries were modified to avoid two areas of rocky outcroppings that might provide habitat for fish and other marine life that are attracted to "structure" on the seafloor. EPA has determined that the reconfigured ELDS would provide approximately 20 mcy of disposal capacity, which will meet the disposal capacity need estimated by the USACE.

The following site description is based on information in section 3.4.3 of the FSEIS and other support documents. Specifically, Figure 5.6 in the FSEIS show the location of the site and Table 5-11 provides coordinates for the site boundaries.

The ELDS, as described in the Proposed Rule, comprised approximately the western half of the existing NLDS, along with Sites NL-Wa and NL-Wb, which are adjacent areas immediately to the west of the NLDS. The ELDS now being designated excludes the NLDS entirely and encompasses most of former Site NL-Wa (excluding the northern bedrock area) and former Site NL-Wb (excluding the southern bedrock area) (*see* FSEIS, Figure 5-6). The ELDS combines these two areas, forming an irregularly-shaped polygon that is 1 x 1.5 nmi, but that excludes the

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two previously described bedrock areas for a total area of approximately 1.3 square nautical miles (nmi^2).

Water depths in the ELDS range from approximately 59 feet (18 m) in the north to 100 feet (30 m) in the south. The seafloor at the site consists of mostly flat, sandy areas, sloping gradually from north to south. However, there is an area of boulders and bedrock in the northern part of former Site NL-Wa that has been excluded from the reconfigured site boundaries due to its potential value as fisheries habitat. This boulder area may be a lag deposit of a glacial moraine. The water depth in parts of the boulder area is shallower than 59 feet (18 m). The southwestern corner of former Site NL-Wb also contains an area of bedrock and boulders, which is an extension of a larger area with a similar substrate further to the south. The reconfigured site boundaries also exclude this area of potentially high value fisheries habitat.

The distance from the ELDS to the closest points of land and the state border are as follows: from the northern boundary to the Connecticut shoreline (specifically, Harkness Memorial State Park in Waterford, Connecticut, is 1.1 nmi; from the southeastern corner to Fishers Island, New York, is 2.3 nmi; and from the southeastern corner to the Connecticut/New York state border is .19 nmi).

VI. Summary of Public Comments and EPA's Responses

EPA received numerous comments on its proposed site designation as described in the DSEIS and Proposed Rule from federal and state elected officials in Connecticut, New York, and Rhode Island; the USACE; the U.S. Navy; the states of Connecticut and New York; a number of municipalities; environmental groups; harbor and marine trade groups; and many private citizens. EPA received comments both in support of and in opposition to its proposed action,

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with some offering suggested improvements. Documents containing copies of all of the public comments received by EPA and EPA's response to each of the comments have been placed in the public docket and on the website identified in the **ADDRESSES** section of this document. There was significant overlap among the comments received. Below, EPA summarizes the main points of the commenters and the Agency's responses.

Comment #1. EPA received many comments in support of the designation of ELDS from members of the Connecticut and Rhode Island Congressional delegations (including a separate submission from Congressman Joseph Courtney), the U.S. Navy, the Connecticut Department of Energy and Environmental Protection, the Connecticut Port Authority, the Connecticut Harbor Management Association, marina and boatyard operators, several local government officials, and private citizens. While many of these comments were of a general nature, some of the commenters also provided additional, specific comments related to the proposed action which are addressed in more detail farther below in this section.

Response #1. EPA acknowledges the support provided for the Proposed Rule to designate the ELDS.

Comment #2. EPA also received a number of nearly identical comments stating opposition to the DSEIS and the Proposed Rule to designate the ELDS, and dredged material disposal in Long Island Sound in general. These included comments from Congressman Lee Zeldin, Suffolk County Legislators Sarah Anker and Al Krupski, the Citizens Campaign for the Environment, the Fishers Island Conservancy, the Group for the East End, the East End Sailing Association,

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several local government officials, and private citizens.

Some of these commenters found the DMMP to be inadequate, criticized the DMMP's use of the Federal Standard in evaluating alternatives, criticized what they see as a lack of progress toward reducing or eliminating dredged material disposal in Long Island Sound (and, conversely, a lack of progress in increasing beneficial use), and opposed the preferred alternative of designating the ELDS as a dredged material disposal site. Some of the commenters also provided additional, specific comments, which are addressed in more detail elsewhere in this section.

Response #2. EPA acknowledges, but disagrees with, the opposition to the designation of the ELDS, and to the open-water disposal of dredged material in Long Island Sound in general, expressed by these commenters. At the same time, as discussed further in response to other comments in this section, EPA concludes that some amount of open-water disposal of dredged material into Long Island Sound will be necessary in the future because: (1) dredging is essential to allow for safe navigation for recreational, commercial and military and public safety vessels in Long Island Sound, and (2) practicable alternatives to open-water disposal are unlikely to be sufficient to accommodate the amount of material projected to be dredged from the eastern region of Long Island Sound over the 30-year planning horizon. Furthermore, the ELDS is an environmentally appropriate disposal site and restrictions on the type of material that can be placed at the ELDS, coupled with regulatory requirements to use available practicable alternatives to open-water disposal, should ensure that any use of the disposal site is minimized and does not harm the environment. The Final Rule includes the same site use restrictions that were promulgated for the CLDS and WLDS and are designed to reduce or eliminate the disposal of dredged material into the waters of Long Island Sound.

In response to concerns regarding the adequacy of the DMMP, EPA believes the DMMP provides useful information to help the agencies achieve the goal of reducing or eliminating the open-water disposal of dredged material in the Sound. To help realize this goal, the DMMP recommends standards and procedures for the agencies to use in the review of dredged material management proposals. In addition, the DMMP identifies and discusses a range of specific alternatives to open-water disposal for each of the 52 Federal Navigation Projects (FNPs) in Long Island Sound. The choice of which alternative (or alternatives) should be implemented for a specific dredging project will be made in the future based on the facts, law and policy that exist at the time of the decision. EPA has provided a more detailed discussion regarding the Federal Standard in the preamble to the final rule for the Central and Western Disposal Sites (81 FR 44220) and in the complete Response to Comments document placed in the public docket and on the website identified in the **ADDRESSES** section of this document.

Comment #3. Commenters provided a range of opinions on the need for a disposal site in Eastern Long Island Sound. Some commenters noted that dredging is necessary to ensure recreational boating and commercial shipping access to the waters of Long Island Sound. They point out that marinas, boatyards, and boat clubs provide the main access for the public to get out onto the Sound and these facilities must dredge periodically to maintain sufficient depth for safe berthing and navigation. In addition, they comment that dredging is vital to ensure the continued existence of commercial and recreational industries that generate billions of dollars of economic activity and support thousands of jobs around the Sound. They also note that dredging is important to support the function of national interest facilities, such as the Naval Submarine Base New London and U.S. Coast Guard facilities. These commenters conclude that the ELDS site, as

proposed, will meet the dredging needs for the region over the next 30 years and, therefore, there is no need to designate additional sites (such as the CSDS or NBDS).

Other commenters conclude that the dredging needs in the DMMP are vastly overstated, and that there is no need for a disposal site in eastern Long Island Sound. In comments provided by the New York State Department of State (NYSDOS) and New York State Department of Environmental Conservation (NYSDEC), the departments noted that they did not think it was necessary to designate a site in the eastern region of Long Island Sound, but they also recognized the importance of providing stakeholders with a range of options for management of dredged material and recommended EPA designate the NBDS alternative and the NLDS as a "remediation site." EPA received a letter from New York Governor Andrew Cuomo after the end of the comment period expressing opposition to any disposal site designation in eastern Long Island Sound. The Governor's comments further state that the EPA and USACE are incorrectly seeking to justify an eastern site based on the assertion that there is inadequate capacity at the CLDS, WLDS, and Rhode Island Sound Disposal Site (RISDS). (Additional points in the Governor's letter are addressed at Comment and Response #4 below.)

Response #3. EPA agrees that dredging is necessary to provide for safe navigation in and around Long Island Sound and acknowledges that the marine trade industry is an important contributor to the economies of both Connecticut and New York. EPA also agrees that dredging is necessary to provide recreational boating access to Long Island Sound. Recreational boating, and associated activities such as fishing and sightseeing, are important public uses of the Sound that improve the quality of life for residents and visitors alike, while also contributing to the local economy. EPA also notes that by helping to provide for safe navigation, not only does

environmentally-sound dredging and dredged material management benefit commercial and recreational uses of Long Island Sound, but it also contributes to national security and public safety by facilitating navigation for U.S. Navy, U.S. Coast Guard, and other types of military and public safety vessels.

EPA disagrees with the suggestion in the letter from NYSDOS and NYSDEC and the Governor's letter that an eastern Long Island Sound disposal site is not needed because there is sufficient capacity at other already designated sites outside of the eastern Sound, such as the CLDS, WLDS, and RISDS. The USACE projected in the DMMP that dredging in Long Island Sound would generate approximately 52.9 mcy of material over the 30-year planning horizon, with approximately 30.3 mcy coming from the western and central regions, and 22.6 mcy from the eastern region. Of the 52.9 mcy, approximately 3.3 mcy of material are projected to be unsuitable for open-water disposal, *see* 81 FR 24750, leaving approximately 49.6 mcy of material that could potentially be placed at an open-water disposal site, if necessary. Of this 49.6 mcy, 15.2 mcy are projected to be sand that could potentially be used for beneficial uses, such as beach nourishment, while 34.4 is projected to be fine-grained material suitable for open-water disposal. Obviously, it is likely that beneficial uses, or some other upland management option, will be found for some amount of the sand, and even some amount of the fine-grained materials, but there is no guarantee of this and it is impossible to be sure in advance what these amounts will be.

As noted in the DSEIS, the CLDS and WLDS are each estimated to have a disposal capacity of about 20 mcy. This 40 mcy of capacity is not enough to take the full 49.6 mcy of material that could require open-water disposal. The RISDS was designated in 2005 to serve the dredging needs of the Rhode Island and southeastern Massachusetts region.

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Furthermore, the predicted amounts of material to be managed are unavoidably imperfect estimates. The actual amounts of material to be managed could be higher (or lower) over the 30-year planning horizon, especially when unpredictable events such as large storms and possible improvement dredging needs are considered. Therefore, EPA deems it reasonable to take a conservative approach and designate sites to ensure adequate disposal capacity is available for all the projected material, recognizing that all the capacity might not end up being needed. Indeed, as per the site use restrictions, EPA will be working with others to try to find beneficial use options for dredged material to minimize how much disposal capacity is needed.

Beyond the issue of having enough disposal capacity, EPA also determined that the CLDS, WLDS, and RISDS would not reasonably serve the needs of the eastern Long Island Sound region once the environmental effects, cost, environmental and safety risks, and logistical difficulties of using such distant sites were taken into account. Thus, part of the basis of EPA's determination that a designated site is needed in eastern Long Island Sound is the longer transit distances from dredging centers in the region to the CLDS, WLDS, and RISDS. These longer trips would result in greater energy use, increased air emissions, increased risk of spills, more difficult project logistics, and greater cost.

As part of its consideration of, and response to, comments asserting that no disposal site is needed in the eastern region of Long Island Sound, and comments urging that the size of any site be reduced or minimized, EPA asked the USACE to revisit once more its estimate of disposal capacity needs and prepare a more refined estimate of the dredged material disposal capacity needed for sediments projected to be dredged from the eastern region of the Sound. Although the values from the DMMP reflected substantial analysis and public input, the USACE agreed to reassess the capacity needs in coordination with EPA. The USACE undertook this analysis and

projected that a disposal capacity of approximately 20 mcy would likely be sufficient to meet disposal needs over the next 30 years.

Comment #4. EPA received a letter from New York Governor Andrew Cuomo (and undersigned by 32 federal and state elected officials) after the end of the comment period (dated August 4, 2016). The Governor's letter expresses opposition to *any* disposal site being designated in the eastern region of Long Island Sound and indicates his intent to legally challenge any EPA rule designating a disposal site in eastern Long Island Sound and seek to prevent any disposal pursuant to any such rule. The Governor states that this stance is consistent with the State of New York's decades-long opposition to "the unabated dumping of dredged materials in Long Island Sound." The letter also states that the designation of a site in eastern Long Island Sound is not necessary and may further impede progress toward reducing or eliminating open water disposal, a fundamental component of the rule. In addition, the letter indicates that the State of New York opposes the site designation based on comments provided by NYSDOS and NYSDEC in a joint letter. The letter further states that the EPA and USACE are incorrectly seeking to justify an eastern site based on the assertion that there is inadequate capacity at the WLDS, WLDS, and RISDS.

Response #4. EPA is not legally obligated to consider and respond to the Governor's comment letter in this rulemaking process and environmental review under NEPA because the letter was submitted after the close of the comment period. Nevertheless, EPA has reviewed and given careful consideration to the views presented by Governor Cuomo and provides a response here.

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EPA disagrees with the stance presented by the Governor's letter. Without waiting to read EPA's final analysis of whether an appropriate site can be identified, and whether there is a need for such a site to provide a dredged material disposal option to ensure that dredging needed to ensure safe navigation and suitable berthing areas for recreational, commercial, public safety and military vessels, the Governor expresses a plan to sue over *any* rule designating a site in the eastern region of Long Island Sound.

While the Governor's letter suggests that New York "has for decades opposed" dredged material disposal in Long Island Sound, the reality is more nuanced. Over the years, as with the Connecticut shore of the Sound, harbors and marinas on the New York shore of Long Island Sound have been dredged and in some cases the sediments have been placed at disposal sites in Long Island Sound, without objection from New York (e.g., Mamaroneck Harbor). At other times, NY has not objected as long as materials were not placed at the NLDS near to Fisher's Island, NY, and were instead placed at the CLDS, just south of New Haven, Connecticut. At other times, when practicable alternatives were available, material dredged from New York waters has been managed at upland sites. The same is true for material dredged from Connecticut waters (i.e., that some material has been placed at open-water disposal sites, while other material has been managed at upland sites). Furthermore, in still other cases, the dredged material from particular projects has been analyzed and found to be unsuitable for open-water disposal and such material has been managed using methods other than open-water disposal (e.g., placement in a confined aquatic disposal [CAD] cell or confined disposal facility [CDF]). Thus, some suitable material from New York has been placed at open-water disposal sites, while some has been managed at upland locations (e.g., for beach nourishment) and unsuitable material has been managed without open-water disposal. EPA supports this type of overall approach (i.e., choosing

a management method appropriate to the facts of each individual case from a menu of environmentally sound methods).

Consistent with this more nuanced history, EPA believes these issues should be addressed based on their technical, factual, legal, and policy merits, rather than taking an across-the-board position for or against dredged material disposal in the waters of the Sound. EPA has found that the DMMP and the USACE's more recent updated dredged material disposal capacity needs analysis clearly establish a need for a dredged material disposal site to be designated in the eastern region of the Sound. EPA's analysis, in turn, establishes that the ELDS is an appropriate site for designation. This designation will provide an *option* for potential use for suitable material when practicable alternatives to open-water disposal are not available. Going forward, application of EPA's sediment quality criteria will ensure that only environmentally suitable dredged material can be approved for open-water disposal. Moreover, EPA's existing ocean dumping criteria concerning whether there is a need for open-water disposal, *see* 40 CFR 227.15 and 227.16, coupled with the new site use restrictions applicable to the WLDS, CLDS, and ELDS, *see* 40 CFR 228.15(b)(4) – (6), will ensure that the open-water disposal option is used only when the material is found to be suitable and no practicable alternatives to open-water disposal are available.

EPA cannot and should not base a decision not to designate an environmentally appropriate disposal site on as of yet unidentified upland management options that might or might not materialize in the future for all the dredged material that needs to be managed. Such an approach would pose an irresponsible threat to safe navigation and the related recreational, commercial, public safety, and national defense activities that depend on it. If, upon EPA designation of the ELDS, there is no actual need for the site (i.e., practicable alternatives are available for every

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dredging project), then dredged material will not be placed there, as the practicable alternatives will be used instead.

Contrary to the views in Governor Cuomo's letter, the joint comment letter from the NYSDOS and NYSDEC expressed recognition of both the need for dredging to support water-dependent activities and navigation infrastructure and "the importance of providing stakeholders with a range of options for management of dredged material in LIS …." Also contrary to the views expressed in the Governor's letter, the NYSDOS/NYSDEC letter emphasizes the State of New York's commitment to "working with all partners to secure a path forward for achievable, measurable reductions in open water disposal over time …," and noted that the state had demonstrated this commitment by NYSDOS's recent concurrence with EPA's amended Final Rule designating the CLDS and WLDS, "which includes updated policies and procedures intended to meet this goal, and is subject to the additional restrictions agreed to by all Agencies involved." The state agencies' letter further pointed out that the "[t]he proposed rule for eastern LIS contains the same restrictions as those contained within the Final Rule for CLDS and WLDS, with the same ultimate goal of the reduction in open water disposal over time." EPA agrees with NYSDOS and NYSDEC that the site use restrictions for the CLDS, WLDS, and ELDS are well designed to pursue and achieve the shared long-term goal of reducing or eliminating the open-water disposal of dredged material in Long Island Sound. At the same time, these restrictions do not obviate the need to designate an appropriate open-water disposal site in the eastern region of the Sound to provide an environmentally sound disposal option for material that cannot be managed in some other way. While the Governor states opposition and an intent to sue over *any* site being designated in the eastern region of the Sound, the NYSDOS/NYSDEC letter instead supports designating both the NBDS and the NLDS (as a "remediation site") to

provide disposal options in the eastern Sound. EPA agrees that a disposal site should be designated in the eastern Sound, but concludes that designating the reconstituted ELDS is preferable to designating the NBDS and NLDS.

With regard to the Governor's concerns about the capacity at the CLDS, WLDS, and RISDS, see Response #3 above.

Comment #5. Among those supporting the designation of ELDS, a number of commenters suggested revisions to the boundaries of the site for a variety of reasons. Some suggested modifying the northern boundary to avoid burial of rocky, hard-bottom areas that may provide relatively higher quality fish habitat, while others suggested moving the eastern boundary of the proposed ELDS to remove any portion of the site from the submarine transit corridor into the Thames River. Comments from NYSDOS and NYSDEC recommend buffer zones be established around bedrock and archeological areas and included in the Site Management and Monitoring Plan (SMMP) for the ELDS.

Response #5. EPA agrees with the comments to modify the disposal site boundaries to avoid the bedrock and boulder areas and the submarine transit corridor. As discussed in detail above in Section V, EPA is designating the ELDS site with modifications to the boundaries. EPA has redrawn the boundaries of the ELDS to exclude both the rocky, hard-bottom area in the north central portion of the site, and another smaller rocky area in the southwestern corner of the site. Disposal in the ELDS near those areas will be carefully managed, including establishing a 100-meter buffer, to avoid any adverse impacts to these important habitat features. EPA also has shifted the eastern boundary of the ELDS to the west to remove it entirely from the submarine

transit corridor. The eastern boundary of the ELDS site is now .367 nmi west of the corridor. This shift of the site also has moved it entirely out of New York waters.

Comment #6. USACE provided comments supporting designation of the Cornfield Shoals Disposal Site (CSDS). The USACE would like a cost-effective open-water alternative for the Connecticut River dredging center, and it states that the availability of the CSDS would help extend the useful life of the CLDS and ELDS by reducing reliance on those sites for placement of materials suitable for CSDS. Another commenter recommends designation of the CSDS to continue its role as a dispersal site for clean, sandy material in order to "take some pressure off" while supporting the designation of NBDS, both in lieu of ELDS. NYSDOS and NYSDEC opposed designation of CSDS because of the dispersive nature of the site.

EPA received a joint letter from NYSDOS and NYSDEC that commented that there isn't really a need for a site in eastern Long Island Sound based on historic disposal amounts and capacity at other existing sites like the CLDS, but recognized that some stakeholders in the region need one, so they recommend designation of the NBDS. They further recommended designation of the NLDS as a "remediation site." EPA received comments from others expressing concern that designation of the NBDS would contribute to cumulative impacts to Niantic Bay, which is already stressed by the thermal discharge from the Millstone Nuclear Power Station. CTDEEP, while expressing support for ELDS, also indicated that NBDS, in combination with ELDS, is a viable option if adequate management practices are in place at the site to ensure containment of dredged materials. Another commenter reluctantly supported

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designating NBDS as the lesser of evils, while still other commenters opposed designation of the NLDS and wanted that site closed. EPA also received comments stating it should have given more consideration to designating a site outside Long Island Sound, including in deep open-ocean waters off Rhode Island and off the continental shelf.

Response #6. While EPA did determine for the Proposed Rule that the CSDS meets the site selection criteria and could be designated in combination with one of the other alternatives, and did seek comments on that position, EPA ultimately decided not to designate the CSDS. EPA agrees that the site is dispersive and lies within a high energy area, which makes the site difficult to manage and monitor. Further, use of this site would need to be limited to receiving material such as sand, which EPA feels can and should typically be used for beneficial uses, instead, such as beach nourishment. Finally, EPA has concluded that designating a single site is preferable to designating multiple sites because dredged material placement would be concentrated in one area and site management and monitoring demands would be reduced. EPA also has concluded that the ELDS will provide an adequate open-water disposal option by itself, while the CSDS would be insufficient by itself because of the restrictions for site use that EPA would place on it.

Regarding the request to designate the NBDS, based on the dredging needs assessment conducted by the USACE for the DMMP, and the subsequent, more refined dredged material disposal capacity needs analysis by the USACE, EPA is confident that the ELDS is sufficient by itself to meet all the open-water disposal needs of the eastern Long Island Sound region and EPA prefers to designate a single site to serve the region. Therefore, there is no need to designate the NBDS, too. Moreover, designating a second site would entail additional monitoring and

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management work and expense that can be avoided. Finally, had EPA decided to designate the NBDS, it would only have designated the containment portion of the site to ensure containment of the dredged material, which does not provide enough capacity to meet the projected need. The question of whether designating the NBDS would cause adverse cumulative impacts on the ecology of Niantic Bay when viewed together with effects of the Millstone Nuclear Power Station thermal discharge is now moot because EPA is not designating the NBDS. With regard to consideration of sites outside of Long Island Sound, as discussed in Chapters 3, 4, and 5 in the DSEIS and in the Proposed Rule, EPA considered a wide range of alternatives, including sites in Block Island Sound and on the continental shelf, before deciding to propose designation of the ELDS. The sites in Block Island Sound had a combination of significant marine habitats and strong tidal currents, and were relatively small or were located at a comparatively long distance from the dredging centers in the region. EPA's evaluation also determined that the long distances and travel times between the dredging locations in eastern Long Island Sound and the continental shelf posed significant environmental, operational, safety, and financial concerns, rendering such options unreasonable.

Finally, with regard to the suggestion that the NLDS be designated as a "remediation site," EPA disagrees. Long-term monitoring of the disposal mounds at the NLDS, and surveys conducted in 2013 at all the alternative sites, indicate a healthy and diverse benthic community and no evidence of levels of contamination that would require some sort of "remediation," even if it could be determined what type of remediation would be appropriate for a site in relatively deep water. The ecological parameters and phyla data indicate that, overall, the NLDS has relatively good species diversity and is not dominated by just a few species. These data were

consistent with observations at off-site locations outside of the NLDS, although the species richness was slightly lower at the off-site stations (FSEIS Section 4.9.3 and Table 4-11). Toxicity testing conducted in 2013 indicated no potential toxicity at the NLDS or other alternative sites (FSEIS Section 4.6.3 and (Table 4-9). Finally, the majority of the NLDS is already near capacity, with much of the site already at depths that would prevent further placement of dredged material. EPA is not designating the NLDS and that site will close by operation of law on December 23, 2016.

Comment #7. NYSDOS and NYDDEC opined that there were deficiencies in the DSEIS, such as an inadequate alternatives analysis, the absence of comprehensive biological monitoring, and an inadequate cumulative impact assessment. They also suggested that comments they had provided earlier on draft sections of the DSEIS regarding physical oceanography and biological studies were not reflected in the final reports. They also expressed concern about the lack of information about the effectiveness of capping plans at the NLDS.

Response #7. EPA finds the alternatives analysis, biological monitoring, and cumulative impact assessment were all more than adequate. The alternatives analysis included active and historic sites, as well as some other potential sites that had never been used before in eastern Long Island Sound, Block Island Sound, and off the continental shelf south of Long Island. EPA also considered use of the CLDS, WLDS, and/or the RISDS to serve the eastern region of the Sound. In addition, and as informed by the USACE's DMMP, EPA considered beneficial use options and other non-open-water options such as confined disposal cells (CDFs) or facilities (CDFs).

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EPA's cumulative impact assessment is based on over 40 years of monitoring data on chemistry, toxicity, bioaccumulation, benthic health, and bathymetry to assess physical and biological changes at the NLDS and CSDS sites. It also was based on an evaluation of the potential effects of designating the ELDS, NBDS, CSDS, or other site alternatives. Given that EPA has not found significant adverse effects from past disposal at the NLDS or CSDS, and does not anticipate significant adverse effects from the future placement of suitable material at the ELDS, it is not surprising that EPA did not find significant adverse cumulative impacts from the proposed action. EPA also considered issues such as the cumulative effect on bottom depths that would result from future disposal at the proposed disposal sites.

EPA and the USACE will continue to manage and monitor all Long Island Sound disposal sites and will request input from the state agencies if there is evidence of any adverse impacts. If necessary, EPA and the USACE will modify the SMMPs for any site at which impacts have been identified, and would do so in consultation the states of New York and Connecticut and other interested parties, as appropriate.

With respect to addressing comments received on various draft reports and documents during the development of the DSEIS, EPA did take all comments into consideration and in some cases modified those documents accordingly. In other cases, EPA may have decided that modifications were not warranted based on the comments submitted. EPA solicited input throughout the development of the DSEIS through a "cooperating agency workgroup," of which NYSDOS and NYSDEC were regular participants, and from the public through an extensive public involvement program. Agency and public input received during the three-and-a-half-year process was reflected in the DSEIS text or in the appendices or both. Regarding the idea of "capping"

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disposal mounds at the NLDS with new, clean dredged material, as discussed in Response #7 above, EPA does not see any reason to pursue this approach. Extensive long-term monitoring of the NLDS and surveys conducted in 2013 for the DSEIS have documented a healthy benthic community at the site, with no toxicity in the sediment.

Comment #8. Some of the commenters who support the Proposed Rule believe that the site use restrictions accompanying the site designation that establish, among other things, standards and procedures for identifying and utilizing alternatives to open-water disposal, will help achieve the goal of reducing or eliminating open-water disposal of dredged material wherever practicable. These commenters support the goal of reducing open-water placement of dredged material in the waters of Long Island Sound, but believe that it is not feasible or practicable at this time to handle all dredged material at upland locations or at already designated dredged material disposal sites. Some of those opposing the designation recommended upland placement and beneficial use of dredged material, rather than disposing of it at open-water sites. One commenter suggested "warehousing" material for future use in response to sea level rise, another suggested consideration of on-barge dewatering as a tool to facilitate upland placement of dredged materials, and another commenter suggested the alternative of the creation of islands near their sources.

Joint comments from NYSDOS and NYSDEC expressed commitment to "working with all partners to secure a path forward for achievable, measurable reductions in open water disposal over time …," and noted that the state had demonstrated this commitment by NYSDOS's recent concurrence with EPA's amended Final Rule designating the Central and Western Long Island

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Sound Disposal Sites, "which includes updated policies and procedures intended to help meet this goal, and is subject to the additional restrictions agreed to by all Agencies involved." The state departments' letter further pointed out that the "[t]he proposed rule for eastern LIS contains the same restrictions as those contained within the Final Rule for CLDS and WLDS, with the same ultimate goal of the reduction in open water disposal over time."

Response #8. EPA agrees with the comment that the standards and procedures in the Final Rule will support the goal of eliminating or reducing open-water disposal. EPA also agrees that relying solely on upland management alternatives for all dredged material from the eastern region of the Sound is not feasible at this time. Such alternatives will, however, likely be feasible for some of that material. For example, sandy material is commonly used for beach and nearshore bar nourishment at the present time and the standards in the Final Rule expect that sandy material will continue to be used beneficially. In addition, it would be impracticable to rely on distant open-water sites outside the eastern region of the Sound, or on contained in-water disposal, for all dredged material from the eastern Sound. *See* 40 CFR 227.15 and 227.16(b).

Ultimately, decisions about how particular dredged material will be managed will be made in individual project-specific reviews under the MPRSA and/or the CWA, with additional overview and coordination provided by the Long Island Sound Steering Committee and Regional Dredging Team (RDT), as described in the site use restrictions. The Steering Committee and RDT have a number of important roles specified in the site use for the ELDS, including the identification and piloting of beneficial use alternatives, identifying possible resources to support those alternatives, and eliminating regulatory barriers, as appropriate. EPA expects that the Steering Committee and RDT will, generally and on a project specific basis, facilitate the

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process of matching projects, beneficial use alternatives and the resources necessary to implement them. The process of continually seeking new alternative uses for dredged material will provide the opportunity to evaluate approaches not yet fully developed, such as the "warehousing" suggestion. EPA views on-barge dewatering as a technique that, while expensive, has promise and should be explored and further evaluated by the Steering Committee and RDT. Ultimately, it could be become a useful technique for dewatering dredged material to prepare it for management using methods other than open-water disposal. Managing dredged material by using it to create islands was evaluated in the DMMP. The concept of creating islands in waters of the United States raises numerous issues (e.g., environmental, water quality, regulatory) and any proposal of this type would need to go through a very involved regulatory process and would have to meet all legal requirements. This is something the Steering Committee and the RDT can consider in the future if a proposal is developed.

EPA agrees with the NY departments that the new site use restrictions, agreed upon by the interested state and federal agencies and inserted into the CLDS/WLDS regulations, include standards and procedures to secure a path forward for achievable, measurable reductions in open-water disposal over time. EPA also agrees that these same restrictions are now also being applied to the ELDS. In EPA's view, it makes sense to treat all regions of Long Island Sound the same in this regard.

Comment #9. EPA received a number of comments concerning potential impacts on aquatic species including fish, lobsters and oysters. Some expressed concern that the DSEIS: (1) incorrectly portrays eastern Long Island Sound as "a barren desert with barely any fish or shellfish species," based in part on what they characterized as an inadequate data collection

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effort; (2) "glosses over" the fact that parts of the area are federally-designated Essential Fish Habitat (EFH); and (3) minimizes the potential impacts of dredged material disposal on "struggling lobster populations." Another commenter noted that the NLDS is adjacent to Fisher's Island, NY, where oyster harvesting has been a way of life for centuries, and the threat to water quality posed by an expansion of open-water dumping at this site translates directly to a loss of important seafood jobs.

Response #9. With respect to comments about EPA's mischaracterization of eastern Long Island Sound in terms of biological productivity, there was extensive documentation in the DSEIS and its supporting technical reports supporting the conclusion that, while this region is generally a highly productive and diverse ecosystem, the area in which the ELDS is sited is less so. Compared with some of the hard-bottom, bedrock and boulder areas in other parts of the region, the seafloor in the ELDS is relatively flat and sandy, without the sort of structure that typically supports a large diversity of fish or shellfish. At the same time, EPA has excluded two areas from the ELDS that *do* include the type of hard-bottom, bedrock and boulder conditions that tend to provide relatively better marine habitat. As for concerns about the data on fishing activity, EPA made an extensive effort to encourage as many fisherman as possible to respond to the survey in order to provide information that was as accurate as possible for analysis. The survey was made available for 37 days and, as noted in the DSEIS, it was distributed via multiple media avenues. Of 440 respondents, only 229 surveys provided sufficient information (at least five questions answered), and very few provided location-specific information as to where they fished. Of the 229 respondents, only six percent indicated they fished near dredged material disposal sites (one percent regularly and five percent occasionally). There is no shellfishing in

this area, and the closest shellfish aquaculture operation is several miles west of the ELDS and closer to shore.

EPA did not gloss over the existence of EFH in the vicinity of the ELDS. As required by the Magnuson-Stevens Fisheries Conservation and Management Act, EPA coordinated with the NOAA National Marine Fisheries Service (NMFS) to determine whether its proposal to designate the ELDS would cause adverse impacts to EFH. NMFS concurred with EPA's determination that the designation of the ELDS would not adversely affect EFH. The coordination process is fully documented in the DSEIS.

EPA assessed lobster abundance in the DSEIS and found that alternative sites do not contain preferred habitat for lobsters. Prior to 1999, lobsters were very abundant throughout Long Island Sound, and particularly in the western and central regions. However since the major lobster die-off in 1999, lobsters are far less abundant through the Sound, and found primarily in the deeper waters of the central basin and The Race. The 1999 lobster die-off prompted millions of dollars in research over the past 16 years, the results of which have led scientists and resource managers to believe that the phenomenon was caused by a combination of factors, including increased water temperatures, low dissolved oxygen levels (hypoxia), a parasitic disease (paramoeba), and possibly pesticide runoff. Researchers have not cited dredged material disposal as a possible factor in the die-off.

EPA does not agree that designating the ELDS will threaten oystering and the way-of-life of residents of Fisher's Island, NY, or cause the loss of jobs in the seafood industry. The boundaries of the ELDS have been revised so that it is farther from Fisher's Island, entirely outside of the NLDS, and entirely outside of New York State waters. EPA's evaluation of the ELDS indicates that designation of the site will not cause significant adverse effects to water quality or aquatic

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organisms or their habitat. As a result, the site designation will not cause lost jobs in the seafood industry. To the contrary, designation of the ELDS may assist the local seafood industry. Fishing vessels require adequate navigation channels and berthing areas, which are maintained as a result of dredging. Designation of the ELDS should facilitate needed dredging by providing an open-water disposal option for use when practicable alternative management methods are not available.

Comment #10. Some of those opposing the Proposed Rule stated that the dredged material is toxic and should not be placed in the waters of Long Island Sound, and requested remediation of such dredged material. Commenters questioned the use of older data to support the evaluation of dredged material for its suitability for open-water disposal. Some commenters noted concern with the introduction of nitrogen from dredged material into the system and requested that EPA estimate the quantity of nitrogen that would be added to the system from dredged material over the next 30 years. EPA also received comments regarding concern due to metal or organic contaminant concentrations in sediment and benthic organism tissues, elevated breast cancer rates in East Lyme, and closed shellfish harvesting areas following rainfall. Some commenters suggested that the CTDEEP Remediation Standard Regulations should be followed for disposal of dredged material in Long Island Sound.

Response #10. EPA strongly disagrees with the suggestion that toxic sediments will be disposed of at the ELDS. Neither the existing laws and regulations nor the Final Rule would allow the disposal of toxic material at the sites. Rigorous physical, chemical, and biological testing and analysis of sediments is conducted prior to any authorization to dredge. The MPRSA

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and EPA's ocean dumping regulations provide that sediments that do not pass these tests are considered "unsuitable" and shall not be disposed of at the site.

EPA believes concerns about the disposal of toxic sediments at the NLDS and other Long Island Sound disposal sites also have been addressed by the USACE's DAMOS program, which has collected data at these sites since the late 1970s. The program has generated over 200 detailed reports addressing questions and concerns related to placement of dredged material in the Sound. These reports indicate that toxic sediments are not being placed at open-water disposal sites. Moreover, sequential surveys of biological conditions at sites following the placement of dredged material consistently show a rapid recovery of the benthic community to that of the surrounding habitat outside the disposal sites. Monitoring at the NLDS has verified that past management practices have been successful in adequately controlling any potential adverse impacts to water quality and benthic habitat.

Furthermore, water and sediment quality have improved in Long Island Sound as a result of improvements in the control of point source and non-point source pollutant discharges to the Sound and its tributaries. At the same time, dredging and dredged material management are carefully controlled by federal and state agencies to optimize environmental results using tools such as "environmental windows" that preclude dredging when sensitive aquatic organisms in the vicinity of dredging operations would be at an increased risk of being harmed, CAD cells or CDFs that sequester unsuitable dredged material, and beneficial use projects that avoid open-water disposal of dredged material that can be better put to an alternative use (e.g., using sand for beach nourishment). This management approach is reflected in the site use restrictions for ELDS that are intended to reduce or eliminate the open-water disposal of dredged material into Long Island Sound by promoting and facilitating the use of available practicable alternatives to such

open-water disposal.

Potential risks associated with the bioaccumulation of chemicals from sediments at the alternative sites were evaluated by comparing contaminant concentrations in tissues of test organisms to Federal Drug Administration (FDA) Action/Tolerance Levels for an assessment of potential human health impacts and to Ecological Effect Values for an assessment of ecological impacts. Ecological Effects Values represent tissue contaminant concentrations believed to be safe for aquatic organisms, generally derived from the final chronic value of USEPA water quality criteria. The FDA Action/Tolerance Levels and Ecological Effect Values are commonly used by USEPA and USACE in the dredging program to assess risk. This evaluation considers that tissue contaminant concentrations that do not exceed FDA Action/Tolerance Levels or Ecological Effect Values do not result in a potential human health or ecological risk. There is no evidence in the current literature or other data evaluated by EPA to support a causative link between any elevated cancer rates that may exist in East Lyme and dredged material disposal in Long Island Sound.

Shellfish bed closures are typically a result of bacterial contamination from untreated or poorly treated sanitary wastewater, stormwater runoff, marine biotoxins, or elevated water temperatures. There is no evidence that shellfish harvesting in Long Island Sound, most of which is from aquaculture operations conducted in open waters off the coast, is, or will be, affected by dredged material disposal at the ELDS.

Regarding comments about older studies referenced in the DSEIS, such as those conducted in support of the 2004 EIS that supported the designation of the CLDS and WLDS, EPA used the best available literature during the development of the DSEIS. Some of this material was older

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and some was more recent. EPA also has included as part of the FSEIS relevant data from more recent studies (such as fisheries data) that were not available at the time the DSEIS was published. In all cases, EPA evaluated whether the data was relevant and appropriate for addressing whatever issue was at hand. While some parameters may change constantly, others remain consistent for long periods of time. Typically, older data were supplemented with newer data, or juxtaposed to newer data, to help depict trends and patterns in the study area.

As to the concern about dredged material disposal in Long Island Sound contributing to nitrogen loading in these waters, EPA notes that nitrogen loading is a concern due to its potential to help fuel excessive algae levels, which could be one potential driver of hypoxia in western Long Island Sound. In Chapter 5.2.1 of the DSEIS, however, EPA discussed the relative insignificance of nitrogen loading from dredged material disposal. The USACE also addressed the issue in Section 3.5.2 of the DMMP. The annual placement of dredged material at the open-water sites is estimated to add less than one tenth of one percent of the overall annual nitrogen loading to Long Island Sound.

Finally, EPA disagrees with the request to follow the CTDEEP Remediation Standard Regulations (RSRs). The RSRs are not applicable to dredged material from marine waters placed at open-water disposal sites. Rather, they "identify the technical standards for the remediation of environmental pollution at hazardous waste sites and other properties that have been subject to a spill, release or discharge of hazardous wastes or hazardous substances." The MPRSA and Ocean Dumping Regulations limit the potential for adverse environmental impacts associated with dredged material disposal by requiring that the dredged material from each proposed dredging project be subject to sediment testing requirements. Suitability is determined by

analyzing the sediments proposed for dredging for their physical characteristics as well as for toxicity and bioaccumulation. If it is determined that the sediment is unsuitable for open-water disposal – that is, that it may unreasonably degrade or endanger human health or the marine environment – it cannot be placed at disposal sites designated under the MPRSA.

Comment #11. EPA received comments from the Shinnecock Tribal Nation noting the tribe's longstanding reliance on the waters of Long Island Sound for "food, travel and spiritual renewal." The Shinnecock have high regard for these waters and, as a steward for this resource, feel a shared responsibility to protect it and to speak for other life forms that rely on it but cannot speak for themselves. The Shinnecock's comments note that work is beginning to investigate whether "submerged paleo cultural landscapes" exist that would indicate that the tribe's ancestors lived farther offshore than currently understood. The tribe expresses concern that dredged material placement at an open-water site could further bury any evidence of such sites. The tribe also expresses concern over how long it takes aquatic organisms to recover from open-water placement of dredged material and whether such placement at a designated site will adversely affect whales. Finally, the Shinnecock note that their concern over water pollution is related to their historic use of Long Island Sound as a travel route, which they still use for canoe journeys.

Response #11. EPA acknowledges and respects the Shinnecock Tribal Nation's stewardship, concern, and reliance upon the waters of Long Island Sound. As tasked by Congress under the CWA and MPRSA, EPA also is a steward of Long Island Sound with a mission of protecting its physical, chemical, and biological integrity, and protecting human and ecological health from

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harm that could result from the disposal of material into these waters. As a result, EPA believes that its goals align well with the environmental interests of the Shinnecock Tribal Nation.

With regard to the possibility that dredged material disposal might further bury submerged evidence of settlements of the Shinnecock's ancestors, EPA notes that it is currently unaware of any specific reason to believe that such submerged evidence may exist at the ELDS or the other site alternatives. In evaluating site alternatives, EPA considered the site selection criteria in EPA's regulations, which include whether "any significant natural or cultural features of historical importance" may exist "at or in close proximity to" the disposal sites. *See* 40 CFR 228.6(a)(11). EPA's consideration of this criterion dovetailed with its consultation with the State Historic Preservation Officers of both Connecticut and New York, as well as its consultation with the Shinnecock Indian Nation. In addition, EPA conducted side-scan sonar survey work to look for possible historic resources in the area of the disposal sites and none of this work identified any archaeological or historical artifacts of cultural significance. If later investigations identify the presence of submerged artifacts of cultural importance to the Shinnecock Indian Nation, EPA will consult with the tribe regarding how to respond appropriately in terms of the future use and management of the site.

As discussed in detail elsewhere in the preamble, no significant adverse effects will occur to water quality, habitat value, or marine organisms, as a result of using the ELDS as a dredged material disposal site. With regard to the concern expressed about possible impacts to whales, EPA evaluated the potential for the site designation to affect endangered species, including whales, and concluded that adverse effects to whales or their critical habitat were unlikely to result from the site designation. The National Marine Fisheries Service concurred with EPA's conclusion.

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Finally, regarding the Shinnecock using the waters of Long Island Sound for canoe journeys, nothing about the designation of the ELDS should interfere with or preclude such journeys. First, the dredging (and therefore dredged material disposal) season is restricted to avoid the warmer weather months for ecological reasons, but this also ensures that dredging traffic and disposal is less likely to interfere with other boating activities that tend to be occur during warmer weather. Second, any dredged material disposal would be concentrated in one offshore area as a result of designating the ELDS. This would tend to minimize any conflicts with non-dredging-related navigation. Finally, multiple types of navigational activities (e.g., recreational, commercial, military) have coexisted with dredged material disposal-related navigation for years in Long Island Sound and EPA expects that this will continue after designation of the ELDS.

Comment #12. EPA received a number of very specific and detailed comments on aspects of the studies and findings in the DSEIS and its appendices. Subjects included the physical oceanography study in Appendix C, physical energy and hydrodynamics, sediments, and tidal energy projects, among others.

Response #12. EPA's detailed responses to these comments are contained in the Response to Comments document that is included in the FSEIS as Appendix J and placed in the public docket and on the website identified in the **ADDRESSES** section of this document.

VII. Changes from Proposed Rule

In response to public comment, as previously described, EPA has made certain adjustments to the boundaries of the ELDS as it was proposed. These adjustments have reduced the size of

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the ELDS from approximately 1 x 2 nm to approximately 1 x 1.5 nm (and an area of 1.3 nmi^2), and the capacity of the site from 27 mcy to approximately 20 mcy. The specific boundary adjustments and the reasons for them have been discussed above and are further discussed below.

EPA also has decided not to designate the NBDS or CSDS. In the Proposed Rule, EPA did not propose to designate either of these two sites, but did request public comment on whether either or both ought to be designated in addition to, or instead of, the ELDS. EPA received some public comments favoring designation of the NBDS or CSDS, and other comments opposing the designation of either site. Some commenters favored designation of the ELDS, while others commented that no designated disposal site was needed in the eastern portion of the Sound. After considering all these comments, EPA decided to designate only the ELDS. This decision was based primarily on the Agency's determination that one site is sufficient to meet the dredging needs of the eastern Long Island Sound region, and that the ELDS is the best site when evaluated in light of the site selection criteria in the Ocean Dumping Regulations. EPA also received public comments that support this decision.

The Final Rule for the ELDS, as with the Proposed Rule, incorporates by reference the site use restrictions, including the standards and procedures, contained in the final amended site designation rule for the Central and Western Long Island Sound dredged material disposal sites. These restrictions are further described in Section IX ("Restrictions").

VIII. Compliance with Statutory and Regulatory Authorities

EPA has conducted the dredged material disposal site designation process consistent with the requirements of the MPRSA, NEPA, CZMA, the Endangered Species Act (ESA), the Magnuson-

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Stevens Fishery Conservation and Management Act (MSFCMA), and any other applicable legal requirements.

A. Marine Protection, Research, and Sanctuaries Act

Section 102(c) of the MPRSA, as amended, 33 U.S.C. 1412(c), *et seq.*, gives the Administrator of EPA authority to designate sites where ocean disposal of dredged material may be permitted. *See* also 33 U.S.C. 1413(b) and 40 CFR 228.4(e). Neither statute nor regulation specifically limits how long an EPA-designated disposal site may be used. Thus, EPA site designations can be for an indefinite term and are generally thought of as long-term designations. EPA may, however, place various restrictions or limits on the use of a site based on the site's capacity to accommodate dredged material or other environmental concerns. *See* 33 U.S.C. 1412(c).

Section 103(b) of the MPRSA, 33 U.S.C. 1413(b), provides that any ocean disposal of dredged material should occur at EPA-designated sites to the maximum extent feasible. In the absence of an available EPA-designated site, however, the USACE is authorized to "select" appropriate disposal sites. There are currently no EPA-designated dredged material disposal sites in the eastern portion of Long Island Sound. There are two active USACE-selected sites in that region, the NLDS and CSDS, but neither will be available after December 23, 2016, when their Congressionally-authorized term of use expires.

The Ocean Dumping Regulations, *see generally* 40 CFR subchapter H, prescribe general and specific criteria at 40 CFR 228.5 and 228.6, respectively, to guide EPA's choice of disposal sites for final designation. Ocean dumping sites designated on a final basis are promulgated by EPA at 40 CFR 228.15. *See* 40 CFR 228.4(e)(1). Section 102(c) of the MPRSA, 33 U.S.C. 1412(c), and

40 CFR 228.3 also establish requirements for EPA's ongoing management and monitoring, in conjunction with the USACE, of disposal sites designated by EPA. This enables EPA to ensure that unacceptable, adverse environmental impacts do not occur from the placement of dredged material at designated sites. Examples of site management and monitoring measures employed by EPA and the USACE include the following: regulating the times, rates, and methods of disposal, as well as the quantities and types of material that may be disposed; conducting pre- and post-disposal monitoring of sites; conducting disposal site evaluation studies; and, if warranted, recommending modification of site use and/or designation conditions and restrictions. *See also* 40 CFR 228.7, 228.8, 228.9.

A disposal site designation by EPA does not actually authorize the disposal of particular dredged material at that site. It only makes the site available as a possible management option if various other conditions are met first. Disposal of dredged material at a designated site must first be authorized by the USACE under MPRSA section 103(b), subject to EPA review under MPRSA 103(c). USACE authorization can only be granted if: (1) it is determined that there is a need for open-water disposal for that project (i.e., that there are no practicable alternatives to such disposal that would cause less harm to the environment); and (2) the dredged material is found suitable for open-water disposal by satisfying the applicable environmental criteria specified in EPA's regulations at 40 CFR part 227. *See* 40 CFR 227.1(b), 227.2, 227.3, 227.5, 227.6 and 227.16. An authorization for disposal also must satisfy other applicable legal requirements, such as those under the ESA, the MSFCMA, the CWA (including any applicable state water quality standards), NEPA, and the CZMA. The text below discusses EPA's evaluation of the ELDS for this Final Rule using the applicable site selection criteria from EPA's

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MPRSA regulations. It also discusses the Agency's compliance with site management and monitoring requirements.

EPA's evaluation considered whether there was a need to designate one or more disposal sites for long-term dredged material disposal, including an assessment of whether other dredged material management methods could reasonably be judged to obviate the need for such designations. From this evaluation, EPA concluded that one or more open-water disposal sites were needed. EPA then assessed whether sites were available that would satisfy the applicable environmental criteria to support a site designation under MPRSA section 102(c). In deciding to designate the ELDS, as specified in this Final Rule, EPA complied with all applicable procedural requirements and substantive criteria under the MPRSA and EPA regulations.

1. Procedural Requirements

MPRSA sections 102(c) and 103(b) indicate that EPA may designate ocean disposal sites for dredged material. EPA regulations at 40 CFR 228.4(e) specify that dredged material disposal sites will be "designated by EPA promulgation in this [40 CFR] part 228 …." EPA regulations at 40 CFR 228.6(b) direct that if an EIS is prepared by EPA to assess the proposed designation of one or more disposal sites, it should include the results of an environmental evaluation of the proposed disposal site(s). In addition, the Draft SEIS (DSEIS) should be presented to the public along with a proposed rule for the proposed disposal site designation(s), and a Final SEIS (FSEIS) should be provided at the time of final rulemaking for the site designation.

EPA has complied with all procedural requirements. The Agency prepared a thorough environmental evaluation of the site proposed for designation and other alternative sites and courses of action (including the option of not designating an open-water disposal site). This

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evaluation was first presented in a DSEIS (and related documents) and a Proposed Rule for promulgation of the disposal sites. EPA published the Proposed Rule and a notice of availability of the DSEIS (81 FR 24748) for a 60-day public comment period on April 27, 2016, and subsequently extended the comment period by 21 days (to July 18, 2016) to give the public additional time to comment on the proposed site designation. By this Final Rule, EPA is now completing the designation of the ELDS by promulgation in 40 CFR part 228.

Finally, MPRSA sections 102(c)(3) and (4) dictate that EPA must, in conjunction with the USACE, develop a site management plan for each dredged material disposal site it proposes to designate. MPRSA section 102(c)(3) also states that in the course of developing such management plans, EPA and the USACE must provide an opportunity for public comment. EPA and the USACE have met this obligation by publishing for public review and comment a Draft SMMP for the ELDS. The Draft SMMP was published with the DSEIS (as Appendix I) and the proposed rule on April 27, 2016. After considering public comments regarding the SMMP, EPA and the USACE are publishing the Final SMMP for the ELDS as Appendix I of the FSEIS.

2. Disposal Site Selection Criteria

EPA regulations under the MPRSA identify four general criteria and 11 specific criteria for evaluating locations for the potential designation of dredged material disposal sites. *See* 40 CFR 228.4(e), 228.5 and 228.6. EPA's evaluation of the ELDS with respect to the four general and 11 specific criteria was discussed in the DSEIS and the Proposed Rule and is further discussed in detail in the FSEIS and supporting documents and is summarized below.

General Criteria (40 CFR 228.5)

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EPA has determined that the ELDS satisfies the four general criteria specified in 40 CFR 228.5. This is discussed in Chapter 5 and summarized in Table 5-9, "Summary of Impacts for Action and No Action Alternatives of the FSEIS."

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

EPA's evaluation determined that use of the ELDS – as modified in this Final Rule in response to public comments and further evaluation – would cause minimal interference with the aquatic activities identified in this criterion. The site is not located in shipping lanes or any other region of heavy commercial or recreational navigation. In addition, the site is not located in an area that is important for commercial or recreational fishing or shellfish harvesting. Analysis of this data indicated that use of the site would have minimal potential for interfering with other existing or ongoing uses of the marine environment in and around the ELDS, including lobster harvesting or fishing activities. In addition, the nearby NLDS has been used for dredged material disposal for many years; not only has this activity not significantly interfered with the uses identified in this criterion, but mariners in the area are accustomed to dealing with the presence of a dredged material disposal site. With the adjustment to the eastern boundary of the ELDS, EPA is even more confident that the site will not pose a hazard to navigation. Finally, time-of-year restrictions (also known as "environmental windows") imposed to protect fishery resources will typically limit dredged material disposal activities to the months of October through April, thus further minimizing any possibility of interference with the various activities specified in this

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criterion.

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

EPA's analysis concludes that the ELDS, as adjusted for this Final Rule, satisfies this criterion. First, the site is a significant distance from any beach, shoreline, marine sanctuary (in fact, there are no federally-designated marine sanctuaries in Long Island Sound), or known geographically limited fishery or shellfishery. Second, the site will be used only for the disposal of dredged material determined to be suitable for open-water disposal by application of the MPRSA's ocean dumping criteria. *See* 40 CFR part 227. These criteria include provisions related to water quality and account for initial mixing. *See* 40 CFR 227.4, 227.5(d), 227.6(b) and (c), 227.13(c), 227.27, and 227.29. Data evaluated during development of the FSEIS, including data from monitoring conducted during and after past disposal activities, indicates that any temporary perturbations in water quality or other environmental conditions at the site during initial mixing from disposal operations will be limited to the immediate area of the site and will neither cause any significant environmental degradation at the site nor reach any beach, shoreline, marine sanctuary, or other important natural resource area.

iii. The sizes of disposal sites will be limited in order to localize for identification and

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control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

EPA has determined, based on the information presented in the FSEIS, that the ELDS, in its final configuration, is sufficiently limited in size to allow for the identification and control of any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-term or cumulative impacts. To put things in perspective, the size of the ELDS is approximately 1.3 nmi^2, which is just 0.003 (0.03 percent) of the approximately 370 nmi^2 surface area of the eastern Long Island Sound region, and just 0.001 (less than one-tenth of one-percent) of the approximately 1300 nmi^2 surface area of the entire Long Island Sound. The designation of just this one site reduces the overall number of active disposal sites in Long Island Sound from four to three. The long history of dredged material disposal site monitoring in New England through the USACE's Disposal Area Monitoring System (DAMOS), and specifically at active and historic dredged material disposal sites in Long Island Sound, provides ample evidence that these surveillance and monitoring programs are effective at determining physical, chemical, and biological impacts at dredged material disposal sites such as the ELDS.

The boundaries of the ELDS are identified by specific coordinates provided in Table 5-11 of the FSEIS, and the use of precision navigation equipment in both dredged material disposal operations and monitoring efforts will enable accurate disposal operations to be conducted, and also will contribute to effective management and monitoring of the sites. Detailed plans for the management and monitoring of the ELDS are described in the SMMP (Appendix I of the

FSEIS). Finally, as discussed herein and in the FSEIS, EPA has tailored the boundaries of the ELDS, and site management protocols, in light of site characteristics such as local currents and bottom features, so that the area and boundaries of the sites are optimized for environmentally sound dredged material disposal operations.

iv. EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites that have been historically used (40 CFR 228.5(e)).

EPA evaluated sites beyond the edge of the continental shelf and historical disposal sites in Long Island Sound as part of the alternatives analysis conducted for the FSEIS. The continental shelf extends about 60 nmi seaward from Montauk Point, New York, and a site located on the continental slope would result in a transit of approximately 80 nmi from New London. This evaluation determined that the long distances and travel times between the dredging locations in eastern Long Island Sound and the continental shelf posed significant environmental, operational, safety, and financial concerns, rendering such options unreasonable and not practicable. Environmental concerns include increased risk of encountering endangered species during transit, increased fuel consumption and air emissions, and greater potential for accidents in transit that could lead to dredged material being dumped in unintended areas.

As described in Section V ("Disposal Site Description"), while the ELDS, as modified, does not include any areas that have been used historically for dredged material disposal, its eastern boundary is the western boundary of the historically used NLDS. Thus, the modified site is in the general vicinity of the historically used NLDS. To the extent that the ELDS boundaries have been adjusted from those described in the Proposed Rule to include only adjacent areas outside

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of the existing site, EPA has concluded that these adjustments will be environmentally beneficial, as discussed in the FSEIS. For example, rather than propose designation of part of the existing NLDS, the eastern half of which is at capacity and nearing depths that could lead to scouring of the sediment by surface currents and storms, EPA's final designation of ELDS encompasses two areas (formerly NL-Wb and NL-Wa) immediately to the west of the NLDS. Moving the site to the west is consistent with public comments urging that the originally proposed ELDS be moved to the west, farther from the New London Harbor approach lane and submarine transit corridor in that area of the Sound. It is also consistent with public comments that favored sites that were further from New York state waters. These two adjacent areas have been determined to be suitable for use as containment areas by physical oceanographic modeling. Long-term monitoring of the adjacent NLDS has shown minimal adverse impacts to the marine environment and rapid recovery of the benthic community in the disposal mounds. Similarly, adverse impacts are not expected to result from use of the new ELDS. While there are other historically used disposal sites in eastern Long Island Sound, the analysis in the FSEIS and summarized herein concludes that the ELDS is the preferable location. Thus, designation of the ELDS would be consistent with this criterion.

a. Specific Criteria (40 CFR 228.6)

In addition to the four general criteria discussed above, 40 CFR 228.6(a) lists eleven specific factors to be used in evaluating the impact of using a site for dredged material disposal under the MPRSA. Compliance with the eleven specific criteria is discussed below. It is also discussed in detail in Chapter 5 and summarized in Table 5–13, "Summary of Impacts at the Alternative Sites," of the FSEIS.

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

Water depths at the ELDS range from approximately 59 feet (18 m) in the north to 100 feet (30 m) in the south. As described above, the closest points of land to the site are Harkness Memorial State Park in Waterford, Connecticut, approximately 1.1 nmi to the north, and Fishers Island, New York, approximately 2.3 nmi to the east. Based on analyses in the FSEIS, EPA has concluded that the ELDS's geographical position (i.e., location), water depth, and bottom topography (i.e., bathymetry), along with the absence of strong bottom currents at the site, will result in containment of dredged material within site boundaries. As described in Section V ("Disposal Site Description"), and in the above discussion of compliance with general criteria iii and iv (40 CFR 228.5(c) and (d)), the ELDS also is located far enough from shore and lies in deep enough water to avoid adverse impacts to the coastline.

Because the ELDS is a containment area, dredged material placed there is expected to remain within the site and not affect adjacent seafloor areas. Long-term monitoring of the NLDS and other disposal sites in Long Island Sound supports that determination. Any short-term impacts during dredged material placement, such as burial of benthic organisms or temporarily increasing the turbidity in the water column within the disposal site, will be localized at the site. As explained farther below in this analysis and in the FSEIS, although dredged material disposal will cause these localized, short-term effects, these effects are not expected to result in significant short-term or long-term adverse impacts to the environment.

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ii. 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)).

EPA considered the ELDS, as modified for this Final Rule, in relation to breeding, spawning, nursery, feeding, and passage areas for adult and juvenile phases (i.e., life stages) of living resources in Long Island Sound. From this analysis, EPA concluded that, while disposal of suitable dredged material at the ELDS would cause some short-term, localized effects, overall it would not cause adverse effects to the habitat functions and living resources specified in the above criterion.

The ELDS does not encompass or infringe upon any breeding, spawning, nursery, feeding or passage area of particular or heightened importance for juvenile or adult living resources. That said, EPA has noted that in the north-central area of the ELDS as delineated in the Proposed Rule, there is a hard-bottom area with rocky outcroppings that appears likely to constitute high quality habitat for fish and other aquatic organisms, and there is a similar hard bottom area in the extreme southwestern corner of the ELDS. As a result, EPA has redrawn the northern and southern boundaries of the ELDS to avoid these particular areas.

Generally, there are three primary ways that dredged material disposal could potentially adversely affect marine resources. First, disposal can cause physical impacts by injuring or burying less mobile fish, shellfish, and benthic organisms, as well as their eggs and larvae. Second, tug and barge traffic transporting the dredged material to a disposal site could possibly collide or otherwise interfere with marine mammals and reptiles. Third, if contaminants in the dredged material are taken in by aquatic organisms, these contaminants could potentially bioaccumulate through the food chain. However, EPA and the other federal and state agencies

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that regulate dredging and dredged material disposal impose requirements that prevent or greatly limit the potential for these types of impacts to occur.

For example, the agencies impose "environmental windows," or time-of-year restrictions, for both dredging and dredged material disposal. This type of restriction has been a standard practice for more than a decade in Long Island Sound, and New England generally, and is incorporated in USACE permits and authorizations in response to consultation with federal and state natural resource agencies (e.g., the National Marine Fisheries Service (NMFS)). Dredging, and corresponding dredged material disposal in Long Island Sound, is generally limited to the period between October 1 and April 30 to avoid time periods of possibly heightened threat to aquatic organisms. Indeed, environmental windows are often set depending on the location of specific dredging projects in relation to certain fish and shellfish species. For example, dredging in nearshore areas where winter flounder spawning occurs is generally prohibited between February 1 and April 1; dredging that may interfere with anadromous fish runs is generally prohibited between April 1 and May 15; and dredging that may adversely affect shellfish is prohibited between June 1 and September 30. These environmental windows limiting when dredging can occur also, in effect, restrict periods when dredged material disposal could occur.

Another benefit of using environmental windows is that they reduce the likelihood of dredged material disposal activities interfering with marine mammals and reptiles. There are several species of marine mammal or reptile, such as harbor porpoises, long-finned pilot whales, seals, and sea turtles that either inhabit or migrate through Long Island Sound. During the winter months, however, most of these species either leave the Sound for warmer waters to the south or are less active and remain near the shore. There also are many species of fish (e.g., striped bass,

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bluefish, and scup) and invertebrates (e.g., squid) that leave the Sound during the winter for either deeper water or warmer waters to the south, thus avoiding the time of year when most dredging and dredged material disposal occurs. The use of environmental windows has been refined over time and is considered an effective management tool to minimize impacts to marine resources.

Dredged material disposal will, however, have some short-term, localized impacts to fish, shellfish, and benthic organisms, such as clams and worms, that are present at a disposal site (or in the water column directly above the site) during a disposal event. The sediment plume may entrain and smother some fish in the water column, and may bury some fish, shellfish, and other marine organisms on the sea floor. It also may result in a short-term loss of forage habitat in the immediate disposal area, but the DAMOS program has documented the recolonization of disposal mounds by benthic infauna within 1–3 years after disposal, and this pattern would be expected at the sites evaluated in the FSEIS. As discussed in the FSEIS (section 5.2.2), over time, disposal mounds recover and develop abundant and diverse biological communities that are healthy and able to support species typically found in the ambient surroundings. Some organisms may burrow deeply into sediments, often up to 20 inches, and are more likely to survive a burial event.

The MPRSA regulations further limit the potential for adverse environmental impacts associated with dredged material disposal by requiring that the dredged material from each proposed dredging project be subject to the MPRSA sediment testing requirements, set forth at 40 CFR 227.6, to determine the material's suitability for open-water disposal. Such suitability is determined by analyzing the sediments proposed for dredging for their physical characteristics as

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well as for toxicity and bioaccumulation. In addition, the regulatory agencies quantify the risk to human health that would result from consuming marine organisms exposed to the dredged material and its associated contaminants using a risk assessment model. If it is determined that the sediment is unsuitable for open-water disposal – that is, that it may unreasonably degrade or endanger human health or the marine environment – it cannot be placed at disposal sites designated under the MPRSA. *See* 40 CFR 227.6. In light of these strict controls, EPA does not anticipate significant effects on marine organisms from dredged material disposal at the sites under evaluation.

EPA recognizes that dredged material disposal causes some short-term, localized adverse effects to marine organisms in the immediate vicinity of each disposal event. Dredged material disposal would be limited, however, to suitable material at the one site (see above regarding compliance with general criteria (40 CFR 228.5(e)), and only during the several colder-weather months of the year. As a result, EPA concludes that designating the ELDS would not cause significant, unacceptable or unreasonable adverse impacts to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases. Moreover, there is no evidence that designating the ELDS would have significant long-term effects on benthic processes or habitat conditions.

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

EPA's analysis concludes that the ELDS satisfies this criterion. The ELDS is far enough away from beaches, parks, wildlife refuges, and other areas of special concern to prevent adverse impacts to these amenities. Also, as previously noted, there are no marine sanctuaries in Long

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Island Sound. The ELDS is approximately 2.3 nmi from the closest public beach in New York, on the western shore of Fishers Island, and approximately 1.1 nmi from the beach at Harkness Memorial State Park in Waterford, Connecticut. Given that the ELDS is a containment site, no material placed at the site would be expected to move from the site to these amenity areas. As noted above, any temporary perturbations in water quality or other environmental conditions at the site during initial mixing from disposal operations will be limited to the immediate area of the site and will not reach any beach, parks, wildlife refuges, or other areas of special concern.

iv. 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 ELDS is being designated to receive only suitable dredged material; disposal of other types of material will not be allowed. The MPRSA and EPA regulations expressly prohibit open water disposal of certain other types of material (e.g., industrial waste, sewage sludge, chemical warfare agents, and insufficiently characterized materials) (33 U.S.C. 1414b; 40 CFR 227.5).

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 historical data from dredging projects in the eastern region of Long Island Sound. For federal dredging projects and private projects generating more 25,000 cubic yards of dredged material, EPA and the USACE will conduct sediment suitability determinations applying the criteria for testing and evaluating dredged material under 40 CFR part 227, and further guidance in the "Regional Implementation Manual for the Evaluation of Dredged Material Proposed for Disposal in New England Waters" (EPA, 2004). Dredged material must satisfy these suitability criteria before it

can be authorized for disposal under the MPRSA. In accordance with MPRSA § 106(f), private dredging projects generating up to 25,000 cubic yards will continue to be regulated under CWA section 404.

Dredged material to be placed at the ELDS would be transported by either government or private contractor hopper dredges or oceangoing bottom-dump barges ("scows") towed by a towing vessel (e.g., tugboat). Both types of equipment release the material at or very near the surface, which is the standard operating procedure for this activity. The disposal of this material will occur at specific coordinates marked by buoys, and will be placed so as to concentrate material from each disposal project. This concentrated placement is expected to help minimize bottom impacts to benthic organisms. In addition, there are no plans to pack or package dredged material prior to disposal.

As previously discussed, the USACE's DMMP projected that dredging in eastern Long Island Sound will generate approximately 22.6 million cubic yards (mcy) of dredged material over the next 30 years, including 17.9 mcy from Connecticut ports and harbors and 4.7 mcy from ports and harbors in New York. Of the total amount of 22.6 mcy, approximately 13.5 mcy are projected to be fine-grained sediment that meets MPRSA and CWA standards for aquatic disposal (i.e., "suitable" material), and 9.1 mcy are projected to be course-grained sand that also meets MPRSA and CWA standards for aquatic disposal (i.e., also "suitable" material).

As discussed above in Section VI ("Summary of Public Comments and EPA's Responses"), EPA asked the USACE to conduct another analysis to further refine the actual disposal capacity needed as compared with the original dredging needs estimate, taking into consideration EPA's designation of only one site, past dredging experience, and other factors, such as the potential for

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future improvement dredging projects and extreme storm events, and accounting for consolidation of dredged material in the disposal site. The USACE's disposal capacity analysis determined that the necessary capacity was approximately 20 mcy, which will be just met by the capacity of the ELDS. For all of these reasons, no significant adverse impacts are expected to be associated with the types and quantities of dredged material that may be disposed at the sites.

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

Monitoring and surveillance will be feasible at the ELDS. The site is conducive to monitoring because it is a containment site and material placed at the site is expected to stay there. The ELDS is readily accessible for sediment grab, bathymetric, and side-scan sonar surveys. The nearby NLDS has been successfully monitored by the USACE over the past 35 years under the DAMOS program. Monitoring of the ELDS would be carried out under the DAMOS program in accordance with the current approved Site Management and Monitoring Plan (SMMP) for the site. In conjunction with the Proposed Rule, EPA and the USACE developed a draft SMMP and published it for public review and comment. The agencies have now developed a final SMMP in connection with this Final Rule. The final SMMP for the ELDS is included as Appendix I of the FSEIS.

The SMMP is subject to review and updating at least once every ten years, if necessary, and may be subject to additional revisions based on the results of site monitoring and other new information. Any such revisions will be closely coordinated with other federal and state resource management agencies and stakeholders during the review and approval process and will become final only when approved by EPA, in conjunction with the USACE. *See* 33 U.S.C. 1413 (c)(3).

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

Although the interactions of bathymetry, wind-generated waves, and river and ocean currents in Long Island Sound are complex, EPA has conducted a rigorous assessment of bottom stress, hydrodynamic processes, and storm-driven wave action at the ELDS. The assessment included data collection and modeling of disposal of dredged material under a variety of conditions. The assessment concluded that the area that encompasses both the ELDS and NLDS has the least amount of bottom stress compared with the other sites in the eastern Long Island Sound region that were assessed. This supports EPA's conclusion that the ELDS provides for the greatest stability of disposal mounds and is the optimal location for a containment site. See e.g., 40 CFR 228.15(b)(4)(vi)(L)). Consistent with this, past monitoring during disposal operations at the NLDS (in the vicinity of the ELDS) revealed minimal drift of sediment out of the disposal site area as it passed through the water column. EPA expects the same result at the ELDS.

Disposal site monitoring has confirmed that peak wave-induced bottom current velocities are not sufficient to cause significant erosion of dredged material placed at the ELDS. As noted above, physical oceanographic monitoring and modeling has indicated that the ELDS is a depositional location that collects, rather than disperses, sediment. As a result, EPA has determined that the dispersal, horizontal transport, and vertical mixing characteristics, as well as the current velocities and directions at the ELDS, all support designating it as a long-term dredged material disposal site.

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

As previously described in Section V ("Disposal Site Description"), the ELDS is west of, and adjacent to, the NLDS, which has received approximately 8.9 mcy (6.7 million m^3) of dredged material since 1955. The NLDS was used regularly until the early 2000s and is still an active site, but it has not been used frequently in recent years and it will no longer be available for use after December 23, 2016.

Until the passage of the CWA in 1972, dredged material disposal was not a heavily regulated activity. Since 1972, open-water disposal in Long Island Sound has been subject to the sediment testing and alternatives analysis provisions of section 404 of the CWA. With passage of the Ambro Amendment in 1980 (which was further amended in 1990), 33 U.S.C. 1416(f), dredged material disposal from all federal projects and non-federal projects generating more than 25,000 cubic yards of material became subject to the requirements of the MPRSA in addition to CWA section 404. These increasingly stringent regulatory requirements for dredged material disposal, combined with other CWA requirements that have reduced the level of pollutants being discharged into the Nation's waterways, have contributed to a steady, measurable improvement in the quality of material that has been allowed to be placed at the NLDS over the past 40 years.

The NLDS has been used since the early 1980s pursuant to the USACE's short-term site selection authority under section 103(b) of the MPRSA (33 U.S.C. 1413(b)). In EPA's view, the close proximity of the NLDS to the ELDS, coupled with past use of the NLDS, generally makes the ELDS preferable for designation, as compared to more pristine sites that have either not been used or were used in the more distant past. *See* 40 CFR 228.5(e). Using a site in the vicinity of

an existing site, rather than using sites in areas completely unaffected by dredged material in the past, will help to concentrate, rather than spread, the footprint of dredged material disposal on the seafloor of Long Island Sound.

While the effects of placing suitable dredged material at a disposal site are primarily limited to short-term physical effects, such as burying benthic organisms in the location where the material is placed, EPA regards it to be preferable to concentrate such effects in particular areas and leave other areas untouched as much as possible.

That said, EPA's evaluation of data and modeling results indicates that past disposal operations at the NLDS have not resulted in unacceptable or unreasonable environmental degradation, and that there should be no such adverse effects in the future from the projected use of the ELDS. As part of this conclusion, discussed in detail in Section 5.7 of the FSEIS, EPA found that there should be no significant adverse cumulative environmental effects from using the ELDS on a long-term basis for dredged material disposal in compliance with all applicable regulatory requirements regarding sediment quality and site usage.

viii. 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 site could interfere with any of the uses described above, EPA considered both the effects of placing dredged material on the bottom of the Sound at the ELDS and any effects from vessel traffic associated with transporting the dredged material to the disposal site. From this evaluation, EPA concluded there would be no

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unacceptable or unreasonable adverse effects on the considerations noted in this criterion. Some of the factors listed in this criterion have already been discussed above due to the overlap of this criterion with aspects of certain other criteria. Nevertheless, EPA will address each point below.

As previously discussed, and in response to public comment, the eastern boundary of the ELDS has been shifted westward to move it further from the submarine transit corridor into the Thames River. The eastern boundary of the ELDS is 0.467 nmi west of the western boundary of the New London Harbor approach lane and submarine transit corridor, which will further reduce any potential for conflicts between use of the disposal site and submarine and deep draft commercial marine traffic. Vessel traffic generated by disposal activity is expected to be similar to that which has occurred over the past 20-30 years, which has not interfered with other shipping activity. Moreover, research by EPA and the USACE concluded that after disposal at the ELDS, resulting water depths will be sufficient to permit navigation in the area without interference. By providing an open-water alternative for dredged material disposal in the absence of environmentally preferable, practicable alternatives, the sites are likely to improve and facilitate navigation in many of the harbors, bays, rivers and channels around eastern Long Island Sound.

EPA also carefully evaluated the potential effects on commercial and recreational fishing for both finfish and shellfish (including lobster) of designating the ELDS for dredged material disposal, and concluded that there would be no unreasonable or unacceptable adverse effects. As discussed above in relation to other site evaluation criteria, dredged material disposal will have only short-term, incidental, and insignificant effects on organisms in the disposal sites and no appreciable effects beyond the sites. Indeed, since past dredged material disposal, including at the nearby NLDS, has been determined to have no significant adverse effects on fishing, the

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similar projected levels of future disposal activities at the designated site also are not expected to have any significant adverse effects.

There are four main reasons that EPA concluded that no unacceptable adverse effects would occur from placing dredged material at the ELDS. First, as discussed above, any contaminants in material permitted for disposal – having satisfied the dredged material criteria in the regulations that restrict any toxicity and bioaccumulation – will not have any significant adverse effects on fish, shellfish, or other aquatic organisms. Moreover, because the ELDS is a containment area, dredged material disposed at the site is expected to remain there.

Second, as also discussed above, the disposal site does not encompass any especially important, sensitive, or limited habitat for the Sound's fish and shellfish, such as key spawning or nursery habitat for species of finfish. That said, as explained farther above, EPA has redrawn the boundary of the ELDS to avoid a rocky area that could provide particularly good habitat for fish, even though it is not an area that has received any special designation for such purposes.

Third, while EPA found that a small number of demersal fish (e.g., winter flounder), shellfish (e.g., clams and lobsters), benthic organisms (e.g., worms), and zooplankton and phytoplankton could be lost due to the physical effects of disposal (e.g., burial of organisms on the seafloor by dredged material and entrainment of plankton in the water column by dredged material upon its release from a disposal barge), EPA also determined that these minor, temporary adverse effects would be neither unreasonable nor unacceptable. This determination was based on EPA's conclusion that the numbers of organisms potentially affected represent only a minuscule percentage of those in eastern Long Island Sound, and on DAMOS monitoring that consistently documents the rapid recovery of the benthic community in an area that has received dredged material. In addition, any physical effects will be further limited by the

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relatively few months in which disposal activities could be permitted by the environmental window (or time-of-year) restrictions.

Fourth, EPA has determined that vessel traffic associated with dredged material disposal will not have any unreasonable or unacceptable adverse effects on fishing. As explained above, environmental window restrictions will limit any disposal to the period between October 1 and April 30, and often to fewer months depending on species-specific restrictions for each dredging project, each year. Moreover, due to the seasonal nature of recreational boating and commercial shipping, there is generally far less vessel traffic in the colder-weather months when disposal would occur.

There currently are no mineral extraction activities or desalinization facilities in the eastern Long Island Sound region with which disposal activity could potentially interfere. Energy transmission pipelines and cables are located near the site, but none are within the boundaries of the ELDS.

No finfish aquaculture currently takes place in Long Island Sound, and the only form of shellfish culture in the area, oyster production, occurs in nearshore locations far enough away from the ELDS that it should not be impacted in any manner by this proposed action.

Finally, the ELDS is not in an area of special scientific importance; in fact, areas with such characteristics were screened out very early in the alternatives screening process. Accordingly, depositing dredged material at the ELDS will not interfere with any of the activities described in this criterion or other legitimate uses of Long Island Sound.

ix. 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)).

EPA's analysis of existing water quality and ecological conditions at the ELDS in light of available data, trend assessments and baseline surveys indicates that disposal at the site will not cause unacceptable or unreasonable adverse environmental effects. Considerations related to water quality and various ecological factors (e.g., sediment quality, benthic organisms, fish and shellfish) have already been discussed above in relation to other site selection criteria, and are discussed in detail in the FSEIS and supporting documents. In considering this criterion, EPA took into account existing water quality and sediment quality data collected at the disposal sites, including from the USACE's DAMOS site monitoring program, as well as water quality data from the Connecticut Department of Energy and Environmental Protection's (CTDEEP) Long Island Sound Water Quality Monitoring Program. As discussed herein, EPA has determined that placement of suitable dredged material at the ELDS should not cause any significant adverse environmental effects to water quality or to ecological conditions at the disposal sites. EPA and the USACE have prepared a SMMP for the ELDS to guide future monitoring of site conditions (FSEIS Appendix I).

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

Monitoring at disposal sites in Long Island Sound over the past 35 years has shown no recruitment of nuisance (invasive, non-native) species that are attributable to dredged material disposal. There is no reason to expect this to change, but monitoring will continue to look for any such impacts. EPA and the USACE will continue to monitor the ELDS and other EPA-

designated sites under their respective SMMPs, which include a "management focus" on "changes in composition and numbers of pelagic, demersal, or benthic biota at or near the disposal sites" (Section 6.1.5 of the SMMP, Appendix I of the FSEIS).

xi. 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)).

There are no natural or cultural features of historical importance located within or in close proximity to the ELDS. There is, however, one shipwreck located within the ELDS near the southeastern corner the site, just inside its eastern boundary. As discussed in the FSEIS, a review of submerged vessel reports in the NOAA and Connecticut State Historic Preservation Office (CT SHPO) shipwreck databases indicates that there is one charted shipwreck located within the ELDS, near its eastern boundary. This wreck also was identified by EPA's side-scan sonar survey. This shipwreck is not, however, considered to be of historical importance.

EPA coordinated with Indian tribes in Connecticut, Rhode Island, and New York throughout the development of the FSEIS, and the tribes did not identify any important natural, cultural, spiritual, or historical features or areas within the ELDS. At the same time, the Shinnecock Indian Nation commented to EPA that investigations are underway to determine whether "submerged paleo cultural landscapes" might exist that would indicate that the tribe's ancestors lived farther offshore than currently understood. In this regard, the tribe expresses concern that dredged material placement at an open-water site could further bury any evidence of such sites. As discussed above and in the FSEIS, EPA is currently not aware of any evidence suggesting that such submerged artifacts may exist at the ELDS. If such evidence emerges in the future,

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EPA will further consult with the Shinnecock Indian Nation about whether any adjustments to the site boundaries, site management requirements, or site use restrictions would be appropriate.

In summary, one shipwreck is located just inside the eastern boundary of the ELDS, but the wreck is not considered to be of historical significance. Nevertheless, any impacts to that wreck from dredged material disposal will be minimized by establishing a 164-foot (50 m) avoidance buffer surrounding the shipwreck as well as appropriate site management, which accommodates both the minimum buffer of 30 m recommended by the CT SHPO, and the 40-50 m minimum buffer applied by the NY OPRHP.

3. Disposal Site Management (40 CFR 228.3, 228.7, 228.8 and 228.9)

The ELDS will be subject to specific management requirements to ensure that unacceptable adverse environmental impacts do not occur. Examples of these requirements include: (1) restricting the use of the sites to the disposal of dredged material that has been determined to be suitable for ocean disposal following MPRSA and/or CWA requirements in accordance with the provisions of MPRSA section 106(f), as well as to material from waters in the vicinity of the disposal sites; (2) monitoring the disposal sites and their associated reference sites, which are not used for dredged material disposal, to assess potential impacts to the marine environment by providing a point of comparison to an area unaffected by dredged material disposal; and (3) retaining the right to limit or close these sites to further disposal activity if monitoring or other information reveals evidence of unacceptable adverse impacts to the marine environment. As mentioned above, dredged material disposal will not be allowed when weather and sea conditions could interfere with safe, effective placement of any dredged material at a designated site. In addition, although not technically a site management requirement, disposal activity at the

sites will generally be limited to the period between October 1 and April 30, but often less, depending on environmental windows, to protect certain species, as described above.

EPA and the USACE have managed and monitored dredged material disposal activities at disposal sites in Long Island Sound since the early 1980s. Site monitoring has been conducted under the USACE's DAMOS disposal site monitoring program. In accordance with the requirements of MPRSA section 102(c) and 40 CFR 228.3, EPA and the USACE have developed a SMMP for the ELDS, which is incorporated as Appendix I of the FSEIS. The SMMP describes in detail the specific management and monitoring requirements for the ELDS.

B. National Environmental Policy Act

As EPA explained in the preamble to the Proposed Rule, 81 FR 24760 (April 27, 2016), EPA disposal site designation evaluations conducted under the MPRSA have been determined to be "functionally equivalent" to NEPA reviews and, as a result, are not subject to NEPA analysis requirements as a matter of law. Nevertheless, as a matter of policy, EPA voluntarily uses NEPA procedures when evaluating the potential designation of ocean dumping sites. *See* 63 FR 58045 (Notice of Policy and Procedures for Voluntary Preparation of National Environmental Policy Act Documents, October 29, 1998).

EPA is the agency authorized by the MPRSA to designate dredged material disposal sites and is responsible for the site designation decision and the NEPA analysis supporting it. As discussed in detail in the preamble to the Proposed Rule, 81 FR 24761, EPA used a third-party contracting approach so that funding from the state of Connecticut could be applied to the support the site designation studies and the development of the FSEIS. *See* 40 CFR 1506.5. Because EPA is

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ultimately responsible for the FSEIS, the Agency worked closely with the state of Connecticut to select the contractors and then maintained close involvement with production of the SEIS and control over its analyses and conclusions. The U.S. Navy also contributed to the site designation process by funding biological and other environmental studies in support of the FSEIS. The Navy, with extensive input from EPA and CTDEEP, used its contractor Tetra Tech based on its expertise in biological resources studies and risk assessment.

The USACE was a "cooperating agency" in the development of the FSEIS because of its knowledge concerning the region's dredging needs, its technical expertise in monitoring dredged material disposal sites and assessing the environmental effects of dredging and dredged material disposal, its history in the regulation of dredged material disposal in Long Island Sound and elsewhere, and its ongoing legal role in regulating dredging, dredged material disposal, and the management and monitoring of disposal sites. Other cooperating agencies were NMFS, CTDEEP, CT DOT, New York Department of State (NYSDOS), New York Department of Environmental Conservation (NYSDEC), and Rhode Island Coastal Resources Management Council (RICRMC). To take advantage of expertise of other entities, and to promote strong inter-agency communications, EPA also coordinated with the U.S. Fish and Wildlife Service; the Mashantucket (Western) Pequot Tribal Nation, Mohegan Tribe, Eastern Pequot Tribal Nation, and Paucatuck Eastern Pequot Indians (in Connecticut); the Narragansett Indian Tribe (in Rhode Island); the Shinnecock Indian Nation (in New York); and, as previously discussed, the CT SHPO and NY OPRHP. Throughout the SEIS development process, EPA communicated with the cooperating federal and state agencies and tribes to keep them apprised of progress on the project and to solicit input.

Consistent with its voluntary NEPA policy, EPA has undertaken NEPA analyses as part of its

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decision-making process for the designation of the ELDS. EPA published a Notice of Intent to prepare an EIS on October 16, 2012, invited other federal and state agencies to participate as cooperating or coordinating agencies, defined a "Zone of Siting Feasibility" in cooperation with the cooperating agencies, held public meetings regarding the scope of issues to be addressed by the SEIS, and published a DSEIS for public review and comment. The DSEIS, entitled, "Draft Supplemental Environmental Impact Statement for the Designation of Dredged Material Disposal Site(s) in Eastern Long Island Sound, Connecticut and New York," assesses and compares the effects of designating alternative dredged material disposal sites in eastern Long Island Sound. EPA's SEIS also evaluated various alternative approaches to managing dredging needs, including the "no action" alternative (i.e., the alternative of not designating any open-water disposal sites). *See* 40 CFR 1502.14. The DSEIS was considered supplemental because it updated and built upon the analyses that were conducted for the 2005 Long Island Sound Environmental Impact Statement that supported the designation of the Central and Western Long Island Sound disposal sites.

EPA released the DSEIS for a 60-day public comment period on April 27, 2016, and subsequently extended the comment period for 21 days, until July 18, 2016. EPA held four public hearings during the comment period: two (afternoon and evening) on May 24 in Riverhead and Mattituck, NY, and two on May 25 in Groton, CT. As previously noted, EPA received extensive public comment, both in support of, and in opposition to, EPA's proposed action as described in the DSEIS and proposed rule.

After considering the public comments received, EPA conducted additional analysis and has now published an FSEIS in conjunction with, and as part of the support for, publication of this Final Rule designating the ELDS. EPA's FSEIS includes additional discussion and analysis

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pertaining to EPA's final site designation, including discussion and analysis supporting EPA's decision to adjust the boundaries of the ELDS as they were delineated in the Proposed Rule. Appendix J of the FSEIS includes all the public comments EPA received on the DSEIS and Proposed Rule, and provides a summary of those comments and EPA responses to those comments. EPA also has summarized the more significant comments and EPA's responses to them in Section VI of the preamble to this Final Rule.

C. Coastal Zone Management Act

Based on the evaluations presented in the FSEIS and supporting documents, and a review of the federally approved coastal zone programs and policies of Connecticut, New York, and Rhode Island, EPA determined that designation of the ELDS for open-water dredged material disposal under the MPRSA will be fully consistent with, or consistent to the maximum extent practicable with, the enforceable policies of the approved coastal zone management programs of the three states. EPA provided a written determination to that effect to the NYSDOS (on July 20, 2016), to CTDEEP (on July 29, 2016), and to the RICRMC (on July 28, 2016), respectively.

The specific policies of each state's coastal zone management program are discussed in detail in the determinations noted above, but in a general sense, there are several broad reasons why designation of the ELDS is consistent with the applicable, enforceable policies of the three states' coastal zone programs. First, the designation is not expected to cause any significant adverse impacts to the marine environment, coastal resources, or uses of the coastal zone. Indeed, EPA expects the designation to benefit coastal uses involving navigation and berthing of vessels by facilitating needed dredging, and to benefit the environment by limiting any open-water dredged material disposal to a small number of environmentally appropriate sites

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designated by EPA, rather than at a potential proliferation of USACE-selected sites. Second, designation of the site does not actually authorize the disposal of any dredged material at the sites. Any proposal to dispose dredged material from a particular project at a designated site will be subject to case-specific evaluation and be allowed only if: (a) the material satisfies the sediment quality requirements of the MPRSA and the CWA; (b) no practicable alternative method of management with less adverse environmental impact is available; and (c) the disposal complies with the site restrictions for the site. These restrictions are described and discussed in the next section of the preamble and are designed to reduce or eliminate dredged material disposal in Long Island Sound. Third, the designated disposal site will be managed and monitored pursuant to a SMMP and if adverse impacts are identified, use of the sites will be modified to reduce or eliminate those impacts. Such modification could further restrict, or even terminate, use of the sites, if appropriate. *See* 40 CFR 228.3, 228.11.

On August 9, 2016, the RICRMC sent EPA a letter concurring with EPA's CZMA determination for Rhode Island. Similarly, on September 26, 2016, CTDEEP, which administers Connecticut's coastal zone management program, sent EPA a letter concurring with EPA's CZMA determination for Connecticut.

On October 3, 2016, EPA received a letter from the NYSDOS objecting to EPA's designation of the ELDS on the basis of its view that either EPA had provided insufficient information to support a CZMA consistency determination or, based on the information provided, the action was inconsistent with the enforceable policies of New York's Coastal Management Program (CMP).

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After giving careful consideration to the issues raised by NYSDOS, EPA continues to hold the view that designation of the ELDS, as specified herein, is consistent to the maximum extent practicable with the enforceable policies of New York's CMP. EPA also believes that the site use restrictions that have been made applicable to the ELDS provide enhanced assurance of such consistency.

D. Endangered Species Act

The ESA requires consultation with NMFS and/or USFWS to adequately address potential impacts to threatened and endangered species that may occur at the proposed dredged material disposal site from any proposal to dispose dredged material. EPA initiated consultations regarding the proposed ELDS with both the NMFS and USFWS, concurrent with the public comment period for the DSEIS. This consultation process is fully documented in the FSEIS. EPA provided the NMFS and USFWS with its conclusion that the proposed designation of the ELDS was not likely to adversely affect any federally listed endangered or threatened species, or designated critical habitat of any such species.

On August 11, 2016, USFWS sent an e-mail message concurring with EPA's proposed action, stating that the designation of the ELDS, "will have no effect on federally listed species under the jurisdiction of the U.S. Fish and Wildlife Service and that any effects from activities associated with the disposal of dredged material at this location will be consulted individually under section 7 of the ESA," and that, "(f)urther consultation…is not necessary unless there is new information relative to listed species presence or there are changes to the project."

On August 12, 2016, NMFS also concurred with EPA's "conclusion that the proposed action is not likely to adversely affect the ESA-listed species under our jurisdiction and will have no effect on critical habitat since the action does not overlap with any proposed/designation (*sic*) critical habitat under our jurisdiction," and that, "…no further consultation…is required." Copies of all consultation and coordination correspondence are provided in Appendices A -11 of the FSEIS.

E. Magnuson-Stevens Fishery Conservation and Management Act

The MSFCMA requires federal agencies to coordinate with NMFS regarding any action they authorize, fund, or undertake that may adversely affect essential fish habitat (EFH). EPA initiated coordination with NMFS on June 30, 2016, by submitting an EFH assessment in compliance with the Act. This coordination addressed the potential for the designation of any of the alternative disposal sites being evaluated to adversely affect EFH. In a letter dated August 12, 2016, NMFS concurred with EPA's determination that the designation of the ELDS would not adversely affect EFH. The letter stated, in part, "We concur with your determination that by excluding the boulder areas located in the south and northwest corners of the proposed disposal site, and with the incorporation of your specific management practices that include a 200-foot buffer zone from the boulder areas, the proposed designation will result in no more than minimal adverse impacts to designated EFH." The coordination process is fully documented in the FSEIS.

IX. Restrictions

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As described in the Proposed Rule, EPA is restricting the use of the ELDS in the same manner that it has restricted use of the CLDS and WLDS. On July 7, 2016, EPA published in the **Federal Register** (81 FR 44220) a final rule to amend the 2005 rule that designated the CLDS and WLDS, to establish new restrictions on the use of those sites to support the goal of reducing or eliminating open-water disposal in Long Island Sound. The restrictions include standards and procedures to promote the development and use of practicable alternatives to open-water disposal, including establishment of an interagency "Steering Committee" and "Regional Dredging Team" that will play important roles in implementation of the rule. The site use restrictions for the CLDS are detailed in 40 CFR 228.15(b)(4)(vi) and are incorporated for the WLDS by the cross-references in 40 CFR 228.15(b)(4)(vi) and (b)(5)(vi). Similarly, EPA is applying to the ELDS the same restrictions as are applied to the CLDS and WLDS by including simple cross-references to those restrictions in the new ELDS regulations at 40 CFR 228.15(b)(4) and (b)(6)(vi).

The restrictions incorporate standards and procedures for the use of the Eastern, Central and Western disposal sites consistent with the recommendations of the Long Island Sound DMMP. The DMMP identifies a wide range of alternatives to open-water disposal and recommends standards and procedures to help determine whether and which of these alternatives should be pursued for particular dredging projects. The DMMP addresses dredging and dredged material management issues for the entire Long Island Sound region, including the eastern portion of the Sound. Therefore, EPA concludes that it makes sense to apply site use restrictions based on the DMMP to the ELDS as well as to the CLDS and WLDS. EPA also received public comments in support of applying the site use restrictions to all Long Island Sound disposal sites.

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The standards included in the restrictions are described in the Proposed Rule and address the disposition of sandy material, suitable fine-grained material and unsuitable fine-grained materials. *See* 81 FR 24764. *See also* 81 FR 44229 (40 CFR 228.15(b)(4)(vi)(C)(*3*)(*i*) – (*iii*)). Also included are expectations of continued federal, state and local efforts at source reduction (i.e., reducing sediment entering waterways). EPA did not receive any comments on the standards and has not modified them in the Final Rule.

The restrictions augment the recommended procedures in the DMMP, and in the Proposed Rule, by establishing a Long Island Sound Dredging Steering Committee (Steering Committee), consisting of high-level representatives from the states of Connecticut and New York, EPA, USACE, and, as appropriate other federal and state agencies. Such other parties could include the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS), which had a seat on the previous Steering Committee, and the state of Rhode Island, which had a seat on the previous Long Island Sound Regional Dredging Team (LIS RDT), and may have more interest now that the LIS RDT's geographic scope includes eastern Long Island Sound. The Steering Committee will provide policy-level direction to the Long Island Sound Regional Dredging Team (RDT). The Steering Committee is charged with: establishing a baseline for the volume and percentage of dredged material being beneficially used and placed at the open-water sites; establishing a reasonable and practicable series of stepped objectives, including timeframes, to increase the percentage of beneficially used material while reducing the percentage and amount being disposed in open water, and while recognizing that the amounts of dredged material generated by the dredging program will naturally fluctuate

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from year to year; and develop accurate methods to track the placement of dredged material, with due consideration for annual fluctuations. The stepped objectives should incorporate an adaptive management approach while striving for continuous improvement.

The restrictions provide that when tracking progress, the Steering Committee should recognize that exceptional circumstances may result in delays meeting an objective. Exceptional circumstances should be infrequent, irregular and unpredictable. It is expected that each of the member agencies will commit the necessary resources to support the Long Island Sound RDT and Steering Committee's work, including the collection of data necessary to support establishing the baseline and tracking and reporting on the future disposition of dredged material.

The restrictions also provide that the Steering Committee may utilize the RDT, as appropriate, to carry out the tasks assigned to it. The Steering Committee, with the support of the RDT, will guide a concerted effort to encourage greater use of beneficial use alternatives, including piloting alternatives, identifying possible resources and eliminating regulatory barriers as appropriate.

As described in the Proposed Rule, *see* 81 FR 24765, the restrictions establish the Long Island Sound RDT. *See also* 81 FR 44229-44230 (40 CFR 228.15(b)(4)(vi)(E) and (F)). The purpose of the RDT reflects its role and relationship to the Steering Committee. The purpose of the RDT is to: (1) review dredging projects and report to USACE on its review within 30 days of receipt of project information; (2) assist the Steering Committee in the tasks described above; (3)

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serve as a forum for continuing exploration of new beneficial use alternatives, matching available beneficial use alternatives with dredging projects; (4) exploring cost-sharing opportunities and promoting opportunities for beneficial use of clean, parent marine sediments (that underlie surficial sediments and are not exposed to pollution) often generated in the development of Confined Aquatic Disposal cells; and (5) assist the USACE and EPA in continuing long-term efforts to monitor dredging impacts in Long Island Sound. The membership of the RDT will comprise representatives from the states of Connecticut and New York, EPA, USACE, and, as appropriate, other federal and state agencies. State participation on the RDT is voluntary. The geographic scope of the RDT, as well as details for the structure and process of the RDT, are unchanged from the Proposed Rule.

Finally, the restrictions provide that if the volume of open-water disposal of dredged material, as measured in 2026, has not declined or been maintained over the prior ten years, then any party may petition EPA to conduct a rulemaking to amend the restrictions of the use of the sites.

X. Supporting Documents

1. EPA Region 1/USACE NAE. 2005. Response to Comments on the Final Environmental Impact Statement for the Designation of Dredged Material Disposal Sites in Central and Western Long Island Sound, Connecticut and New York. U.S. Environmental Protection Agency, Region 1, Boston, MA and U.S. Army Corps of Engineers, New England District, Concord, MA. April 2005.

2. EPA Region 1. 2005. Memorandum to the File Responding to the Letter from the New

York Department of State Objecting to EPA's Federal Consistency Determination for the Dredged Material Disposal Site Designations. U.S. Environmental Protection Agency, Region 1, Boston, MA. May 2005.

3. EPA Region 1/USACE NAE. 2004. Final Environmental Impact Statement for the Designation of Dredged Material Disposal Sites in Central and Western Long Island Sound, Connecticut and New York. U.S. Environmental Protection Agency, Region 1, Boston, MA and U.S. Army Corps of Engineers, New England District, Concord, MA. March 2004.

4. EPA Region 1/USACE NAE. 2004. Regional Implementation Manual for the Evaluation of Dredged Material Proposed for Disposal in New England Waters. U.S. Environmental Protection Agency, Region 1, Boston, MA, and U.S. Army Corps of Engineers, New England District, Concord, MA. April 2004.

5. EPA Region 2/USACE NAN. 1992. Guidance for Performing Tests on Dredged Material Proposed for Ocean Disposal. U.S. Environmental Protection Agency, Region 2, New York, NY and U.S. Army Corps of Engineers, New York District, New York, NY. Draft Release. December 1992.

6. EPA/USACE. 1991. Evaluation of Dredged Material Proposed for Ocean Disposal Testing Manual. U.S. Environmental Protection Agency, Washington, DC, and U.S. Army Corps of Engineers, Washington, DC. EPA– 503/8–91/001. February 1991.

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7. Long Island Sound Study. 2015. Comprehensive Conservation and Management Plan for Long Island Sound. Long Island Sound Management Conference. September 2015.

8. NYSDEC and CTDEP. 2000. A total maximum daily load analysis to achieve water quality standards for dissolved oxygen in Long Island Sound. Prepared in conformance with section 303(d) of the Clean Water Act and the Long Island Sound Study. New York State Department of Environmental Conservation, Albany, NY and Connecticut Department of Environmental Protection, Hartford, CT. December 2000.

9. USACE NAE. 2016. Final Long Island Sound Dredged Material Management Plan and Final Programmatic Environmental Impact Statement - Connecticut, Rhode Island and New York. U.S. Army Corps of Engineers, New England District. December 2015.

10. EPA Region 1. 2016. Draft Supplemental Environmental Impact Statement for the Designation of Dredged Material Disposal Site(s) in Eastern Long Island Sound, Connecticut and New York. U.S. Environmental Protection Agency, Region 1, Boston, MA. April 2016.

11. USACE NAE. 2016a. Memorandum from USACE New England District to EPA Region 1 with updated dredging and disposal capacity needs for Eastern Long Island Sound. U.S. Army Corps of Engineers, New England District. September 2016.

12. USACE NAE. 2016b. Memorandum from USACE New England District to EPA Region 1 with detailed cost estimates for dredged material disposal at different disposal sites in Long

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Island Sound. U.S. Army Corps of Engineers, New England District. September 2016.

XI. Statutory and Executive Order Reviews

1. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action, as defined in the Executive Order, and therefore was not submitted to the Office of Management and Budget (OMB) for review.

2. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA 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)

This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). The amended restrictions in this rule are only relevant for dredged material disposal projects subject to the MPRSA. Non-federal projects involving 25,000 cubic yards or less of material are not subject to the MPRSA and, instead, are regulated under CWA section 404. This action will, therefore, have no effect on such projects. "Small entities" under the RFA are most likely to be involved with smaller projects not covered by the MPRSA. Therefore, EPA does not believe a substantial number of small entities will be affected by today's rule. Furthermore, the amendments to the restrictions also will not have significant economic impacts on a substantial number of small entities because they will

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primarily create requirements to be followed by regulatory agencies rather than small entities, and will create requirements (i.e., the standards and procedures) intended to help ensure satisfaction of the existing regulatory requirement (*see* 40 CFR 227.16) that practicable alternatives to the ocean dumping of dredged material be utilized.

4. Unfunded Mandates Reform Act (UMRA)

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

5. Executive Order 13132: Federalism

This action 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. Through the Steering Committee and RDT process, however, this action will provide a vehicle for facilitating the interaction and communication of interested federal and state agencies concerned with regulating dredged material disposal in Long Island Sound.

6. 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 proposed restrictions will not have substantial direct effects on Indian tribes, on the relationship between the federal government and Indian tribes, or the distribution of power and responsibilities between the federal government and Indian tribes. EPA coordinated with all

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Indian Tribal Governments in the vicinity of the proposed action and consulted with the Shinnecock Tribal Nation in making this determination.

7. Executive Order 13045: Protection of Children from Environmental Health Risks 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.

8. Executive Order 13211: Actions Concerning Regulations 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.

9. *National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

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

The EPA concludes that this action will not have a disproportionate adverse human health or environmental effect on minority, low-income, or indigenous populations.

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11. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to "expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment." EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the Executive Order is to protect the significant natural and cultural resources within the marine environment, which means, "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law."

The EPA expects that this Final Rule will afford additional protection to the waters of Long Island Sound and organisms that inhabit them. Building on the existing protections of the MPRSA and the ocean dumping regulations, the rule is designed to promote the reduction or elimination of open-water disposal of dredged material in Long Island Sound, and, at the same time, to ensure that any such disposal that occurs will be conducted in an environmentally sound manner.

12. Executive Order 13547: Stewardship of the Ocean, Our Coasts, and the Great Lakes

Section 6(a)(i) of Executive Order 13547, (75 FR 43023, July 19, 2010) requires, among other things, EPA and certain other agencies "… to the fullest extent consistent with applicable law [to] … take such action as necessary to implement the policy set forth in section 2 of this order and the stewardship principles and national priority objectives as set forth in the Final Recommendations and subsequent guidance from the Council." The policies in section 2 of Executive Order 13547 include, among other things, the following: "… it is the policy of the

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United States to: (i) protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources; [and] (ii) improve the resiliency of ocean, coastal, and Great Lakes ecosystems, communities, and economies …." As with Executive Order 13158 (Marine Protected Areas), the overall purpose of the Executive Order is to promote protection of ocean and coastal environmental resources.

The EPA expects that this Final Rule will afford additional protection to the waters of Long Island Sound and the organisms that inhabit them. Building on the existing protections of the MPRSA and the ocean dumping regulations, the rule is designed to promote the reduction or elimination of open-water disposal of dredged material in Long Island Sound even as it facilitates necessary dredging.

13. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the Federal Register. This action is not a major rule as defined by 5 U.S.C. 804(2). This rule will be effective 30 days after date of publication.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

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Dated: November 4, 2016.

H. Curtis Spalding,

Regional Administrator, EPA Region 1-New England.

For the reasons stated in the preamble, title 40, chapter I, of the *Code of Federal Regulations* is amended as set forth below.

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

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

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

2. Section 228.15 is amended by revising paragraph (b)(4)(vi) introductory text and adding paragraph (b)(6) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(b) * * *

(4) * * *

(vi) *Restrictions:* The designation in this paragraph (b)(4) sets forth conditions for the use of the Central Long Island Sound (CLDS), Western Long Island Sound (WLDS) and Eastern Long Island Sound (ELDS) Dredged Material Disposal Sites. These conditions apply to all disposal subject to the MPRSA, namely, all federal projects and nonfederal projects greater than 25,000 cubic yards. All references to "permittees" shall be deemed to include the U. S. Army Corps of Engineers (USACE) when it is authorizing its own dredged material disposal from a USACE dredging project. The conditions for this designation are as follows:

* * * * *

(6) Eastern Long Island Sound Dredged Material Disposal Site (ELDS).

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(i) *Location:* Corner Coordinates (NAD83) 41°15.81′ N., 72°05.23′ W.; 41°16.81′ N., 72°05.23′ W.; 41°16.81′ N., 72°07.22′ W.; 41°15.97′ N., 72°07.22′ W; 41°15.81′ N., 72°06.58′ W.

(ii) *Size:* A 1 x 1.5 nautical mile irregularly-shaped polygon, with an area of 1.3 square nautical miles (nmi^2) due to the exclusion of bedrock areas. North-central bedrock area corner coordinates (NAD83) are: 41°16.34′ N., 72°05.89′ W.; 41°16.81′ N., 72°05.89′ W.; 41°16.81′ N., 72°06.44′ W.; 41°16.22′ N., 72°06.11′ W.

(iii) *Depth:* Ranges from 59 to 100 feet (18 m to 30 m).

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

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

(vi) *Restrictions:* See paragraph (b)(4)(vi)(A) through (N) of this section.

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