

compliance costs on those communities. Accordingly, the requirements of Executive Order 12898 do not apply.

#### *K. 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 on April 16, 2003.

#### *L. National Environmental Policy Act of 1969*

Section 102(c) of the National Environmental Policy Act of 1969, section 4321 *et seq.* (NEPA) requires Federal agencies to prepare environmental impact statements (EIS) for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. Although EPA ocean dumping program activities have been determined to be "functionally equivalent" to NEPA, EPA has voluntarily undertaken to follow NEPA procedures when designating ocean dumping sites. *See*, 63 FR 58045 (October 29, 1998).

In August 1982, EPA published a final EIS for the designation of the New York Dredged Material Disposal Site (Mud Dump Site). The EIS assessed the environmental impacts of establishing an ocean disposal site for 100 million cubic yards (mcy) of dredged materials generated within the Port of New York and New Jersey. After completion of the EIS, EPA designated the Mud Dump Site as an Impact Category I disposal site (*see*, 40 CFR 228.10(c)) with a capacity of 100 mcy (*see*, 40 CFR 228.15(d)(6)). Approximately 68 mcy of dredged material was disposed of at the Mud Dump Site. In 1997, EPA prepared a Supplemental EIS, for the Designation of the Historic Area Remediation Site (HARS) in the New York Bight Apex (USEPA, 1997a). That document addressed the environmental

considerations relevant to the HARS, and identified the Priority Remediation Area (PRA) within the HARS. At the time of the rule designating the HARS, the PCB matrix value for disposal at the site was 400 ppb. The promulgation of the 113 ppb HARS-specific PCB worm tissue criterion is a refinement based on new information since the designation of the HARS, which will have positive impacts on the marine environment. EPA does not consider this refinement as a substantial change in the designation of the HARS, and no additional NEPA review is required.

However, EPA received comments on the proposed rule questioning EPA's determination that no further NEPA evaluation is required to establish the 113 ppb HARS-specific PCB worm tissue criterion. Specifically, these comments questioned whether EPA was remiss in not evaluating the need for, and impacts associated with the use of, other disposal methods in light of the new PCB criterion. In point of fact, EPA does not evaluate such issues when designating ocean disposal sites because permission to use an ocean site for the disposal of dredged material can be granted only after a determination has been made that no alternative disposal options exist. Evaluations of alternative disposal options are more properly performed in the review process for individual ocean dumping permit applications. As such, EPA again concludes that no further NEPA documentation is needed to establish a 113 ppb HARS-specific PCB worm tissue criterion.

#### *M. The Endangered Species Act*

Under section 7(a)(2) of the Endangered Species Act, 16 U.S.C. 1536(a)(2), Federal agencies are required to "insure that any action authorized, funded, or carried on by such agency \* \* \* is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat of such species. \* \* \*". Under regulations implementing the Endangered Species Act, a federal agency is required to consult with either the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (depending on the species involved) if the agency's action "may effect" endangered or threatened species or their critical habitat. *See*, 50 CFR 402.14(a).

EPA initiated its consultation process with the U.S. Fish and Wildlife Service (USFWS) on April 6, 1995 for what was then the Mud Dump Site and surrounding areas. The consultation process was concluded with them on

July 28, 1995, with the USFWS's concurrence that EPA's action was not likely to adversely affect federally listed species under its jurisdiction. The action covered by this final rule is more protective of the marine environment. Accordingly, the conclusions of our earlier consultation with the USFWS for the designation of the HARS are still valid.

EPA initiated threatened and endangered species consultation with the National Marine Fisheries Service (NMFS) on April 4, 1996. As directed by the NMFS, EPA prepared a Biological Assessment (BA) (USEPA, 1997c) to assess the impacts of the designation of the HARS on the Kemp's ridley and loggerhead sea turtles, and the humpback and fin whales. In May 1997, EPA sent the NMFS a copy of the BA, which concluded that the designation of the HARS is not likely to adversely affect the species in question; NMFS concurred with this conclusion. Since the BA utilized a PCB worm tissue matrix value of 400 ppb and this final rule proposes 113 ppb, any impacts to endangered or threatened species, or their critical habitats resulting from this action will be positive; the conclusion of the earlier consultation with NMFS is still valid.

#### *N. Magnuson-Stevens Fishery Conservation and Management Act*

The 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) require the designation of essential fish habitat (EFH) for federally managed species of fish and shellfish. Pursuant to section 305(b)(2) of the MSFCMA, federal agencies are required to consult with the National Marine Fisheries Service (NMFS) regarding any action they authorize, fund, or undertake that may adversely affect EFH. An adverse effect has been defined by the Act as follows: "Any impact which reduces the quality and/or quantity of EFH. Adverse effects may include direct (*e.g.*, contamination or physical disruption), indirect (*e.g.*, loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions." EFH became effective after the HARS was designated. However, prior to September 2000 all USACE permits and authorizations were subject to EFH review utilizing a PCB matrix value of 400 ppb and were found acceptable. Since September 2000, all USACE permits and authorizations have been subject to EFH review utilizing a PCB matrix value of 113 ppb and have been found acceptable. Since this action