

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

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

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

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

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

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

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

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

E. Proposed Action

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

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

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

F. Statutory and Executive Order Reviews

1. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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