



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA-R04-OW-2016-0356; FRL-9948-90-Region 4]

**Ocean Dumping: Modification of an Ocean Dredged Material Disposal Site Offshore of
Charleston, South Carolina**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a modification of the ocean dredged material disposal site (ODMDS) site offshore of Charleston, South Carolina pursuant to the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). The primary purpose for the site modification is to serve the long-term need for a location to dispose of material dredged from the Charleston Harbor federal navigation channel, and to provide a location for the disposal of dredged material for persons who have received a permit for such disposal. The modified site will be subject to ongoing monitoring and management to ensure continued protection of the marine environment.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OW-2016-0356, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments and accessing the docket and materials related to this proposed rule.
- E-mail: collins.garyw@epa.gov

- Mail: Gary W. Collins, U.S. Environmental Protection Agency, Region 4, Water Protection Division, Marine Regulatory and Wetlands Enforcement Section, 61 Forsyth Street, Atlanta, Georgia 30303.

Instructions: Direct your comments to Docket ID No. EPA-R04-OW-2016-0356. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy during normal business hours from the regional library at the U.S. Environmental Protection Agency, Region 4 Library, 9th Floor, 61 Forsyth Street, Atlanta, Georgia 30303. For access to the documents at the Region 4 Library, contact the Region 4 Library Reference Desk at (404) 562-8190, between the hours of 9:00 a.m. to 12:00 p.m., and between the hours of 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays, for an appointment.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, U.S. Environmental Protection Agency, Region 4, Water Protection Division, Marine Regulatory and Wetlands Enforcement Section, 61 Forsyth Street, Atlanta, Georgia 30303; phone number (404) 562-9395; e-mail: collins.garyw@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act, as amended (MPRSA), 33 U.S.C. 1401 to 1445. The EPA’s proposed action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Charleston, South Carolina. Currently, the U.S. Army Corps of Engineers (USACE) would be most affected by this action.

Potentially affected categories and persons include:

| Category | Examples of potentially regulated persons |
|---------------------------------|---|
| Federal government ... | U.S. Army Corps of Engineers Civil Works projects, U.S. Navy and other Federal agencies |
| Industry and general public ... | Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners |

| | |
|---|---|
| State, local and tribal governments ... | Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects |
|---|---|

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding “FOR FURTHER INFORMATION CONTACT” section.

II. Background

a. History of disposal sites offshore of Charleston, South Carolina

The existing Charleston ODMDS is located approximately 9 nautical miles (nmi) southeast of the mouth of Charleston Harbor on the continental shelf off the coast of South Carolina. It is currently 12.1 nmi² in size, with an authorized disposal zone that is 3.0 nmi² in size. Since 1896, the area now designated as the Charleston ODMDS and vicinity has been used for disposal of dredged material (e.g., sand, silt, clay, rock) primarily from the Charleston Harbor Navigation Project. The Charleston ODMDS received interim site designation status in 1977 and final designation in 1987. The discovery of live bottom habitats within the original site resulted in several modifications to use of the site resulting in the creation of the restricted disposal zone.

The USACE Charleston District and the EPA Region 4 have identified a need to either designate a new ODMDS or expand the existing Charleston ODMDS. The need for expanding current ocean disposal capacity is based on future capacity modeling, historical dredging volumes, estimates of dredging volumes for future proposed projects, and limited capacity of upland confined disposal facilities (CDFs) in the area

The proposed modification of the ODMDS for dredged material does not mean that the USACE or the EPA has approved the use of the ODMDS for open water disposal of dredged

material from any specific project. Before any person can dispose dredged material at the ODMDS, the EPA and the USACE must evaluate the project according to the ocean dumping regulatory criteria (40 CFR part 227) and authorize the disposal. The EPA independently evaluates proposed dumping and has the right to restrict and/or disapprove of the actual disposal of dredged material if the EPA determines that environmental requirements under the MPRSA have not been met.

b. Location and configuration of Modified Ocean Dredged Material Disposal Site

This action proposes the modification of the ocean dredged material site offshore of Charleston, South Carolina. The location of the proposed modified ocean dredged material disposal site is bounded by the coordinates, listed below. The proposed modification of the ODMDS will allow the EPA to adaptively manage the ODMDS to maximize its capacity, minimize the potential for mounding and associated safety concerns, potentially create hard bottom habitat and minimize the potential for any long-term adverse effects to the marine environment.

The coordinates for the site are, in North American Datum 83 (NAD 83):

Modified Charleston ODMDS

A) 32° 36.280' N, 79° 43.662' W

B) 32° 21.514' N, 79° 46.576' W

C) 32° 20.515' N, 79° 45.068' W

D) 32° 20.515' N, 79° 42.152' W

The proposed modified ODMDS is located in approximately 30 to 45 feet of water, and is located to approximately 6.0 nmi offshore. The proposed modified ODMDS would be 7.4 nmi² in size.

c. Management and monitoring of the Site

The proposed modified ODMDS is expected to receive sediments dredged by the USACE to deepen and maintain the federally authorized navigation project at Charleston Harbor, South Carolina, and dredged material from other persons who have obtained a permit for the disposal of dredged material at the ODMDS. All persons using the ODMDS are required to follow a Site Management and Monitoring Plan (SMMP) for the ODMDS. The SMMP includes management and monitoring requirements to ensure that dredged materials disposed at the ODMDS are suitable for disposal in the ocean and that adverse impacts of disposal, if any, are addressed to the maximum extent practicable. The SMMP for the proposed modified ODMDS, in addition to the aforementioned, also addresses management of the ODMDS to ensure adverse mounding does not occur, promotes habitat creation where possible and to ensure that disposal events minimize interference with other uses of ocean waters in the vicinity of the proposed modified ODMDS. The SMMP has been publically review and is currently being finalized by the Charleston Ocean ODMDS Task Force. The Task Force is made up of members representing EPA, USACE, National Marine Fisheries Service (NMFS), Bureau of Environmental Management (BOEM), the South Carolina State Ports Authority (SCSPA), the South Carolina Department of Natural Resources (SCDNR), and the South Carolina Department of Health and Environmental Control.

d. MPRSA criteria

In proposing to modify the ODMDS, the EPA assessed the proposed modified ODMDS according to the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR part 228, to determine whether the proposed site designations satisfy those criteria. The EPA's *Final Environmental Assessment for Modification of an Ocean*

Dredged Material Disposal Site Offshore Charleston, South Carolina, [April 2016] (EA), provides an extensive evaluation of the criteria and other related factors for the modification of the ODMDS.

General Criteria (40 CFR 228.5)

(1) 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)).

Dredged material disposal within the existing Charleston ODMDS has been confined to the eastern side of the designated site within a defined 4-mi² disposal zone to avoid impacts to live hardbottom. During this time, dredged material disposal at the site has not interfered with commercial or recreational navigation, commercial fishing, or sportfishing activities. The proposed modification of the site boundaries to the north, east, and south is not expected to change these conditions. The proposed action avoids major fisheries, natural and artificial reefs, and areas of recreational use. Modification of the site to the east will minimize interference with shellfisheries by avoiding areas located primarily to the west of the ODMDS that are frequently used by commercial shrimpers. Construction of the berm will provide an additional approximately 427 acres of hardbottom habitat and will protect existing hardbottom habitat by minimizing sediment transport. There will be a 3000-foot buffer along the northern perimeter of the ODMDS where dumping will not occur. Modeling results indicate that this buffer should be sufficient to protect probable hardbottom areas to the north of the site.

(2) 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 undetectable contaminant concentrations or effects before reaching

any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

The proposed ODMDS modification area will be used for disposal of suitable dredged material as determined by Section 103 of the MPRSA. Based on the USACE and EPA sediment testing and evaluation of dredged maintenance material and proposed new work material from the Post 45 deepening project, disposal is not expected to have any long-term impact on the water quality. Results of the maximum concentration found outside the disposal area after 4 hours of mixing for each dredging unit was zero. Based on these results, water quality perturbations that could reach any beach, shoreline, marine sanctuary, or known geographically-limited fishery or shellfishery are not expected. The western edge of the proposed modified ODMDS is approximately 7 miles offshore such that prevailing current will not transport dredged material to beaches. Water quality perturbations caused by dispersion of disposal material will be reduced to ambient conditions before reaching any environmentally sensitive areas.

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

The location, size, and configuration of the proposed modified ODMDS provides long-term capacity, site management, and site monitoring while limiting environmental impacts to the surrounding area. Based on 25 years of projected new work and maintenance dredged material disposal needs, it is estimated that the ODMDS modification area should accommodate approximately 66.5 mcy of dredged material in order to meet the long-term disposal needs of the area. The dump zone within the proposed ODMDS is estimated to have approximately 75

mcy of capacity. The capacity in the dump zone provides a reasonable amount of additional capacity to manage risk, account for future unknown disposal operations from private entities, and provides a margin of navigation safety. The remaining area within the boundaries of the existing 12 nmi² Charleston ODMDS (parallelogram) would be de-designated. The area to be de-designated is approximately 10.4 mi² (7.8 nmi²) in size and contains documented hardbottom habitat.

By adding 5.8 mi² (4.4 nmi²) to the existing ODMDS disposal zone, the total area of the modified Charleston ODMDS would be 9.8 mi² (7.4 nmi²), with a dump zone area of 5.1 mi² (3.9 nmi²). An ODMDS of this size and capacity will provide a long-term ocean disposal option for the region.

To help protect nearby hardbottom habitat from being buried by sediment migrating from the ODMDS, a U-shaped berm along the east, south, and west perimeters of the modified ODMDS will be constructed. Although there is probable hardbottom located north of the proposed modified ODMDS, no berm will be constructed along the northern boundary. However, there will be a 3000-foot buffer along the northern perimeter of the ODMDS where dumping will not occur. Fate modeling indicates that this buffer should be sufficient to protect probable hardbottom areas to the north of the site.

When determining the size of the proposed site, the ability to implement effective monitoring and surveillance programs, among other things, was factored in to ensure that navigational safety would not be compromised and to prevent mounding of dredged material, which could result in adverse wave conditions. A site management and monitoring program will be implemented to determine if disposal at the site is significantly affecting adjacent areas and to detect the presence of long-term adverse effects. At a minimum, the monitoring program will consist of bathymetric

surveys, sediment grain size analysis, chemical analysis of constituents of concern in the sediments, and a health assessment of the benthic community.

(4) EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).

The continental slope is approximately 55 nmi offshore of Charleston. Disposal off the continental shelf (shelf break) was evaluated in detail the 1983 ODMDS Designation EIS document. In comparison to locating the site in the nearshore region, it was determined that monitoring and surveillance would be more difficult and expensive in the shelf break area because of the distance from shore to the deeper waters. Transporting material to and performing long-term monitoring of a site located off the continental shelf is not economically or operationally feasible.

The historically used ocean dumping site, Charleston ODMDS, is not located beyond the continental shelf. A portion of the proposed modified ODMDS encompasses an area previously designated for disposal.

Specific Criteria (40 CFR 228.6)

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

The proposed modified ODMDS is located on the shallow continental shelf, approximately 6 nmi offshore of Charleston, South Carolina. Water depths range from -30 to -45 feet (9 to 13 meters) with an overall average depth of -40 feet (12 meters). Characteristics of the South Atlantic Bight seafloor include low relief, relatively gentle gradients, and smooth bottom surfaces exhibiting physiographic features contoured by erosional processes. Sediments largely

consist of fine to coarse sands. Some areas contain extensive coarse grains and shell hash. Fines were found to be typically less than 10%.

(2) Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

The proposed modified ODMDS is not located in exclusive breeding, spawning, nursery, feeding, or passage areas for adult or juvenile phases of living resources. The intensity of these activities within the vicinity of the ODMDS is seasonally variable, with peaks typically occurring in the spring and early fall for most commercially important finfish and shellfish species (USEPA 1983). The ODMDS is not located within North Atlantic right whale critical habitat.

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

The center of the proposed modified ODMDS is approximately 7 mi (6 nmi) from the nearest coastal beach. The site is approximately 3.1 mi (2.7 nmi) south of the nearest artificial reef. No significant impacts to beaches or amenity areas associated with the existing ODMDS have been documented.

(4) Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).

Only material that meets EPA Ocean Dumping Criteria in 40 CFR 220-229 will be placed in the proposed site. Average annual maintenance material is approximately 1.4 mcy and approximately 31.2 mcy of new work material is expected from the Charleston Harbor Deepening Project. Sediments dredged from Charleston Harbor and the entrance channel are a mixture of silt, sand, and rock. Hopper dredge, barge, and scow combinations are the usual vehicles of transport for the dredged material. None of the material is packaged in any manner.

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

The EPA expects monitoring and surveillance at the proposed modified ODMDS to be feasible and readily performed from ocean or regional class research vessels. The proposed modified ODMDS is of similar size, water depth and distance from shore as are a majority of the ODMDSs within the Southeastern United States which are routinely monitored. The EPA will ensure monitoring of the site for physical, biological and chemical attributes as well as for potential impacts beyond the site boundaries. Bathymetric surveys will be conducted routinely as defined in the SMMP, contaminant levels in the dredged material will be analyzed prior to dumping, and the benthic infauna and epibenthic organisms will be monitored every 10 years, as funding allows.

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

A study conducted by EPA from 2013-2015 indicated that currents in the vicinity of the Charleston ODMDS tend to have a significant tidal component with predominant currents in the cross-shore direction. The depth-averaged median current velocity was 18 cm/sec (0.6 ft/sec) with 90% of the measurements below 30 cm/sec (1.1 ft/sec). Wind-driven circulation is the most important factor in controlling sediment transport. Strong winds generate waves that steer the sediment on the seabed and create large nearbed suspended sediment concentrations. Suspended sediment transport is directed mainly NE and SW in response to local wind climate and the wind-generated alongshore flows. LTFATE and MPFATE modeling results over a 25-year period indicate depths of sediment deposited outside the boundaries of the ODMDS will not exceed the 5 cm deposition contour guidance provided by EPA.

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

Previous disposal of dredged material resulted in temporary increases in suspended sediment concentrations during disposal operations, localized mounding within the site, burial of benthic organisms within the site, changes in the abundance and composition of benthic assemblages, and changes in the sediment composition from sandy sediments to finer-grained silts. Impacts to live bottoms were identified in the western portion of the 12-mi² ODMDS.

Short-term, long-term, and cumulative effects of dredged material disposal in the proposed ODMDS modification area would be similar to those for the existing ODMDS.

(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)).

The proposed modified ODMDS is not expected to interfere with shipping, fishing, recreation or other legitimate uses of the ocean. Commercial navigation, commercial fishing, and mineral extraction (sand mining) are the primary activities that may spatially overlap with disposal at the proposed modified ODMDS. The proposed modified ODMDS avoids the National Oceanographic and Atmospheric Administration (NOAA) recommended vessel routes offshore Charleston, South Carolina, thereby avoiding conflict with commercial navigation.

Commercial fishing (shrimp trawling) occurs primarily to the west of the proposed modified ODMDS.

The likelihood of direct interference with these activities is low, provided there is close communication and coordination among users of the ocean resources. The EPA is not aware of

any plans for desalination plants, or fish and shellfish culture operations near the proposed modified ODMDS at this time. The proposed modified ODMDS is not located in areas of special scientific importance.

(9) The Existing Water Quality and Ecology of the Sites as Determined by Available Data or Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9)).

Water quality of the existing site is typical of the Atlantic Ocean. Water and sediment quality analyses conducted in the study area and experience with past disposals in the Charleston ODMDS have not identified any adverse water quality impacts from ocean disposal of dredged material. The site supports benthic and epibenthic fauna characteristic of the South Atlantic Bight. Neither the pelagic (mobile) or benthic (non-mobile) communities should sustain irreparable harm due to their widespread occurrence off the South Carolina coast.

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

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the proposed modified ODMDS. They are either transported to or recruited to the site because the disposal of dredged material creates an environment where they can establish. Habitat conditions have changed somewhat at the Charleston ODMDS because of the disposal of some silty material on what was predominately sandy sediments. While it can be expected that organisms will become established at the site which were not there previously, this new community is not regarded as a nuisance, or “undesirable,” community.

(11) Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).

No significant cultural features have been identified at, or in the vicinity of, the proposed modified ODMDS at this time. Surveys conducted in 2012-2013 did not identify any cultural features of historical importance. The EPA has coordinated with South Carolina's State Historic Preservation Officer (SHPO) to identify any cultural features. The SHPO concurred with the EPA's determination that the proposed modification of the ODMDS will have no effect on cultural resources listed, or eligible for listing on the National Register of Historic Places as no such resources exist in the project area.

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

a. NEPA

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major federal actions significantly affecting the quality of the human environment. NEPA does not apply to EPA designations of ocean disposal sites under the MPRSA because the courts have exempted the EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. The EPA has, by policy, determined that the preparation of NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. The EPA's "Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents," (Voluntary NEPA Policy), 63 FR 58045, (October 29, 1998), sets out both the policy and procedures the EPA uses when preparing such environmental review documents. The EPA's primary voluntary NEPA document for expanding the ODMDS is the

Final Environmental Assessment for Modification of an Ocean Dredged Material Disposal Site Offshore Charleston, South Carolina, [April 2016] (FEA), prepared by the EPA in cooperation with the USACE. Anyone desiring a copy of the FEA may obtain one from the addresses given above. A draft of this document was released for public review in December, 2015. The public comment period on the Draft EA closed on January 19, 2016.

The EPA received 8 comment letters on the DEA. There were two main concerns expressed in those letters: 1) potential movement of disposed material impacting areas such as habitat, fisheries and sand borrow areas; and 2) monitoring associated with the SMMP. No objections to the ODMDS modification were received. The EPA and USACE responded to all comments and they are provided in the FEA. The FEA and its Appendices, which are part of the docket for this action, provide the threshold environmental review for modification of the ODMDS. The information from the FEA is used above, in the discussion of the ocean dumping criteria.

The proposed action discussed in the FEA is the permanent designation of a modified ODMDS offshore Charleston, South Carolina. The purpose of the proposed action is to provide an environmentally acceptable option for the ocean disposal of dredged material. The need for the modified ODMDS is based on a demonstrated USACE need for ocean disposal of dredged material from the Charleston Harbor Federal Navigation Project, and the proposed Charleston Harbor Deepening Project (also known as Post 45). The need for ocean disposal for these and other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the USACE process of issuing permits for ocean disposal for private/federal actions and a public review process for its own actions. This will include an evaluation of disposal alternatives.

For the proposed modified ODMDS, the USACE and the EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria set forth in the Ocean Dumping Regulations (40 CFR 220-229) and the USACE regulations (33 CFR 209.120 and 335-338). The USACE issues Marine Protection, Research, and Sanctuaries Act (MPRSA) permits to applicants for the transport of dredged material intended for disposal after compliance with regulations is determined. The EPA has the right to disapprove any ocean disposal project if, in its judgment, all provisions of MPRSA and the associated implementing regulations have not been met.

The FEA discusses the need for the proposed modified ODMDS and examines ocean disposal site alternatives to the proposed actions. The need for expanding the current ODMDS is based on future capacity modeling, historical dredging volumes, estimated dredging volumes for proposed projects, and limited capacity of upland CDFs in the area. Non-ocean disposal options have been examined in the FEA based on information provided by the USACE in the Dredged Material Management Plans for Charleston Harbor.

The following ocean disposal alternatives were considered but eliminated from detailed evaluation in the FEA:

1. Alternative 2: Use Existing ODMDS and remove disposal zone restriction

Alternative 2 is the removal of the current disposal zone restriction and allowing use of the entire ODMDS for disposal. This alternative would require further delineation and assessment of live-bottom habitat within the western portion of the site or the acceptance of direct impacts to such habitat from disposal. Further habitat assessment could result in the need for multiple disposal zones to avoid direct impacts. From a site management and disposal operations perspective, a non-contiguous site would be more difficult and costly to manage and monitor.

Use of the western portion of the site also has the potential for impacting shrimp trawling grounds.

2. Alternative 3: New ODMDS north of the Entrance Channel

Alternative 3 proposes to designate a new ODMDS north of the entrance channel of the same size and configuration as Alternative 1 (Table 2.2-2, Figure 2-6). This site is located approximately 16 mi (14 nmi) offshore of the entrance to Charleston Harbor and 1.6 mi (1.4 nmi) east of the anchorage area.

No hardbottom or cultural resource surveys have been conducted in this area. Therefore, the presence of hardbottom and cultural resources within and adjacent to this site are unknown and would require additional surveys. As mentioned in Section 2.1-1, shrimpers appear to generally work within and on the edge of the entrance channel out to near the ODMDS disposal zone, and then they either head north or south and loop back inland (Mark Messersmith, Charleston District, USACE pers. corr. with Wayne Magwood, President, Magwood Seafood). Based on this information, it appears this site is outside of primary shrimping grounds.

The predominant net sediment transport is generally from NE to SW and is influenced by local and regional wind and current patterns as well as periodic storm events. Therefore, disposal of dredged material in a site located on the north side of the entrance channel may result in sediment transport into the channel. Alternative 3 is 7 mi (6 nmi) farther offshore than Alternative 1, which would significantly increase transit times and fuel costs. This site is also in close proximity to the anchorage area, which could impact transit routes to and from the ODMDS. Primarily due to concerns about dredged material being deposited back into the entrance channel, increased transportation costs, and the need for additional surveys to assess

hardbottom and cultural resources, this alternative is eliminated from further consideration for this proposed action.

3. Alternative 4: Disposal off the continental shelf

The continental slope is approximately 55 nmi offshore of Charleston. Disposal off the continental shelf (shelf break) was evaluated in detail the 1983 ODMDS Designation EIS document. In comparison to locating the site in the nearshore region, it was determined that monitoring and surveillance would be more difficult and expensive in the shelf break area because of the distance from shore to the deeper waters. There would be a likelihood of a higher frequency of rough weather that could hinder disposal and monitoring operations.

Alternative 4 was considered during initial alternatives analysis; however, transporting material to and performing long-term monitoring of a site located off the continental shelf is not economically or operationally feasible; therefore, disposal off the continental shelf is eliminated from further consideration for this proposed action.

4. Alternative 5: Upland disposal

Upland disposal is an important option for maintenance dredged material removed from the federal navigation channel. To ensure that adequate project depth is maintained throughout the navigation channel within Charleston Harbor, USACE uses several upland placement areas to meet dredged material disposal needs within certain reaches of the harbor. The sites are adjacent to the Cooper River in the vicinity of the shoaling areas, allowing for the economical transfer of dredged material from the shoaled areas. The upland placement areas require the maintenance and construction of dikes to contain dredged material and monitoring to provide conformance with environmental requirements. Dredged material is pumped into the sites and the excess surface water is clarified by ponding and then released through weir structures.

Upland and ocean disposal site capacity were evaluated as part of the Charleston Harbor Post 45 Deepening IFR/EIS. Upland sites will continue to be used and dikes will need to be raised to provide additional capacity at these sites. Based on recent analysis conducted in 2014, assuming on-going dike raising efforts continue, there is sufficient capacity for at least the next 20 years. However even with dike raising, it was determined that additional ocean disposal capacity will be needed to accommodate continued dredged material operations and maintenance in the future.

Alternative 5 was considered during initial alternatives analysis; however, even with dike raising efforts upland capacity and land for new disposal areas are limited. Although upland disposal has been eliminated from further evaluation in this EA, it remains an option for disposal of maintenance material from various reaches when economically feasible and capacity is available or if dredged material is unsuitable for ocean disposal. Each dredging project will be evaluated separately to determine if upland disposal is an option. A MPRSA Section 103 evaluation was conducted on the new work material, and it was determined to be suitable for ocean disposal. Therefore, dredged material generated from the deepening project is expected to be disposed at the ODMDS.

5. Alternative 6: Beach nourishment, nearshore placement, and other beneficial uses

The Federal Government has placed considerable emphasis on using dredged material in a beneficial manner. Statutes such as the Water Resources Development Acts of 1992, 1996, 2000, and 2007 demonstrate that beneficial use has been a Congressional priority. USACE has emphasized the use of dredged material for beneficial use through such regulations as 33 CFR part 335, ER 1105-2-100, and ER 1130-2-520 and by Policy Guidance Letter No. 56. ER 1105-2-100 states that “all dredged material management studies include an assessment of potential beneficial uses for environmental purposes including fish and wildlife habitat creation,

ecosystem restoration and enhancement and/or hurricane and storm damage reduction.” In accordance with ER 1105-2-100, USACE is considering beneficial use of dredged material as part of the Charleston Harbor Post 45 Project. Potential beneficial uses include:

- ODMDS berm creation
- Reef placement
- Crab Bank enhancement
- Shutes Folly enhancement
- Nearshore placement off Morris Island
- Protection of Ft. Sumter

Details on volumes and construction methods for other beneficial use projects will be evaluated during the pre-construction, engineering, and design (PED) phase.

Alternative 6 was considered during initial alternatives analysis; however, the majority of the material dredged from the Charleston Harbor Navigation Project is not suitable for beach nourishment, nearshore placement, or other beneficial uses. This alternative alone does not meet the project need for additional disposal capacity for material dredged during the proposed deepening project or annual maintenance material. Therefore, this alternative is eliminated from further consideration for this proposed action. However, a portion of rock material dredged from the entrance channel is proposed to be used to construct the berms along the perimeter of the Alternative 1 site to minimize sediment transport from the site. The added benefit associated with berm construction includes hardbottom habitat creation.

6. No Action Alternative

The No Action Alternative is defined as not modifying the existing Charleston ODMDS disposal zone pursuant to MPRSA Section 102. The current capacity of the existing 4-mi²

disposal zone within the ODMDS is approximately 29.5 mcy (USACE 2014b). If no action is taken, the estimated volume of dredge material from the Post 45 deepening project that is slated for ocean disposal will fill the existing Charleston ODMDS almost to capacity. There would not be enough capacity left for disposal of O&M projects that are expected to generate approximately 1.4 mcy of dredge material per year. The No Action Alternative could result in limiting the long-term use of the site and the amount of dredged material that could be removed from the Charleston Harbor navigation channels and berths per dredging event. This, in turn, could impact operations by restricting vessel drafts and access to areas that were unable to be dredged to authorized project depths. The No Action Alternative fails to fulfill the need and objective to provide a long-term ocean disposal option for suitable dredged material generated from new projects and maintenance projects in support of the Charleston Harbor Federal Navigation Project and other local users. The availability of suitable ocean disposal sites to support ongoing navigation channel maintenance and capital improvement projects is essential for continued efficient commerce in the region. The No Action Alternative does not meet the proposed action's purpose and need. However, it was evaluated in the FEIS as a basis to compare the effects of the other alternatives considered.

7. Preferred Alternative: Modification of the Existing Charleston ODMDS

The proposed ODMDS modification consists of the addition of a 5.8-mi² area (4.4 nmi²) along the northern, eastern, and southern boundaries of the existing Charleston ODMDS disposal zone. This area would be added to the existing 4-mi² (3 nmi²) disposal zone and would be designated for disposal of dredged material from the future harbor deepening projects and routine maintenance material from the Charleston Harbor Navigation Project and other local users. The new Charleston ODMDS would have a total area comprising 9.8 mi². Within the

larger ODMDS, a dump zone is proposed that will serve as the boundaries that ocean dumping will occur in. This dump zone within the ODMDS was modeled using Long Term Fate and Multiple Placement Fate models. The EPA also proposes the de-designation of the remaining area within the boundaries of the existing 12 nmi² Charleston ODMDS (parallelogram) located primarily in the western portion of the site that is not included in the disposal zone or the proposed modification area. The area to be de-designated is approximately 10.4 mi² (7.8 nmi²) in size and contains documented hardbottom habitat.

The Final EA presents the information needed to evaluate the suitability of ocean disposal areas for final designation use and is based on a series of disposal site environmental studies. The environmental studies and final designation are being conducted in accordance with the requirements of MPRSA, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

b. MSA

The EPA integrated the essential fish habitat (EFH) assessment with the EA, pursuant to Section 305(b), 16 U.S.C. 1855(b)(2), of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d, and submitted that assessment to the National Marine Fisheries Service (NMFS) on December 4, 2015. The NMFS responded via letter that they have no comments on the proposed project.\

CZMA

Pursuant to an Office of Water policy memorandum dated October 23, 1989, the EPA has evaluated the proposed site designations for consistency with the State of South Carolina's (the State) approved coastal management program. The EPA has determined that the designation of the proposed site is consistent to the maximum extent practicable with the State coastal

management program, and submitted this determination to the State for review in accordance with the EPA policy. The State conditionally concurred with this determination on February 17, 2016. The EPA has taken the State's comments into account in preparing the FEA for the site, in determining whether the proposed site should be designated, and in determining whether restrictions or limitations should be placed on the use of the site, if they are designated.

ESA

The Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with NMFS and the U.S. Fish and Wildlife Service (USFWS) to ensure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of any critical habitat. The EPA incorporated a Biological Assessment (BA) into the EA to assess the potential effects of expanding the Charleston ODMDS on aquatic and wildlife species and submitted that document to the NMFS and USFWS on December 4, 2016. The EPA concluded that the proposed project would not adversely affect any threatened or endangered species, nor would it adversely modify any designated critical habitat. The USFWS concurred on the EPA's finding that the proposed action is not likely to adversely affect listed endangered or threatened species under the jurisdiction of the USFWS. The NMFS concluded the proposed action is not likely to adversely affect listed species under their jurisdiction.

c. NHPA

The USACE and the EPA initiated consultation with the State of South Carolina's Historic Preservation Officer (SHPO) on December 4, 2015, to address the National Historic Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a-2, which requires Federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in,

or eligible for inclusion in the National Register of Historic Places (NRHP). In a letter dated January 6, 2016, the SHPO determined that no properties listed in or eligible for listing in the National Register of Historic Places will be affected by the project.

IV. Statutory and Executive Order Reviews

This rulemaking proposes the designation of a modified ODMDS pursuant to Section 102 of the MPRSA. This proposed action complies with applicable executive orders and statutory provisions as follows:

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

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

- b. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This proposed site designation, does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

- c. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small

governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA determined that this proposed action will not have a significant economic impact on small entities because the proposed rule will only have the effect of regulating the location of site to be used for the disposal of dredged material in ocean waters. After considering the economic impacts of this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

d. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

e. Executive Order 13132: Federalism

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

specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicited comments on this proposed action from State and local officials.

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

This proposed action does not have tribal implications, as specified in Executive Order 13175 because the modification of the Charleston ODMDS will not have a direct effect on Indian Tribes, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action. The EPA specifically solicits additional comments on this proposed action from tribal officials.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5-501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The proposed action concerns the modification of the Charleston ODMDS and only has the effect of providing a designated location for ocean disposal of dredged material pursuant to Section 102 (c) of the MPRSA. However, we welcome comments on this proposed action related to this Executive Order.

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

This proposed action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355) because it is not a "significant regulatory action" as defined under Executive Order 12866. However, we welcome comments on this proposed action related to this Executive Order.

i. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed action includes environmental monitoring and measurement as described in EPA's proposed SMMP. The EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the designated ODMDS. The Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the proposed SMMP. The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this proposed action.

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

Executive Order 12898 (59 FR 7629) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The EPA has assessed the overall protectiveness of modifying the Charleston ODMDS against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable. We welcome comments on this proposed action related to this Executive Order.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: June 22, 2016.

Heather McTeer Toney

Regional Administrator, Region 4.

For the reasons set out in the preamble, the EPA proposes to amend chapter I, title 40 of the Code of Federal Register as follows:

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

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

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

2. Section 228.15 is amended by revising paragraphs (h)(5)(i) through (iii) and (vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(5) * * *

(i) *Location:* 32° 36.280' N, 79° 43.662' W; 32° 21.514' N, 79° 46.576' W; 32° 20.515' N, 79° 45.068' W; 32° 20.515' N, 79° 42.152' W.

(ii) *Size:* Approximately 7.4 square nautical miles in size.

(iii) *Depth:* Ranges from approximately 30 to 45 feet (9 to 13.5 meters).

* * * * *

(vi) *Restrictions:* (A) Disposal shall be limited to dredged material from the Charleston, South Carolina, area;

(B) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13;

(C) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(D) Monitoring, as specified in the SMMP, is required.

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[FR Doc. 2016-16584 Filed: 7/12/2016 8:45 am; Publication Date: 7/13/2016]