

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA-R09-OW-2020-0188; FRL-10009-64-Region 9]

**Ocean Dumping: Modification of an Ocean Dredged Material Disposal Site Offshore of
Humboldt Bay, California**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to modify the boundaries of the existing EPA-designated Humboldt Open Ocean Disposal Site (referred to hereafter as HOODS) offshore of Humboldt Bay, California, pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). The primary purpose for the site modification is to enlarge the site to serve the long-term need for disposal of permitted, suitable material dredged from Humboldt Harbor and vicinity, in order to provide for continued safe navigation in the vicinity of Humboldt Bay. The modified site will be subject to 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-R09-OW-2020-0188**, by one of the following electronic 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: ross.brian@epa.gov

- Mail: Note that due to the ongoing COVID-19 pandemic EPA's office building in San Francisco is closed, and physical mail may not be received for some time. Therefore, written comments should be submitted by one of the electronic methods listed above. If you are unable to access email, please contact Brian Ross via the phone number listed below and he will assist you in determining how to best to submit your comments.

Instructions: Direct your comments to Docket ID No. **EPA-R09-OW-2020-0188**. 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. 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: The Environmental Assessment (EA) supporting this proposed action, and other publicly available docket materials, are accessible electronically at www.regulations.gov, and also on the EPA Region 9 web page: <https://www.epa.gov/ocean-dumping/humboldt-open-ocean-disposal-site-hoods-documents>.

FOR FURTHER INFORMATION CONTACT: Brian Ross, U.S. Environmental Protection Agency Region 9, Water Division, Dredging & Sediment Management Team, 75 Hawthorne Street, San Francisco, California 94105; phone number (415) 972-3475; e-mail: ross.brian@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 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 Humboldt Bay, California. 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 ...	USACE Civil Works projects, and other Federal agencies
Industry and general public ...	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners

State, local and tribal governments ...	Governments owning and/or responsible for ports, harbors, and/or berths, government agencies requiring disposal of dredged material associated with public works projects
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This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this proposed action. For any questions regarding the applicability of this proposed action to a particular entity, please refer to the contact person listed in the preceding “FOR FURTHER INFORMATION CONTACT” section.

II. Background

a. History of ocean disposal offshore Humboldt Bay, California

HOODS is currently the only designated ocean dredged material disposal site (ODMDS) off the coast of Humboldt Bay, California. The existing HOODS is located three to four nautical miles (nmi) offshore Humboldt Bay, and is currently 1.0 square nautical mile (nmi²) in size. HOODS originally received final designation by the EPA in 1995. Since that time an average of one million cubic yards (cy) of dredged material has been disposed at HOODS each year. The great majority of this material has been sand dredged by USACE from the Humboldt Harbor entrance channel. The dredged sand that has been disposed at HOODS has mounded to the point where the existing site is now effectively reaching full capacity. The USACE San Francisco District and EPA Region 9 have identified a need to expand the capacity of HOODS so that ongoing dredging can continue to provide for safe navigation in and around Humboldt Bay. The need for modifying current ocean disposal capacity is based on historical dredging volumes, estimates of future dredging needs, and limited current capacity of alternatives to ocean disposal in the area.

The EPA is proposing to expand the existing HOODS boundaries rather than designate a new ocean disposal site off the coast of Humboldt Bay. Monitoring studies at HOODS have confirmed that there have been no significant adverse environmental consequences of disposal in this area, and that there are no unique or limited habitats, features, or uses of the ocean that would be affected by expanding the site. Note that proposed expansion of the existing HOODS boundary does not by itself mean that dredged material from any specific project will necessarily be approved to be disposed at the site. Before any person can ocean dump dredged material at either the existing HOODS or at the proposed expanded HOODS in the future, the EPA and the USACE must evaluate the project according to the ocean dumping regulatory criteria (40 CFR 227) and the USACE must authorize the disposal under section 103 of the MPRSA. 33 U.S.C. § 1413(b). The USACE relies on the EPA's ocean dumping criteria when evaluating permit requests for (and implementing federal projects involving) the transportation of dredged material for the purpose of dumping it into ocean waters. MPRSA permits and federal projects involving ocean dumping of dredged material are subject to the EPA's review and concurrence in accordance with 33 U.S.C. § 1413(c). The EPA may concur with or without conditions or decline to concur (i.e., non-concur) on the permit. If the EPA concurs with conditions, the final permit or authorization must include those conditions. If the EPA declines to concur, the USACE cannot issue the permit for ocean dumping of dredged material or authorize the disposal.

The Environmental Assessment (EA) supporting this proposed action, along with other publicly available docket materials, are available for public review and are accessible electronically at www.regulations.gov, and also on the EPA Region 9 web page:

<https://www.epa.gov/ocean-dumping/humboldt-open-ocean-disposal-site-hoods-documents>.

b. Location and Configuration of the Proposed Expanded HOODS

This action proposes the modification (by expansion) of the existing HOODS. The proposed modified HOODS is in approximately -150 to -200 feet of water (-45 to -61 meters). The proposed modified boundaries would expand the existing HOODS from a size of 1.0 nmi² to 4.0 nmi² in size. The location of the proposed modified ODMDS is bounded by the coordinates listed below. The proposed coordinates for the site are in North American Datum 83 (NAD 83):

Proposed Modified HOODS Coordinates (NAD 83)

A) 40° 50.300' N, 124° 018.017' W

B) 40° 49.267' N, 124° 15.767' W

C) 40° 47.550' N, 124° 17.083' W

D) 40° 48.567' N, 124° 19.300' W

The proposed modification of the existing HOODS boundary will allow the EPA to adaptively manage the site to maximize its capacity, manage mounding and loss of fine sediments outside of the site, and minimize the potential for any long-term adverse effects to the marine environment.

c. Management and Monitoring of the Site

The proposed modified ODMDS is expected to continue to receive suitable dredged material from the Federal navigation project at Humboldt Harbor, California, and suitable dredged material from other local and regional dredging applicants who obtain an MPRSA permit for the disposal of dredged material at the site. Under the Ocean Dumping regulations (40 CFR 228.3(b)) EPA is responsible for the management of all ocean disposal sites designated under the MPRSA. Management of the ocean disposal sites consists of regulating the times, quantity and characteristics of the material dumped at the site; establishing disposal controls, conditions and requirements to avoid and minimize potential impacts to the marine environment;

and monitoring the site and surrounding environment to verify that unanticipated or significant adverse effects are not occurring from past or continued use of the ocean disposal site and that terms of the MPRSA permit are met. All persons using HOODS would be required to follow any project-specific permit conditions, as well as provisions of the Site Management and Monitoring Plan (SMMP) for the modified site as identified or incorporated into a permit or Federal project. The draft SMMP is currently available for review as an appendix to the EA, and separately at <https://www.epa.gov/ocean-dumping/humboldt-open-ocean-disposal-site-hoods-documents>. It includes management and monitoring considerations to ensure that disposal activities will not unreasonably degrade or endanger the marine environment, human health, welfare, or economic potentialities. The draft SMMP for the proposed modified ODMDS also includes management conditions to ensure adverse mounding does not occur at the site. The SMMP will be finalized by the EPA Region 9 and the USACE San Francisco District following finalization of the site modification rule and consideration of any comments received on this proposed rule and the draft SMMP.

d. MPRSA criteria

In evaluating the proposed modified HOODS, the EPA assessed the site according to the criteria of the MPRSA, with emphasis on the general and specific regulatory criteria of 40 CFR Part 228, to determine whether the proposed site designation satisfies those criteria. The EA provides a detailed evaluation of the criteria and other related factors for the modification of the existing ODMDS.

General Criteria (40 CFR 228.5)

(a) 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)).

The original 1995 site designation identified the HOODS location as having the least potential for adverse impacts to important fish and shellfish resources (particularly including smelt, flatfish, and decapods which are all most abundant in waters shallower than 50 m in the area, closer to shore). In addition, as part of development of the EA supporting this proposed rule, the EPA completed informal consultation with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS), and confirmed that ongoing use of the proposed modified HOODS would continue to avoid adverse effects on existing fisheries, shellfisheries, or habitats of concern. In addition, expansion of HOODS will ensure that mounding of disposed sand does not occur to the extent that the wave climate near the Humboldt entrance channel is altered and adversely affects navigation conditions. The proposed action therefore satisfies this MPRSA criterion.

(b) 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 HOODS modification area will be used for disposal of suitable dredged material as determined by Section 102 of the MPRSA, 33 U.S.C. § 1412, and the Ocean Dumping Criteria published at 40 CFR 220-228. Based on the USACE and EPA dredged material testing and evaluation procedures, disposal of dredged maintenance material and

proposed new work material is not expected to have any significant impact on water quality.

The existing and proposed modified HOODS boundaries are located sufficiently far from shore and fisheries resources to allow temporary water quality disturbances caused by disposal of dredged material to be reduced to ambient conditions before reaching any environmentally sensitive areas.

(c) 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 HOODS boundaries provide long-term capacity, while also permitting effective site management, site monitoring, and limiting environmental impacts to the surrounding area to the greatest extent practicable.

The EA supporting this proposed action considered two alternatives for expanding HOODS: expansion by 0.5 nmi to the north and west; and expansion by 1.0 nmi to the north and west (the proposed action). Under the proposed action, the effective total capacity of the site would increase from the original 25 million cy to over 100 million cy (i.e., allowing for 75 million cy of additional disposal to occur), before mounding to -130 feet could again occur across the entire site. If today's disposal practices were to continue unchanged (i.e., if an average of 1 million cy of entrance channel sand per year were to continue being disposed of at HOODS indefinitely), the site would reach capacity again in about 75 years. In contrast, the smaller expansion alternative would provide effective capacity for about 30 years of disposal. This smaller footprint would also limit on-site management options compared to the proposed action.

When determining the size of the proposed modified site, the ability to implement effective monitoring and surveillance programs was considered to ensure that the environment of the site could be protected, and that navigational safety would not be compromised by the mounding of dredged material. The EPA and USACE have demonstrated that the proposed modified HOODS area is feasible to manage and monitor, as shown by successful surveys in 2008 and 2014. The draft SMMP (Appendix D of the EA) describes the future monitoring and management activities that the EPA and USACE will implement to confirm that disposal at the site is not significantly affecting adjacent areas.

(d) 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 shelf break is approximately 10 nmi offshore at Eureka, California. The Zone of Siting Feasibility (ZSF) analysis prepared by USACE in support of the original (1995) HOODS designation determined that an economically practicable ocean disposal site serving Humboldt Harbor could not be located off the continental shelf, but rather would have to be within approximately 4 nmi from the ends of the entrance channel jetties. The existing HOODS boundary is 2.5 to 3.7 nmi from these jetties. The proposed modified HOODS boundary will extend from 3 nmi to 5 nmi from the jetties. While portions of the proposed modified site will be slightly beyond the original ZSF threshold of 4 nmi, the expansion area remains as close to the entrance channel as practicable while allowing capacity for future disposal needs without creating potentially unsafe mounding. Also, the proposed modified HOODS will occur immediately adjacent to where disposal of virtually identical dredged material has occurred for the past 25 years. This allows the least area to be disturbed overall from ongoing and future disposal activity.

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 HOODS is on the continental shelf three to five nmi offshore of Eureka, California, in water depths of approximately 150 to 200 feet (45 to 61 m). The seafloor in this area is comprised of a gently sloping, essentially featureless sedimentary plain that grades evenly from fine sand in shallower depths to silts in deeper areas. The EA contains a map of the proposed modified HOODS boundaries.

(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 HOODS area provides feeding and breeding areas for common resident benthic organisms, fish, marine mammal, turtle, and seabird species. However, the proposed modified HOODS boundaries have been selected to avoid the presence of any unique or limited breeding, spawning, nursery, feeding, or passage areas for adult or juvenile phases of living resources and designation of the site is not expected to affect any geographically limited (i.e., unique) resources or habitats. Informal Endangered Species Act (ESA) consultation with USFWS, and both ESA and Essential Fish Habitat (EFH) consultations with NMFS, confirmed that ongoing disposal operations in an expanded HOODS will not have significant impacts to sensitive living resources or their habitats.

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

The proposed modified HOODS boundaries begin at approximately three nmi offshore and the square site extends two nmi further offshore. The proposed site is therefore well removed from beaches or amenity areas, and currents in the area are not expected to transport

material disposed at HOODS toward shore. No significant impacts to beaches or amenity areas associated with use of the existing HOODS have been detected.

(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 suitable dredged material that meets the Ocean Dumping Criteria in 40 CFR 220-228 and receives a permit or is otherwise authorized for dumping by the USACE, and concurred with by EPA, will be disposed in the proposed modified HOODS. Dredged materials dumped in this area will be primarily sand with some fines, and most will originate from Humboldt Harbor. Average yearly disposal of dredged material is expected to continue to be approximately 1,000,000 cubic yards, primarily by government owned or contracted hopper dredges. None of the material is packaged in any manner. If a Nearshore Sand Placement Site (NSPS) is established nearby in the future, the volume of sand disposed at HOODS could substantially decrease.

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

The EPA expects monitoring and surveillance at the proposed modified HOODS to continue to be feasible and readily performed from ocean or regional class research vessels. The area of the proposed modified HOODS has been successfully surveyed and sampled in 2008 and 2014. The EPA and USACE will continue to periodically monitor the site for physical, biological and chemical attributes, as described in the draft SMMP for the proposed modified site.

(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)).

Ocean current monitoring in the vicinity of HOODS has confirmed both up- and down-coast current directions (depending on the season), with near-surface current velocities on the order of 25 cm/sec (0.5 knot), and deeper-water current velocities of 20 cm/sec (0.4 knot) at 45 meters deep and 15 cm/sec (0.3 knot) at the bottom. These current conditions have not adversely affected the ability to successfully and precisely dispose of dredged material permitted or authorized for disposal at HOODS in the past nor are they expected to affect disposal in the future.

(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 at the existing HOODS has resulted in mounding of sand and burial of benthic organisms within the site but no discernable physical, chemical, or biological effects outside the site. Water quality effects from active disposal are temporary, spatially limited, and return to background levels prior to the next disposal event. Short-term, long-term, and cumulative effects of dredged material disposal in the proposed modified ODMDS would be negligible, and similar to those for the existing HOODS.

The only discharge in the vicinity of HOODS is from DG Fairhaven Power LLC's Fairhaven Power Facility on the Samoa Peninsula. Fairhaven Power is permitted to discharge a maximum of 0.35 million gallons per day of powerplant-related process water, cooling tower water, and other wastewater under terms of their current National Pollutant Discharge Elimination System (NPDES) permit No. CA0024571, issued by the State of California's North Coast Water Board. The company discharges through an existing outfall into ocean waters adjacent to the Samoa Peninsula. The NPDES permit prohibits discharging wastewater in violation of effluent standards or prohibitions established under Section 307(a) of the Clean

Water Act, and it also prohibits discharging sewage sludge. The outfall is located approximately 3.5 nautical miles (6.5 kilometers) east of the HOODS. Prevailing nearshore currents would direct discharge plumes from this outfall up or down the coast, depending of the seasonal current regime, not offshore towards the HOODS. The EPA believes that there will be no adverse cumulative or synergistic impacts from the use of HOODS and discharges from the outfall described.

(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)).

Minor, short-term interferences with commercial and recreational boat traffic may occur within Humboldt Harbor during dredging operations. However, interference as a result of the transport and disposal of dredged material to HOODS would be even less because disposal vessels move slowly, remain in established navigation channels, and operations are announced via U.S. Coast Guard Notice to Mariners. There may be minor, temporary interferences with recreational fishing in the area during disposal operations, but HOODS is not closed to fishing or other uses. HOODS has not been identified as an area of special scientific importance. There are no aquaculture areas near the site. The likelihood of direct interference with these activities is therefore negligible.

(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 at the existing HOODS is typical of waters offshore of the northern California coast. Monitoring conducted in the vicinity of the proposed modified HOODS and experience with past disposals in the existing HOODS have not identified any adverse water

quality impacts from ocean disposal of dredged material. Water column plumes associated with disposal events rapidly return to background, before subsequent disposal events occur. The seafloor in this area is comprised of a gently sloping, essentially featureless sedimentary plain that grades evenly from fine sand in shallower depths to silts in deeper areas. The existing HOODS supports benthic and epibenthic fauna characteristic of the region, but there are no unique or limited habitats in the vicinity. No adverse impacts to benthos outside the disposal site have been identified based on comprehensive monitoring.

(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 HOODS. Disposal of dredged material, as well as monitoring, has been ongoing for the past 25 years. The dredged material to be disposed at the proposed modified ODMDS is expected to be from similar locations to those dredged previously and disposed of at the existing site; therefore, it is expected that any benthic organisms transported to the site would be relatively similar in nature to those already present.

(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)).

EPA evaluated state records and coordinated with the California State Lands Commission concerning historic shipwrecks near HOODS. The EA documents that the nearest recorded shipwreck sites are close to shore and would not be affected by ongoing disposal at HOODS. In addition, USACE conducted a survey for potential shipwrecks near the existing HOODS in 1991 (prior to designation of the existing HOODS). The USACE survey identified three magnetic

anomalies that could potentially be associated with unrecorded shipwrecks. None of these anomalies has been buried by the existing HOODS disposal mound. The EPA collected high-resolution multibeam echo sounder data in 2014 at the locations of each magnetic anomaly, and confirmed that no debris, structures, or other material extended above the sediment surface at any of these locations. Because these anomalies do not extend above the surface now, and apparently have not since at least 1991, their exact character remains unknown. Ongoing disposal operations may effectively bury these features further but will not otherwise directly affect them.

III. Environmental Statutory Review

a. National Environmental Policy Act (NEPA)

The EPA's primary voluntary NEPA document for expanding the existing HOODS is the EA, prepared by the EPA in cooperation with the USACE and issued for public review simultaneously with this proposed rule. Anyone desiring to review the EA may access it at www.regulations.gov under Docket ID No. EPA-R09-OW-2020-0188, or at <https://www.epa.gov/ocean-dumping/humboldt-open-ocean-disposal-site-hoods-documents>. The EA and its Appendices provide the threshold environmental review for modification of HOODS. The EA discusses in detail the purpose and need for the proposed action and examines alternatives. The EPA determined that there would be no significant adverse impacts of implementing either of the action alternatives evaluated for expanding the existing HOODS.

The following three ocean disposal alternatives were considered in detail in the EA.

No Action Alternative

The No Action Alternative is defined as not modifying the size of the existing HOODS boundaries. This alternative would not address the need for an adequately sized ocean disposal

site to accommodate an annual average of 1,000,000 cy of ongoing and future dredging. Because there is no other currently available disposal site for this material, rapid shoaling of the entrance channel would quickly render navigation unsafe, significantly affecting the economy of the greater Eureka area. Increased wave action in the Harbor entrance would endanger commercial ships as well as fishing and recreational vessels. This situation would discourage shippers from using Humboldt Bay for commerce, because it requires additional vessel trips to accommodate “light-loaded” vessels, resulting in increased transportation costs, decreased vessel safety, and maneuvering problems. This would have a long-term adverse impact on the local economy. In addition, use of the Humboldt Harbor as a port of refuge could be affected. Finally, ship groundings caused by improperly maintained deep-draft channels could result in adverse ecological repercussions (i.e., oil and fuel spills). Although the No Action Alternative would not address the purpose and need for the proposed action, it was evaluated in the EA as a basis to compare the effects of the other alternatives considered.

Alternative 1: Expansion of HOODS by 1 nmi (Preferred Alternative).

Alternative 1, the Proposed Action, is to slightly reorient and expand the existing HOODS boundary by 1 nmi to the north (upcoast) and 1 nmi to the west (offshore). Alternative 1 is the Proposed Action because it would provide environmentally acceptable disposal capacity for many years, while also affording the most operational flexibility for managing the dredged material in a manner that would further minimize even physical impacts over time. This configuration would result in the total area of the site increasing from 1 square nmi to 4 square nmi. The effective total capacity of the site would increase from the original 25 million cy to over 100 million cy (i.e., allowing for 75 million cy of additional disposal to occur), before mounding to -130 feet could again occur across the entire site. If current disposal practices were

to continue unchanged (i.e., if 1 million cy of entrance channel sand per year were to continue to be disposed of at HOODS indefinitely), the modified site would reach capacity in about 75 years.

Alternative 2: Expansion of HOODS by ½ nmi.

Alternative 2 is the expansion of the existing HOODS boundary by 1/2 nmi to the north (upcoast) and 1/2 nmi to the west (offshore). This configuration would result in the total area of the site increasing from 1 square nmi to 2.25 square nmi. The effective total capacity of the site would increase from the original 25 million cy to approximately 56 million cy (i.e., allowing for approximately 31 million cy of additional disposal to occur), before mounding to -130 feet could again occur across the entire site. If current disposal practices were to continue unchanged (i.e., if 1 million cy per year of entrance channel sand were to continue to be disposed of at HOODS indefinitely), the modified site would reach capacity in about 31 years.

b. Magnuson-Stevens Act

The EPA submitted an EFH assessment to the NMFS, pursuant to Section 305(b), 16 U.S.C. §1855(b)(2), of the Magnuson-Stevens Fishery Conservation and Management Act, as amended, 16 U.S.C. §§ 1801 to 1891. The EPA determined that the expansion of HOODS by one nmi (the proposed action) will not significantly affect managed species or EFH. NMFS concurred with the EPA's determination, but included one Conservation Recommendation to further minimize potential impacts. Specifically, NMFS recommended continuing to manage future disposal at HOODS by expanding the mound while leaving other areas of the site undisturbed as long as possible, rather than purposely spreading disposal events throughout the site each year. The draft SMMP (available along with this proposed rule for public comment) discusses a proposed approach for implementing this NMFS Conservation Recommendation; the SMMP will be finalized after considering any comments on it and on this proposed rule.

c. Coastal Zone Management Act

The EPA will submit a Consistency Determination (CD) package to the California Coastal Commission (CCC) following the close of the public comment period on the Environmental Assessment and the proposed rule. The CD package will specifically address how the proposed action to expand HOODS is consistent to the maximum extent practicable with the California Coastal Act Chapter 3 policies. EPA will not take final action on the proposed HOODS expansion until CCC review of EPA's consistency determination is complete and any comments have been addressed to the maximum extent practicable.

d. Endangered Species Act

The ESA, as amended, 16 U.S.C. §§ 1531 to 1544, requires federal agencies to consult with NMFS and the 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 completed informal ESA consultations with USFWS and NMFS, and the consultations are included as an Appendix to the EA.

Based on those consultations, the EPA determined that the proposed action will have “no effect” on marine mammals, sea turtles and certain seabird species. The EPA further determined that the proposed action “may affect but is not likely to adversely affect” anadromous fish (including the SONCC Coho ESU, the CC Chinook Salmon ESU, the NC Steelhead DPS, Eulachon, and sDPS Green Sturgeon), marbled murrelet, and short-tailed albatross. The Services concurred with these findings and no additional mitigation measures were recommended beyond the avoidance and minimization aspects of the EPA mandatory disposal site use conditions which would apply to every project using HOODS (these conditions are included with the draft

SMMP, and relevant provisions of the SMMP would be identified or incorporated into subsequently issued permits and Federal projects).

e. National Historic Preservation Act

The National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 to 470a-2, requires federal agencies to consider 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). The depths of the proposed HOODS (approximately 150-200 feet) generally excludes potential habitation or resources related to human settlements in this area. Historic shipwreck remnants do exist in the general vicinity, but none would be affected by ongoing disposal activities within the expanded HOODS boundaries.

IV. Statutory and Executive Order Reviews

This rule proposes to modify the HOODS by expanding the boundaries of the existing site pursuant to Section 102 of the MPRSA, 33 U.S.C § 1412. 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. Executive Order 13089: Coral Reef Protection

Executive Order 13089 on Coral Reef Protection directs agencies "to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems

and the marine environment." This EO does not apply to this action because there are no coral reef ecosystems in the HOODS area.

c. Paperwork Reduction Act

This proposed 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 modification does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a federal agency.

d. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 expanding an existing site in order to allow ongoing disposal of dredged material in ocean waters. After considering the economic impacts of this proposed rule, the EPA certifies that this

proposed action will not have a significant economic impact on a substantial number of small entities.

e. 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 proposed action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this proposed action is not subject to the requirements of sections 202 or 205 of the UMRA. This proposed 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.

f. 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 proposed action. In the spirit of Executive Order 13132, and consistent with the 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.

g. 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 existing HOODS 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. In addition, the depths of the proposed HOODS (approximately 150 to 200 feet) generally excludes potential habitation or resources related to human settlements. Thus, Executive Order 13175 does not apply to this action. Nevertheless, the EPA specifically solicited input from officials of 10 potentially interested tribal governments during the scoping phase of this action. The EPA is now actively soliciting comments from these tribes on this proposed action, as well as any comments related to this Executive Order.

h. 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. However, the EPA welcomes comments on this proposed action related to this Executive Order.

i. Executive Order 13211: Actions Concerning Regulations 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.

j. 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 Office of Management and Budget, 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 the EPA’s proposed SMMP. The EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the proposed modified HOODS. 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 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.

k. 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 existing HOODS 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. The EPA welcomes 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:

John W. Busterud,

Regional Administrator, EPA Region 9

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 (l)(10) (i) through (vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(l) * * *

(10) Humboldt Open Ocean Disposal Site (HOODS) Ocean Dredged Material Disposal Site—
Region IX.

(i) *Location:* The coordinates of the four corners of the square site are: 40° 50.300' North latitude (N) by 124° 018.017' West longitude (W); 40° 49.267' N by 124° 15.767' W; 40° 47.550' N by 124° 17.083' W; and 40° 48.567' N by 124° 19.300' W (North American Datum from 1983).

(ii) *Size:* 4 square nautical miles (13.4 square kilometers).

(iii) *Depth:* Water depths within the area range between approximately 150 to 200 feet (45 to 61 meters).

(iv) *Use Restricted to Disposal of:* Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 220-228.

(v) *Period of Use:* Continuing use over 50 years from date of site designation, subject to restrictions and provisions set forth in paragraph (1)(10)(vi) of this section.

(vi) *Restrictions/Provisions:* Site management and monitoring activities shall be implemented during the period of site use in accordance with the permit or Federal project that identifies or incorporates the most recent Site Management and Monitoring Plan (SMMP) for the HOODS published by EPA in consultation with USACE, and as may be modified in EPA concurrences for individual projects disposing at HOODS. The SMMP may be periodically revised as necessary; proposed substantive revisions to the SMMP shall be made following opportunity for public review and comment.

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