

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES—Continued

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
214.102 .....	Abbreviations and Units .....	12/7/2015	2/1/2018, 83 FR 4591 .....	
214.103 .....	Definitions .....	12/7/2015	2/1/2018, 83 FR 4591 .....	
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 228**

[EPA-R01-OW-2017-0528; FRL-9978-51—Region 1]

**Ocean Disposal; Temporary Modification of an Ocean Dredged Material Disposal Site in Massachusetts Bay**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a temporary modification of the boundaries of the Massachusetts Bay Dredged Material Disposal Site (MBDS) pursuant to the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended. The purpose of this temporary site

modification is to allow for the environmental restoration of a particular area adjacent to the MBDS (Potential Restoration Area) by temporarily expanding the boundaries of the existing MBDS. The temporary expansion is a circular area that contains the Potential Restoration Area, which includes most of the historic Industrial Waste Site (IWS). Decades ago, the IWS was used for the disposal of barrels containing industrial, chemical and low-level radioactive waste, as well as for the disposal of munitions, ordnance, construction equipment, and contaminated dredged material. The modification of the disposal site boundary will enable the U.S. Army Corps of Engineers (USACE) to place suitable dredged material generated from the Boston Harbor Deep Draft Navigation Project at the Potential Restoration Area in order to cover the barrels and other wastes disposed there in the past. This is expected to improve environmental conditions at the site. The Deep Draft Navigation Project includes improvement dredging of the

main ship channel, which will generate approximately 11 million cubic yards (cy) of dredged material. The existing MBDS will continue to be used for disposal of other dredging projects, as usual. The expansion area will permanently close upon completion of the Boston Harbor Deep Draft Navigation Project, while the existing MBDS will remain open for the disposal of other suitable dredged material. Like the MBDS, however, the expansion area will be subject to ongoing monitoring and management to monitor the recovery of the area and to ensure continued protection of the marine environment.

**DATES:** The effective date of this rule is June 28, 2018.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R01-OW-2017-0528. All documents in the docket are listed on the <https://www.regulations.gov> website or on the EPA Region 1 MBDS web page at <https://www.epa.gov/ocean-dumping/massachusetts-bay-industrial-waste-site-restoration-project>. Although listed in

the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>. They are also available in hard copy during normal business hours at the EPA Region 1 Library, 5 Post Office Square Boston, MA 02109.

The supporting document for this site modification is the *Final Environmental Assessment on the Proposed Expansion of the Massachusetts Bay Ocean Dredged Material Disposal Site and Finding of No Significant Impact*, May 2018, which was prepared by EPA.

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**SUPPLEMENTARY INFORMATION:**

**I. Potentially Affected Persons**

The expansion of the MBDS is a temporary modification made in order to improve environmental conditions at the Potential Restoration Area by allowing suitable dredged material from the USACE Boston Harbor improvement project to be placed over wastes dumped in the past at the historic IWS. The USACE are persons potentially affected by this action, as they are responsible for the Boston Harbor Deep Draft Navigation Project and the disposal of dredged material into ocean waters under MPRSA. The existing MBDS will continue to be used for the disposal of dredged material from other projects that is suitable for ocean disposal pursuant to the MPRSA. This action will also impact those fishermen who utilize the historic IWS for fishing, despite posted warnings, by helping to reduce the risk of potential injury resulting from the inadvertent retrieval of wastes from the IWS in their nets. There have been documented instances of fishermen trawling up barrels in the IWS area and this action will lower the risk of that occurring in the future.

**II. Background**

*a. History of Disposal Sites in Massachusetts Bay*

The IWS is a disposal site in Massachusetts Bay approximately 20 nautical miles (nmi) east of Boston that was used in the past for disposal of a

variety of wastes that would not be permitted for disposal today. The IWS is a circular site with its center at 42°25.7' N, 70°35.0' W and a radius of 1 nmi. It is believed that disposal of derelict vessels, construction debris, commercial waste, and dredged material at the area may have begun in the early 1900s. There are records dating back to the 1940s documenting the disposal of radioactive, chemical and hospital waste, ordnance, munitions, etc. Use of the IWS was discontinued in 1977 and the site was officially de-designated in 1990 (55 FR 3688, February 2, 1990).

From 1977 through 1993, there was an Interim Massachusetts Bay Disposal Site for dredged material disposal with a center 1 nmi east of the IWS at 42°25.7' N, 70°34.0' W and a radius of 1 nmi. In 1993, the existing MBDS was designated by EPA with a center at 42°25.1' N, 70°35.0' W and a radius of 1 nmi, an area of 3.14 nmi<sup>2</sup>, and depth ranges from 82 to 92 meters (m). The MBDS overlaps the southern portion of the IWS, but avoids the known densest concentration of barrels, also known as the barrel field. The MBDS is used solely for the disposal of dredged material, primarily from Boston Harbor, but also from smaller harbors and navigation channels north and south of Boston.

The USACE will begin the Boston Harbor improvement dredging project in 2018. The project is expected to generate approximately 11 million cy of suitable dredged material consisting primarily of Boston blue clay and glacial till. EPA and USACE are proposing to use this dredged material beneficially by covering the area in and around the historic IWS barrel field to a depth of one to two meters. This will be accomplished utilizing a method of disposal developed and tested by the USACE, which is designed to prevent direct impact of sediment onto waste containers. This method of disposal is intended to reduce the risk of breaking barrels and resuspending potentially contaminated seafloor sediment.

Before any entity can dispose of dredged material at the MBDS, EPA and the USACE must evaluate the project according to the ocean dumping regulatory criteria (40 CFR 227) and determine whether to authorize the disposal. Under Section 103 of the MPRSA, disposal projects are authorized by the USACE and EPA independently evaluates proposed disposal projects and has the right to restrict and/or reject the disposal of dredged material if it determines that the environmental protection requirements under the MPRSA have not been met. This modification to the

MBDS site boundaries does not constitute an approval by EPA or USACE for open-water disposal of dredged material from any specific project. Thus, although the plan is that suitable material from the USACE's Boston Harbor improvement project would be placed at the temporary expansion area, any material proposed for disposal will have to go through project-specific review and approval.

*b. Location and Configuration of the Modified Ocean Dredged Material Disposal Site*

This Final Rule temporarily modifies the MBDS by expanding it to include the Potential Restoration Area, which encompasses the IWS barrel field. The expansion will be temporary, opening upon the effective date of the Final Rule and closing upon completion of the Boston Harbor Deep Draft Navigation Project. The temporarily expanded site will consist of two partially overlapping circles:

- Center 1—42°25.1' N, 70°35.0' W, 1 nautical mile radius (existing MBDS)
- Center 2—42°26.417' N, 70°35.373' W, 0.75 nautical mile radius (temporary expansion)

The area of the temporarily modified MBDS is 4.60 nmi<sup>2</sup> and the western edge is approximately 19 nmi east of Boston. Water depths at the modified site range from 70 to 91 m. Like the existing MBDS, the modified MBDS will not overlap, and is not expected to impact, the Stellwagen Bank National Marine Sanctuary (SBNMS).

*c. Response to Comments*

On September 22, 2017, EPA published a Proposed Rule proposing to temporarily modify the MBDS with a supporting Draft Environmental Assessment and opened a public comment period under Docket ID EPA-R01-OW-2017-0528. The comment period ended on October 23, 2017. EPA received eleven comments on the Proposed Rule and Draft Environmental Assessment. The comments received are listed below:

- Support of the temporary expansion of the MBDS (6 commenters);
- Boundaries of the temporary expansion of the MBDS overlap with the Neptune Deepwater Port (1 commenter);
- Importance of proceeding with disposal carefully to prevent breakage of barrels (4 commenters);
- Barrels may no longer exist on the seafloor (1 commenter);
- Sewage sludge should not be disposed in the ocean or used for capping (1 commenter);

- There is no evidence of contamination at the IWS (1 commenter);
- Disposing material further out into the ocean is a cheaper solution (1 commenter);
- Other disposal sites were not considered (1 commenter);
- The temporary expansion of the MBDS will eliminate fishable bottom (2 commenters);
- How to stay informed on the status of the project (2 commenters);
- Disposal could impact the health of the ecosystem (1 commenter);
- Typographic errors in Draft EA (1 commenter);
- Modification of the MBDS will change the size of the SBNMS (1 commenter);
- The Potential Restoration Area will increase with additional dredged material (1 commenter);
- The removal of barrels from the IWS was not considered as an alternative (2 commenters);
- Ensure that the disposal of dredged material and the temporary expansion is monitored (2 commenters);
- The Massachusetts Department of Marine Fisheries (MDMF) would like to consult on disposal time-of-year restrictions to minimize impact to cod spawning (1 commenter); and
- MDMF would like the USACE and EPA to continue participating in a working group exploring other opportunities for beneficial use of dredged material (1 commenter).

The responses to these comments can be found in the *Final Environmental Assessment on the Proposed Expansion of the Massachusetts Bay Ocean Dredged Material Disposal Site and Finding of No Significant Impact*, which is available on [Regulations.gov](http://Regulations.gov) and the EPA Region 1 MBDS web page: <https://www.epa.gov/ocean-dumping/massachusetts-bay-industrial-waste-site-restoration-project>.

#### *d. Management and Monitoring of the Site*

There will be two distinct areas of the modified MBDS: The existing MBDS and the temporary expansion. The existing MBDS will continue to be utilized as a dredged material disposal site for those projects generating dredged material suitable for open-water disposal under the MPRSA. The temporary expansion will be used solely for the disposal of suitable dredged material generated from the Boston Harbor improvement dredging project. Management of both the existing MBDS and the temporary expansion will abide by the Site Management and Monitoring Plan (SMMP) for the MBDS. The SMMP

includes management and monitoring requirements to ensure that the any dredged material placed at the sites is suitable for ocean disposal and that the adverse impacts of disposal, if any, are addressed to the maximum extent practicable. The SMMP for the MBDS includes restrictions on disposal vessel speeds, requirements for the presence of a marine mammal observer for each disposal event, and other guidelines to minimize any potential conflicts with threatened or endangered species and other uses or activities in this area.

#### *e. MPRSA Criteria*

EPA has assessed the temporary modification to the MBDS according to the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR 228.5 and 228.6, to determine whether the site modification satisfies those criteria. The *Final Environmental Assessment of the Proposed Expansion of the Massachusetts Bay Ocean Dredged Material Disposal Site and Finding of No Significant Impact* provides an extensive evaluation of the site selection criteria and other related factors considered for the modification of the MBDS, and a summary is included below.

#### General Criteria (40 CFR 228.5)

(a) *The dumping of materials into the ocean will be permitted only at sites or in areas selected to minimize the interference of disposal activities with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation.*

Since its designation in 1993, disposal at the MBDS has not interfered with other activities in the marine environment. It is anticipated that this also will be the case for the temporarily modified MBDS. The IWS has been closed by the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) since 1980 to the harvesting of surf clams and ocean quahogs. There is also a warning from NOAA and the Food and Drug Administration (FDA) on all nautical charts against harvesting fish and shellfish in the area. The expanded MBDS area has low recreational boater density and does not overlap with the shipping lanes into and out of Boston Harbor.

(b) *Locations and boundaries of disposal sites will be so chosen that temporary perturbations in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within*

*the site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.*

The modified MBDS will be used only for dredged material suitable for ocean disposal under the MPRSA. USACE also models disposal projects to evaluate their potential to violate water quality standards. The nearest shoreline to the modified MBDS is approximately eight nmi to the north. The prevailing current is not expected to transport dredged material to surrounding beaches or shores. Temporary changes caused by the physical movement of sediment through the water column will be reduced to ambient conditions before reaching any environmentally sensitive area. The SBNMS is immediately east of the site, but a steep bathymetric rise between the two features provides containment of dredged material in the deeper area known as Stellwagen Basin. There are no known geographically-limited fisheries or shellfisheries in the project area.

(d) *The sizes of ocean disposal sites will be limited in order to localize for identification and control any immediate adverse impacts and permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. The size, configuration, and location of any disposal site will be determined as a part of the disposal site evaluation or designation study.*

The size and configuration of the temporarily modified MBDS is specifically designed to allow for the IWS barrel field to be covered by suitable dredged material generated during the USACE Boston Harbor improvement project. The MBDS area has been monitored under the USACE Disposal Area Monitoring System (DAMOS) program since the late 1970s. Monitoring will continue at the temporarily expanded MBDS to prevent adverse long-range impacts.

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

The continental shelf is over 220 nmi east of Boston. Therefore, transporting material to, and performing long-term monitoring at, a site located off the continental shelf is not economically or operationally feasible. Moreover, taking material somewhere off the continental shelf will not help to isolate the wastes previously placed at the IWS. The

project area has been used for ocean disposal since at least the early 1900s.

Specific Criteria (40 CFR 228.6(a))

(1) *Geographical position, depth of water, bottom topography and distance from coast.*

The temporarily expanded MBDS is located in an area of Massachusetts Bay known as Stellwagen Basin and is approximately eight nmi from the nearest coastline in Gloucester, MA. The depth of the temporarily expanded site ranges from 70–91 m. The seafloor in the area is primarily flat and consists primarily of silt and clay. There are two large glacial knolls included within the boundaries of the temporary expansion, both roughly 20 m high. These knolls are not included in the Potential Restoration Area and, therefore, no disposal will take place on them. There is a smaller glacial knoll, approximately six m high, included within the boundaries of the Potential Restoration Area. The USACE is drafting a project design that will ensure that this feature will be avoided by disposal operations.

(2) *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.*

The MBDS area contains Essential Fish Habitat (EFH) for various fish species, and certain species of whale and sea turtle listed as either threatened or endangered under the Endangered Species Act (ESA) have been sighted in the vicinity of the MBDS. Furthermore, the entirety of Massachusetts Bay and most of the larger Gulf of Maine are designated as critical foraging habitat for the North Atlantic Right Whale by NMFS. At the same time, NMFS has determined that dredged material disposal at the MBDS would not impact any of these species and restrictions are in place to ensure their safety, including vessel speed limitations and the requirement that marine mammal observers accompany the USACE on vessels during disposal operations. Furthermore, any risk of contaminants entering the food web is expected to be minimized by the covering of the IWS barrel field.

(3) *Location in relation to beaches and other amenity areas.*

The closest beach to the temporarily expanded MBDS is 10 nmi away. The SBNMS is just east of the MBDS. Past dredged material disposal has not impacted the SBNMS and no impact to the SBNMS is expected with the temporary expansion of the MBDS.

(4) *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.*

The MBDS is only to be used for the disposal of dredged material that is suitable for ocean disposal under the MPRSA. The temporary expansion of the MBDS will only be used for suitable dredged material generated during the USACE Boston Harbor improvement project. Disposal within the temporary expansion will utilize a berm-building technique devised by the USACE in order to minimize the risk of barrel breakage or resuspension of potentially contaminated seafloor sediment.

(5) *Feasibility of surveillance and monitoring.*

The MBDS is monitored through the DAMOS program under the guidance of the SMMP. Disposal is also monitored through the National Dredging Quality Management Program to confirm accurate placement of dredged material. The area of temporary expansion will be included in the monitoring of the MBDS under the DAMOS program from the time of first disposal for as long as MBDS monitoring continues.

(6) *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.*

Current velocities range from 0–30 cm/s in the MBDS area. Currents are influenced by tides in a rotational manner, but net water movement is to the southeast. Regional dredged material is primarily made up of fine sand, silt, and clay. Dredged material generated during the USACE Boston Harbor improvement project is primarily Boston blue clay, which is cohesive and, therefore, settles rapidly. Minimal horizontal mixing or vertical stratification of dredged material occurs, resulting in low suspended sediment concentrations. Previous modeling of initial disposal indicates no adverse impacts in the water column or violations of water quality criteria. Previous studies have demonstrated the relative immobility of dredged material at the MBDS. Storms with the potential to cause sediment resuspension at the MBDS are rare in Massachusetts Bay.

(7) *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).*

Beginning in the early 1900s, the historic IWS was used for the disposal of industrial, chemical, medical, low-level radioactive, and other hazardous wastes, in addition to contaminated dredged material, construction debris, derelict vessels, etc. An Interim MBDS was designated in 1977 for the disposal of dredged material and it was closed in 1993, when the existing MBDS was designated following all the requirements of the MPRSA and

National Environmental Policy Act (NEPA). Studies and monitoring of the area have shown no significant impacts on water quality, sediment quality, or marine resources. More information regarding the effects of disposal in the area can be found in the *Final Environmental Assessment on the Proposed Expansion of the Massachusetts Bay Ocean Dredged Material Disposal Site and Finding of No Significant Impact*. The berm-building disposal technique designed by USACE is intended to limit the resuspension of potentially contaminated seafloor sediment or hazardous materials in the area. Furthermore, placing suitable dredged material generated during the USACE Boston Harbor improvement project on top of potentially contaminated materials dumped at the IWS in the past will isolate these potential contaminants under a protective layer of suitable sediments, consisting primarily of clay.

(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.*

Extensive shipping, fishing, recreational, and scientific research activities take place in Massachusetts Bay throughout the year. Dredged material disposal operations at the MBDS have not interfered with these activities and temporarily expanding the MBDS is not expected to interfere with these activities either. Due to the hazardous nature of material historically disposed in the IWS, a warning to fishermen against fishing and shellfishing in the area is already included on all nautical charts, and the area is closed for the harvesting of ocean quahogs and surf clams. Therefore, disposal operations in the area are not expected to interfere with any existing fishing activity. To the extent that fishermen ignore the warnings regarding the IWS, the proposed action will not create any greater interference because, as stated above, both fishing and dredged material disposal activities have long been carried out in the area of the MBDS without interference. Moreover, once the IWS barrel field is covered, the area should be safer for any fishermen who drag their nets through that area.

(9) *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.*

Monitoring at the disposal area has taken place since the late 1970s under the DAMOS program. Surveys at the MBDS have detected no significant differences in water quality or biological

characteristics in the disposal site and adjacent reference areas. A *Baseline Seafloor Assessment Survey for the Proposed Expansion of the Massachusetts Bay Disposal Site* was completed by the USACE in anticipation of this project and is available on the USACE DAMOS webpage at <http://www.nae.usace.army.mil/Missions/Disposal-Area-Monitoring-System-DAMOS/>.

(10) *Potentiality for the development or recruitment of nuisance species in the disposal site.*

There are no known components of dredged material or consequences of its disposal that would attract or result in the recruitment or development of nuisance species at the expanded MBDS. Nuisance species have not been detected in any survey of the area.

(11) *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.*

There are two known shipwrecks within the boundaries of the existing MBDS: a Coast Guard vessel and a 55-foot fishing boat. Both were intentionally sunk in 1981 and are not considered to be historically significant. Additional shipwrecks have been revealed in the general area during subsequent surveys, although there are no identified shipwrecks within the Potential Restoration Area. Disposal operations have avoided and will continue to avoid any shipwrecks in the project area by implementing a fifty-meter buffer around known shipwrecks within which no disposal will occur.

### III. Environmental Statutory Review

#### a. National Environmental Policy Act (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. When a federal agency evaluates an action that it plans to take and finds that it will not significantly affect the environment, it may issue an Environmental Assessment and a Finding of No Significant Impact (*i.e.*, an “EA/FONSI”).

NEPA does not apply to EPA designations of ocean disposal sites under the MPRSA because EPA’s actions under the MPRSA are exempt from the procedural requirements of NEPA through the functional equivalence doctrine. Nevertheless, as a

matter of policy, EPA undertakes a NEPA review for certain of its regulatory actions, including the designation of dredged material disposal sites under Section 102 of the MPRSA. 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 addressing the temporary expansion of the MBDS is the *Final Environmental Assessment on the Proposed Expansion of the Massachusetts Bay Ocean Dredged Material Disposal Site and Finding of No Significant Impact* (Final EA), prepared by EPA in cooperation with USACE. Anyone desiring a copy of the Final EA may obtain one using the methods provided above in the Docket section. The *Draft Environmental Assessment on the Expansion of the Massachusetts Bay Ocean Dredged Material Disposal Site (ODMDS)* (Draft EA) was released for public review concurrently with the Proposed Rule. The Final EA, which is part of the Docket for this action, provides the environmental review for the temporary modification of the MBDS. Information from the Final EA is used in the above discussion of the ocean dumping criteria.

#### b. Magnuson-Stevens Fishery Conservation & Management Act (MSA)

EPA integrated the EFH assessment into the Draft 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. 1801–1891d, and submitted that assessment to NMFS on September 28, 2017. NMFS responded via letter with a recommendation to avoid disposal on the glacial knoll that is within the boundaries of the Potential Restoration Area. EPA and USACE have adopted this recommendation and will avoid the disposal of any dredged material on this feature. This recommendation has also been incorporated into the Final EA.

#### c. Coastal Zone Management Act (CZMA)

EPA determined that the modification of the MBDS is consistent to the maximum extent practicable with the enforceable policies of the Massachusetts coastal management program, and a letter was submitted to the Massachusetts Office of Coastal Zone Management (MCZM) on September 28, 2017. MCZM submitted a

letter of concurrence to EPA on November 30, 2017.

#### d. Endangered Species Act (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 (FWS) 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 an assessment of the potential effects of temporarily modifying the MBDS on aquatic and wildlife species, including any species listed under the ESA, into the Draft EA, and EPA has submitted that assessment to NMFS and FWS. EPA concluded that this action is not likely to adversely affect any threatened or endangered species, nor would it adversely modify any designated critical habitat. EPA submitted a letter to NMFS on October 30, 2017, that stated that the re-initiation of consultation was not necessary for this action. NMFS submitted a letter of concurrence to EPA on November 21, 2017. EPA sent a letter to FWS on September 22, 2017, and confirmed that no consultation was necessary.

#### e. National Historic Preservation Act (NHPA)

The National Historic Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a–2, 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 Historical Places. EPA submitted a letter to the Massachusetts State Historic Preservation Office (SHPO) on September 28, 2017, outlining the plan to avoid the historic shipwrecks in the area during disposal operations. The Massachusetts SHPO provided a letter of concurrence with the avoidance plan to EPA on October 19, 2017.

### IV. Statutory and Executive Order Reviews

This rulemaking proposes the modification of an ODMDS pursuant to Section 102 of the MPRSA. This action complies with applicable Executive Orders and statutory provisions as follows:

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

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 3, 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.* This temporary site modification does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a federal agency.

*c. Regulatory Flexibility Act*

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 (businesses, organizations, or jurisdictions). EPA has determined that this action will not have a significant economic impact on small entities.

*d. Unfunded Mandates Reform Act*

This 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 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, EPA has coordinated with, and specifically solicited comments from, state and local officials with regard to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175. The modification of the MBDS 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.

*g. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This action is not subject to Executive Order 13211 (66 FR 28355) because it is not a “significant regulatory action” as defined under Executive Order 12866.

*i. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards and, therefore, the National Technology Transfer and Advancement Act does not apply.

*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 action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations. This action is expected to be protective of human health because it will enable the wastes already within the Potential Restoration Area to be isolated under a protective layer of sediment. This should help prevent any accidental recovery of barrels by fishermen and prevent contaminants from the historic disposal from entering the food web. The EPA has assessed the overall protectiveness of modifying the MBDS 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. No adverse impacts are expected. The action is, instead, expected to improve environmental conditions in Massachusetts Bay by enabling contaminated material dumped at the IWS in the past to be covered with suitable dredged material in order to isolate the former from the environment.

*k. Executive Order 13158: Marine Protected Areas*

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

EPA anticipates that this action will afford additional protection to the waters of Massachusetts Bay and organisms that inhabit them. By covering the barrel field and surrounding seafloor sediment of the historic IWS, potential contaminants should be prevented from entering the water column or food web in Massachusetts Bay. This should provide, if anything, greater protection for the natural resources of the SBNMS, which is in the vicinity of the temporarily expanded MBDS.

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

Section 6(a)(i) of Executive Order 13547, (75 FR 43023, July 19, 2010) requires, among other things, EPA and certain other agencies “. . . to the fullest extent consistent with applicable law [to] . . . take such action as necessary to implement the policy set forth in section 2 of this order and the stewardship principles and national priority objectives as set forth in the Final Recommendations and subsequent guidance from the Council.” The policies in section 2 of Executive Order 13547 include, among other things, the following: “. . . it is the policy of the United States to: (i) Protect, maintain, and restore the health and biological diversity of ocean, coastal, and Great Lakes ecosystems and resources; [and] (ii) improve the resiliency of ocean, coastal, and Great Lakes ecosystems, communities, and economies. . . .” As with Executive Order 13158 (Marine Protected Areas), the overall purpose of the Executive Order is to promote protection of ocean and coastal environmental resources.

EPA anticipates that this action will afford additional protection to the waters of Massachusetts Bay and organisms that inhabit them. By covering the barrel field and surrounding seafloor sediment of the historic IWS, potential contaminants should be prevented from entering the water column or food web in Massachusetts Bay.

*m. Executive Order 13771 Reducing Regulation and Controlling Regulatory Costs*

This action would not be a “significant regulatory action” under the terms of Executive Order 12866 (58

FR 51735, October 3, 1993) and is, therefore, not subject to review under Executive Order 13771. See OMB, “Guidance Implementing Executive Order 13771, Titled “Reducing Regulation and Controlling Regulatory Costs” (M-17-21) (April 5, 2017), p. 3 (“An ‘E.O. 13771 Regulatory Action’ is: (i) A significant regulatory action as defined in section 3(f) of E.O. 12866 that has been finalized and that imposes total costs greater than zero. . . .”).

*n. Congressional Review Act*

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

**List of Subjects in 40 CFR Part 228**

Environmental protection, Water pollution control.

Dated: May 15, 2018.

**Alexandra Dapolito Dunn**  
*Regional Administrator, EPA Region 1.*

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

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

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

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

■ 2. Amend § 228.15 by revising paragraphs (b)(2)(i), (ii), (iii), and (vi) to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) *Location:* Two overlapping circles: Center of existing MBDS: 42°25.1’ N, 70°35.0’ W, 1 nautical mile radius; Center of temporary expansion: 42°26.417’ N, 70°35.373’ W, 0.75 nautical mile radius (NAD 1983).

(ii) *Size:* 4.60 sq. nautical miles.

(iii) *Depth:* Range from 70 to 91 meters.

\* \* \* \* \*

(vi) *Restriction:* Disposal shall be limited to dredged material which meets the requirements of the MPRSA and its accompanying regulations. Disposal-and-capping is prohibited at the MBDS until its efficacy can be effectively demonstrated. The temporary expansion of the MBDS shall be used solely for the disposal of suitable dredged material generated during the Boston Harbor Deep Draft Navigation Project using the berm-building method devised and tested by the U.S. Army Corps of Engineers. The temporary expansion will automatically close upon completion of the Boston Harbor Deep Draft Navigation Project.

\* \* \* \* \*

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