

RULES and REGULATIONS
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3493-3]

Ocean Dumping; Site Designation; Atlantic Ocean Offshore **Brunswick** Harbor, GA

Friday, December 23, 1988

***51777** AGENCY: U.S Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates the existing, interim-approved Ocean Dredged Material Disposal Site (ODMDS) in the Atlantic Ocean offshore **Brunswick** Harbor, Georgia, as an EPA-approved ocean disposal site for the disposal of suitable dredged material. This action is necessary to provide an acceptable ocean disposal site for consideration as a disposal option for dredged material disposal projects in the greater **Brunswick**, Georgia, vicinity.

This Final Rule also corrects the discrepancies in the **Brunswick** Harbor ODMDS boundary coordinates relative to the draft and final Environmental Impact Statement (EIS), 40 CFR Part 228 (Revised as of July 1, 1984, and 1987), and 42 FR 2461 (January 11, 1977: pg. 2485).

EFFECTIVE DATE: This designation shall become effective on January 23, 1989.

ADDRESSES: Send comments to: Frank M. Redmond, Chief, Wetlands and Coastal Programs Section, Water Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

The file supporting this designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC 20460

EPA/Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

FOR FURTHER INFORMATION CONTACT: Reginald G. Rogers, 404/347-2126.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, [33 U.S.C. 1401](#) et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean

disposal sites to the Regional Administrator of the Region in which the sites are located. This final designation of a site offshore **Brunswick** Harbor, Georgia, which is within Region IV, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under the Act ([40 CFR Chapter I, Subchapter H, § 228. 4](#)) indicate that ocean disposal sites will be designated by promulgation in this Part 228. A list of “Approved Interim and Final Ocean Dumping Sites” was published on January 11, 1977 (42 FR 2461 (January 11, 1977)). The list established the existing **Brunswick** Harbor site as an interim site.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, [42 U.S.C. 4321](#) et seq., requires that Federal agencies prepare an EIS on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

The object of NEPA is to build careful consideration of all environmental aspects of proposed actions into the agency decision-making process. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean disposal site designations such as this (see 39 FR 16186 (May 7, 1974)). EPA, in cooperation with the Savannah District of the U.S. Army Corps of Engineers (COE), has prepared a draft and final EIS entitled “[Brunswick Harbor, Georgia Ocean Dredged Material Disposal Site Designation.](#)” This Final Rule and the preceding Proposed Rule ([53 FR 38032 \(September 29, 1988\)](#)) are procedural follow-ups to the EIS. The EIS may be used (not necessarily “should be used” as stated in the Proposed Rule) as reference, particularly for literature citations, which are not cited in the Rules. This Final Rule includes excerpts from the Proposed Rule.

The action discussed in this EIS is the final designation for continuing use of the existing interim ocean dredged material disposal site near **Brunswick** Harbor, Georgia. The purpose of the action is to provide an environmentally acceptable location for ocean disposal. The need for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

For the **Brunswick** Harbor ODMDS, the COE and EPA would evaluate all dredged material disposal projects (not just “all Federal dredged material disposal projects” as stated in the Proposed Rule) pursuant to the EPA *[51778](#) criteria given in the Ocean Dumping Regulations (40 CFR Parts 220 through 229) and the COE regulations (33 CFR 209.120 and [209.145](#)). The COE also issues MPRSA permits to all applicants (upgraded from “private applicants” as stated in the Proposed Rule) for the transport of dredged material intended for disposal after compliance with these regulations is determined (although not stated in the Proposed Rule, the COE also undergoes a public review process for its own disposal actions). 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. State permitting would not be needed for the **Brunswick** Harbor ODMDS since the disposal site is located outside of State of Georgia waters and the State of Georgia currently has no approved Coastal Zone Management Plan.

On Friday, November 28, 1986, the Notice of Availability of the draft EIS for public review and comment was published in the Federal Register ([51 FR 43082 \(November 28, 1986\)](#)). The public comment period on the draft EIS closed on January 12, 1987.

The Notice of Availability of the final EIS for public review and comment was published in the Federal Register

on Friday, March 25, 1988 ([53 FR 9806 \(March 25, 1988\)](#)). The public comment period closed on April 25, 1988. The final EIS addressed the eight comments received on the draft EIS.

The EIS discusses the need for this site designation and examines ocean disposal site alternatives to the action. The EIS considers mid-shelf and shelf-break alternative sites (Continental Shelf) using the general criteria and specific factors contained in the Ocean Dumping Regulations, 40 CFR Part 228. Dredged material disposal has not occurred previously at the mid-shelf or shelf-break alternative site locations. There are significant dissimilarities between the physical and chemical characteristics of the dredged material sediments and sediments covering the mid-shelf or shelf-break regions. Altering the sediment texture and composition through the addition of finer coastal sediments may have a long-term adverse impact on the benthic infauna at the mid-shelf and shelf-break sites. Fishery resources are localized over the mid-shelf and shelf-break areas. These hard bottom areas are unique habitats, support several species of commercially and recreationally important finfish, and are sensitive to the effects of dredged material disposal. Also, the Continental Shelf offshore **Brunswick** is so wide that any site chosen beyond the shelf-break would be beyond economical distances for transporting materials; several proposed or active Minerals Management Service oil and gas lease sites exist in the mid-shelf and shelf-break regions; and the Ocean Dumping Regulations require the designation of sites which have historically been used, where feasible. The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation use and is based on one of a series of disposal site environmental studies.

C. Coastal Zone Management Coordination

The State of Georgia does not have an approved Coastal Zone Management Plan; however, EPA has determined that this site designation is consistent with general coastal zone management practices. The **Brunswick** Harbor ODMDS is located outside of Georgia State waters.

D. Endangered Species Coordination

Pursuant to section 7 of the Endangered Species Act, the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) were asked by EPA to concur in EPA's conclusion that this site designation will not affect the endangered species under their jurisdictions. By letter dated July 2, 1986, the FWS concurred in the conclusion that this site designation will have no effect on Federally-listed threatened or endangered species under the FWS jurisdiction. By letter dated May 1, 1987, the NMFS concurred that the site designation will not affect the endangered or threatened species under NMFS jurisdiction.

E. Site Designation

The disposal site is located southeast of **Brunswick**, Georgia, outside of State waters, approximately 6 nautical miles (nmi) offshore and occupies an area of about 2 square nautical miles (nmi²). The site is rectangular, approximately 1 nmi by 2 nmi. Water depths within the area average 9 meters. The correct coordinates of the **Brunswick** Harbor site being designated on a permanent basis are as follows:

31°02'35" N., 81°17'40" W.;

31°02'35" N., 81°16'30" W.;

31°00'30" N., 81°16'30" W.;

31°00'30" N., 81°17'42" W.

The above last coordinate component, 81°17'42"W., is a slight modification of the 81°17'40"W. coordinate component presented (apparently in error) in [40 CFR 228.12\(a\)\(3\)](#) (revised as of July 1, 1984 and 1987) for the interim **Brunswick** Harbor ODMDS.

(Note: The draft EIS and the final EIS cited the correct coordinates (as above) but incorrectly referenced the Federal Register (Vol. 42, No. 7 dated 11 January 1977), since that Federal Register presented (apparently in error) the last coordinate component as 81°16'30" W. (page 2485) as opposed to 81°17'42" W.).

The Proposed Rule was published in the Federal Register on September 29, 1988 ([53 FR 38032 \(September 29, 1988\)](#)). The 30-day comment period closed on October 31, 1988. No formal comments on the Proposed Rule were received during the comment period by EPA/Region IV. However, certain changes in this Final Rule concerned with the COE's role in dredging project review and permit issuance resulted from a discussion with a COE district.

To supplement EPA's response to a comment letter on the draft EIS received from Terrell K. Murphy, D.D.S. dated December 18, 1986 (see pages 46-47 in final EIS), EPA wishes to relate in this Final Rule that a copy of this comment letter was also subsequently received by EPA (after the close of the draft EIS comment period on January 12, 1987) via an inquiry letter from the Honorable Sam Nunn, U.S. Senator (Georgia), dated January 27, 1987. A copy of Dr. Terrell's letter to Senator Nunn dated January 7, 1987, was also included. EPA responded to this Congressional interest in a letter dated February 12, 1987, which referenced the then pending final EIS, in which the response to the original letter from Dr. Terrell was provided (see response on page 56 in the final EIS).

A draft version of the Proposed Rule was circulated to various Federal, State of Georgia, university and private concern representatives—essentially those attendees at a meeting requested by the Georgia Department of Natural Resources (GDNR) and hosted on April 12, 1988, in Atlanta, Georgia (see discussion of meeting in Proposed Rule). As indicated in the Proposed Rule, comments on the draft version of the Proposed Rule were not formally discussed. However, a brief summary of those received comments is nevertheless presented in this Final Rule.

Informal substantive comments on the draft Proposed Rule were primarily concerned with the fact that the **Brunswick** Harbor ODMDS designation should not preclude beach nourishment. A formal comment letter dated August 15, 1988, from the GDNR also expressed this concern and the GDNR's intention to pursue beach nourishment permits. The letter also stated that “[a]lthough it is apparent EPA does not consider use of maintenance and other dredged material for beach renourishment; it is important that EPA recognize the *51779 potential value of the use of this material for renourishment.” EPA responded to the GDNR letter with a letter dated September 13, 1988, indicating that the GDNR letter was interpreted as a restatement of GDNR's policies on beach nourishment as opposed to a presentation of suggestions to change the draft Proposed Rule. The letter also indicated, as discussed in the Proposed Rule that, “* * * EPA's site designation of the **Brunswick** Harbor ODMDS would not preclude a beach nourishment alternative.”

It should be emphasized in this Final Rule that an EPA designation of an ODMDS makes available an environmentally-acceptable site option for ocean disposal as opposed to authorizing any dredging projects or disposal at the ODMDS. Therefore, beach nourishment and other disposal options can also be considered for disposal needs. These options should be addressed at the dredging project level and with appropriate permitting agencies. As stated in the EPA response letter to the GDNR's interest in beach nourishment, “[p]ursuit of such an alternat-

ive should be initiated with the appropriate permitting agencies as opposed to EPA concerned with site designation.”

A draft version of this Final Rule was coordinated with the Savannah COE before EPA's publication of its (this) final version.

F. Site Management

Site management of the **Brunswick** Harbor ODMDS is the responsibility of EPA and the COE (upgraded from “EPA as well as the COE” as stated in the Proposed Rule). The COE issues permits to all applicants (upgraded from “private applicants” as stated in the Proposed Rule) for ocean disposal (although not stated in the Proposed Rule, the COE also undergoes a public review process for its own disposal actions); however, EPA/Region IV assumes overall responsibility for the **Brunswick** Harbor site management. A Memorandum of Understanding between EPA/Region IV and the South Atlantic Division of the COE is being developed and is to establish a management/monitoring framework (not just “a monitoring framework” as stated in the Proposed Rule) for ODMDSs in the Region, which is to lead toward a site-specific management/monitoring plan (not just “a monitoring plan” as stated in the Proposed Rule) for the **Brunswick** Harbor ODMDS.

Site management may include strategically locating and/or orienting dredged material within the site boundaries relative to predominant current patterns. Monitoring could involve sediment mapping of disposed material to determine any movement of material off of the site. Determination of the significance of any biological impacts of dredged material outside the ODMDS boundaries would then be appropriate.

The existence, magnitude, and implementation of a site management/monitoring plan (not just “a monitoring plan” as stated in the Proposed Rule) is dependent upon available funding and coordination between EPA, the COE, and the State of Georgia (the State was not included in the Proposed Rule).

G. Action

The EIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the general and selection criteria (not just “the general criteria” as stated in the Proposed Rule) used for site evaluation.

The designation of the **Brunswick** Harbor site as an EPA-approved ODMDS is being published as Final Rule-making. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region IV.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean dumping of dredged material at the site may commence, EPA and the COE (not just “the COE” as stated in the Proposed Rule) must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

In this Final Rule, EPA wishes to emphasize that the site designation of the **Brunswick** Harbor ODMDS does not preclude beach nourishment or other non-ocean disposal alternatives. As indicated in the Proposed Rule, if relevant to the project, such options should be discussed at the dredging project level as opposed to the ODMDS designation level by the applicant. Furthermore, pursuit of such options should be with appropriate permitting agencies rather than EPA.

The **Brunswick** Harbor ODMDS is not restricted to disposal use by Federal Projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted, however, to suitable dredged material from the greater **Brunswick**, Georgia vicinity.

H. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under [Executive Order 12291](#), EPA must judge whether a regulation is “major” and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of \$100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a “major” rule. Consequently, this Rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, [44 U.S.C. 3501](#) et seq.

This Final Rulemaking Notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: December 9, 1988.

Approved by:

Lee A. DeHihns, III,

Acting Regional Administrator.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]1. The authority citation for Part 228 continues to read as follows:

Authority: [33 U.S.C. 1412](#) and [1418](#).

[40 CFR § 228.12](#)

2. Part 228 is amended by removing the paragraph for **Brunswick** Harbor from [§ 228.12\(a\)\(3\)](#).

[40 CFR § 228.12](#)

3. Part 228 is further amended by adding [§ 228.12\(b\)\(41\)](#) as follows: [FN1]

FN1 (Note.—The last component presented as 81°17'40" W. in § 228.12(a)(3) of the 40 CFR revised as of July 1, 1987, referenced above was apparently in error, per coordination with the COE Savannah District, and should have been 81°17'42" W. as added above in § 228.12(b)(41). This apparent error was also in § 228.12(a)(3) of the 40 CFR revised as of July 1, 1984. Also, page 2485 of 42 FR 2461 (January 11, 1977) listed (apparently in error) the last coordinate component as 81°16'30" “ W.).

40 CFR § 228.12

***51780 § 228.12** Delegation of management authority for interim ocean dumping sites.

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(b) * * *

(41) **Brunswick Harbor; Brunswick, Georgia; Ocean Dredged Material Disposal Site Region IV.**

Location: 31°02'35" N., 81°17'40" W.; 31°02'35" N., 81°16'30" W., 31°00'30" N., 81°16'30" W., 31°00'30" N., 81°17'42" W;

Size: Approximately 2 square nautical miles.

Depth: Average 9 meters.

Primary use: Dredged material.

Period of use: Continuing use.

Restriction: Disposal shall be limited to suitable dredged material from the greater **Brunswick, Georgia**, vicinity.

[FR Doc. 88-29055 Filed 12-22-88; 8:45 am]

BILLING CODE 6560-50-M

53 FR 51777-01, 1988 WL 342706 (F.R.)

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