RULES and REGULATIONS

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3835-6]

Ocean Dumping; Proposed Site Designation

Monday, October 22, 1990

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

ACTION: Final rule.

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

EFFECTIVE DATE: October 22, 1990.

ADDRESSES: Wesley B. Crum, 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 proposed 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:Jeffrey A. Kellam, 404/347-2126.

SUPPLEMENTARY INFORMATION:

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 proposed designation of a site offshore Canaveral Harbor, Florida, 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, section 228.4) state that ocean disposal sites will be designated by promulgation in this part 228. A list of “Approval In-

terim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 (January 11, 1977)). The list established the existing Canaveral Harbor site as an interim site.

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 EISs in connection with ocean dumping site designations such as this (see 39 FR 16186 (May 7, 1974)). EPA, in cooperation with the Jacksonville District of the U.S. Army Corps of Engineers (COE), has prepared a Draft Environmental Impact Statement (DEIS) entitled "Draft Environmental Impact Statement for Designation of A Canaveral Harbor, Florida Ocean Dredged Material Disposal Site". This Proposed Rule includes excerpts from the DEIS.

The action discussed in the EIS is the permanent designation for continuing use and expansion of the existing interim ocean dredged material disposal site near Canaveral Harbor, Florida. 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 COE process of issuing permits for ocean disposal for federal and/or private actions.

For the Canaveral Harbor ODMDS, the COE and EPA would evaluate all Federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR 220-229) and the COE regulations (33 CFR 209.120 and 209.145). The COE also issues MPRSA permits to private applicants for the transport of dredged material intended for disposal after compliance with these regulations is determined. EPA has the right to disapprove any ocean disposal project if, in its judgement, all provisions of MPRSA and the associated implementing regulations have not been met. State permitting would not be needed for the Canaveral Harbor ODMDS since the disposal site is located outside of State of Florida waters.

On August 14, 1987, the Notice of Availability of the DEIS for public review and comment was published in the Federal Register (52 FR 30429). The public comment period on the DEIS closed on September 28, 1987. Public comments on the DEIS are addressed in the FEIS. The Proposed Rule was published in the Federal Register on June 7, 1990 (55 FR 23251). The comment period closed July 9, 1990, with no formal comments submitted.

Informal substantitive comments were received from the State of Florida concerned with the fact that the site designation did not specifically preclude disposal of beach-compatible material. It must be emphasized in this Final Rule that an EPA designation of an ODMDS makes available an environmentally acceptable option for ocean disposal, as opposed to authorizing dredging projects or disposal at the ODMDS. Beach nourishment and other options can be considered for disposal needs. These options are properly addressed at the project level by the appropriate permitting agencies. EPA concurs with the State of Florida that use of beach compatible material should be considered in cases where such material is present and is practicably available for such use.

The Notice of Availability for the Final EIS (FEIS) was published on September 21, 1990 in the Federal Register at (55 FR 38846). The public comment period on the FEIS will close 30 days from that date.

The EIS discusses the need for this site designation and examines ocean disposal site alternatives to the proposed action. The need for ocean disposal is determined on a case-by-case basis as a part of the process of permitting for ocean disposal. 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. The environmental studies and final designation are being conducted in accordance with the requirements of the MPRSA, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

Pursuant to Office of Water Policy, EPA has evaluated the proposed site designation for consistency with the State's approved coastal management program. EPA has determined that the designation of the proposed site is consistent with the State coastal ***42564** management program, and has submitted this determination to the State for review in accordance with EPA policy. In addition, as part of the NEPA process, EPA has consulted with the State regarding the effects of the disposal at the proposed site on the State coastal zone. EPA has taken the State's comments into account in preparing the FEIS for the site, in determining whether the proposed site should be designated, and in determining whether restrictions or limitations should be placed on the use of the site if it is designated. Concerns raised by the State of Florida on CZM consistency, regarding use of suitable material for beach nourishment, were addressed in the FEIS. As stated above, EPA concurs with the State of Florida regarding the use of suitable material for such nourishment, in circumstances were this use is practical.

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 with EPA's conclusion that this site designation will not affect the endangered species under their jurisdictions. In a letter dated October 8, 1987, NMFS concurred with EPA's determination that designation of this disposal site will not affect the endangered species under their jurisdiction. This concurrence was confirmed in an additional letter dated March 12, 1990. The U.S. Fish and Wildlife Service, in a letter dated August 27, 1987, has also concurred that species under their jurisdiction will not be affected by the designation.

The final rulemaking notice fills the same role as the Record of Decision required under rules promulgated by the Council on Environmental Quality for agencies subject to NEPA.

Site Designation

The proposed site is located east of Canaveral, Florida, approximately 3.2 nautical miles (nmi) offshore and occupies an area of about 4 square nautical miles (nmi2), approximately 2 nmi by 2 nmi. Water depths within the area range from 47 to 55 feet. The coordinates (based on North American Datum 1927) of the Canaveral Harbor site proposed for final designation are as follows:

28°20'15" N

80°31'11" W;

28°18'51" N

80°29'15" W;

28°17'13" N

80°30'53" W;

28°18'36" N

80°32'45" W.

Center coordinates are 28°18'44" N and 80°31'00" W.

Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR part 228, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated. The proposed site conforms to the five general criteria, except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the EIS, that no environmental benefit would be obtained by selecting a site off the Continental Shelf instead of that proposed in this action.

The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists the 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. Application of these 11 criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the proposed site as regards the 11 criteria are summarized below.

1. Geographical position, depth of water, bottom topography, and distance from coast (40 CFR 228.6(a)(1)). The coordinates of the site are given above. The proposed site is located about 3.2 nmi offshore of Canaveral Harbor, Florida. The site is approximately 2 nmi by 2 nmi. The bottom topography is featureless with a gentle slope downward to the southeast. Water depth in the area ranges from 47 to 55 feet.

The configuration of the candidate site, as proposed in the DEIS, only partially included the existing interim site. The site has been re-configured in the FEIS to completely encompass the interim site, consistent with 40 CFR 228.5(e) of the general criteria of the Ocean Dumping Regulations.

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)). Many of the area's species spend their adult lives in the offshore region, but are estuary-dependent because their juvenile stages use a low salinity estuarine nursery region. Specific migration routes are not known in the Canaveral area. But, the candidate site is not near the mouth of an estuary and thus should not encumber migratory passage. The site is not known to be located in any major breeding or spawning area, except for sea turtles which use the entire beach area of eastern Florida as nesting habitat. Due to the motility of finfish, it is unlikely that disposal activities will have any significant impact on any of the species found in the area.

3. Location in relation to beaches and other amenity areas (40 CFR 228.6(a)(3)). The candidate site is located at least 3.2 nautical miles from the coast. Shore-related amenities include Canaveral National Seashore, Merritt Island National Wildlife Refuge, Banana River Aquatic Preserve, and the Kennedy Space Center. Currents in the vicinity trend alongshore in a general north-south orientation. It is therefore unlikely that detectable quantities of dredged material will be transported onto beaches. Considering the distance that the proposed disposal site is

offshore beach areas, dredged material disposal at the site is not expected to have an effect on the recreational uses of these beaches.

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)). It is anticipated that the candidate site will be used primarily for disposal of maintenance material from the Port Canaveral Channel and Turning Basins. Estimated annual volumes are expected to average 0.8 million cubic yards. Disposed material is expected to be composed primarily of fine grain sediments. Future disposal at the site will presumably be similar to that of past disposal. However, each disposal plan must be evaluated on a case-by-case basis to ensure that ocean disposal is the best alternative and that the material meets the Ocean Dumping Criteria in 40 CFR part 227.

5. Feasibility of surveillance and monitoring (40 CFR 228.6(a)(5)). Due to the proximity of the site to shore, surveillance and monitoring will not be difficult. Survey vessels, dredges or aircraft overflights are feasible surveillance methods. Environmental studies relative to the EIS have been conducted at the site to establish baseline conditions. A site-specific management and monitoring plan was developed for the Canaveral Harbor ODMDS. This plan establishes a sequence of monitoring surveys to be ***42565** undertaken to determine any impacts resulting from disposal activities. These surveys may include bathymetry, sediment tracking, benthic faunal analyses, bottom video photography and side scan sonar surveys.

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)). Currents in the area are mainly wind driven. Net current flow is alongshore with the direction of movement related to season. Measurement of current direction trends at the candidate site showed approximately 45% of the currents moving north-northeast and 26% trending south-southwest. Current speeds normally range around 0.1 to 0.4 knot. No conclusive statement can be made regarding sediment transport; however, the following general assumption can be presumed to be a reasonable scenario. The majority of the coarse dredged material sinks rapidly to the bottom during disposal via entrainment and considering the relatively shallow depths of the site. However, transport of fine grain dredged material in the water column will occur in the form of a turbidity plume. Fine material in such plumes is expected to disperse and dilute rather rapidly.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects) (40 CFR 228.6(a)(7)). Site environmental studies cited in the EIS have detected no significant adverse effects from previous disposal operations in terms of water quality, finfish and shellfish species and abundance, and benthic community diversities and densities.

Short-term effects attributed to site use include: water quality changes, smothering of benthic species, and possible mounding of dredged material. Water quality parameters would likely rather rapidly return to ambient levels following disposal operations through dispersion/dilution. Studies have shown no significant adverse water quality effects.

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)). Shipping and recreational and commercial fishing, while not heavy, do occur in the vicinity of the proposed site. Past intermittent use of the site for disposal operations is not known to have interfered with the shipping activities in and out of Canaveral Harbor and therefore has not substantively contributed to congestion within the shipping channels. Other than periodic use by hopper dredges or towed barges on trips to and from the disposal area, the site and its

use should not interest with shipping or commercial fisheries activities.

Effects on commercial or recreational fishing due to past use of the site have presumably been limited since the proposed site represents a small portion of the total fishing area in the Canaveral vicinity.

Mineral extraction, desalination, fish or shellfish culture and other scientific use of the ocean are not known to occur in the vicinity of the site. Potential future mineral exploration or extraction should not be hindered by activities associated the candidate site.

9. The existing water quality and ecoology of the site as determined by available data or by trend assessment or baseline surveys (40 CFR 228.6(a)(9)). Investigations of previous disposal effects indicated no significant adverse effects on water quality parameters such as dissolved nutrients, trace metals, dissolved oxygen, and pH.

Water quality in the region is mostly under the influence of the open ocean and salinities seldom drop much below 34 ppt. With the exception of suspended solids (is turbidity) values for water quality obtained from samples taken during baseline surveys were well within the limits of applicable water quality standards. The ecology of the site is typical of coastal habitat in the vicinity. The bottom sediments at the proposed site are predominantly fine-grained sands with varying amounts of clay, silt and medium to coarse sand. Commercially important species supported by this habitat include shrimp, crab, seatrout, silver perch, croaker, and drum.

No critical habitat or unique ecological communities have been identified at the candidate site. Buffer zone protection has been applied to any existing fish havens, artificial reef communities, turtle nesting areas, and onshore amenities in the general region of the site.

10. Potentiality for the development or recruitment of nuisance species in the disposal site (40 CFR 228.6(a)(10) . It is unlikely that use of the proposed site will result in the development or recruitment of any nuisance species. Past disposal operations have apparently not led to development or recuitment of nuisance species.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance (40 CFR 228.6(a)(11)). No historical features have been identified within the proposed site. The candidate site is at least 4 nautical miles from any identified wrecks at sea which may or may not be of historical importance.

Site Management

Site management of the Canaveral Harbor ODMDS is the responsibility of EPA as well as the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region IV assumes overall responsibility for site management.

A Site Management and Monitoring Plan was developed as a part of the process of completing the EIS. This plan provides the approach for both site management and for the monitoring of effects of disposal activities.

Action

The designation of the Canaveral Harbor site as an EPA-approved ODMDS is being published as Proposed Rulemaking. 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 disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria, or complete a public review process for their proposed actions. EPA has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

The Canaveral 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 satisifed. This site is restricted, however, to suitable dredged material from the greater Canaveral, Florida vicinity.

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.

***42566** 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 Final Rule does not necessitate preparation of a Regulatory Impact Analysis.

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

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: May 29, 1990.

Approved by:

W. Ray Cunningham,

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. sections 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) the words and coordinates for “Canaveral Harbor” and by adding paragraph (b)(86) to read as follows:

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

* * * * *

(b) * * *

(86) Canaveral Harbor; Canaveral, Florida; Ocean Dredged Material Disposal Site —— Region IV.

Location:

28°20'15" N

80°31'11" W;

28°18'51" N

80°29'15" W;

28°17'13" N

80°30'53" W;

28°18'36" N

80°32'45" W.

Center coordinates are 28°18'44" N and 80°31'00" W (NAD 27).

Size: 4 square nautical miles.

Depth: Range 47 to 55 feet.

Primary use: Dredged material.

Period of use: Continuing use.

Restriction: Disposal shall be limited to suitable dredged material from the greater Canaveral, Florida vicinity.

[FR Doc. 90-24731 Filed 10-19-90; 8:45 am]

55 FR 42563-01, 1990 WL 346853 (F.R.)
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