RULES and REGULATIONS

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3993-7]

Ocean Dumping; Site Designation

Tuesday, September 24, 1991

***48106** AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates an Ocean Dredged Material Disposal Site (ODMDS) in the Gulf of Mexico offshore of Pascagoula, Mississippi, as an EPA-approved ocean dumping site for the dumping of suitable dredged material. This action is necessary to provide an acceptable ocean dumping site for consideration as a disposal option for dredged material disposal projects in the Mississippi Sound and vicinity.

DATES: Designation will be effective October 24, 1991.

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 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, Water Management Division, 345 Courtland Street, NE., Atlanta, Georgia 30365.

U.S. Army Engineer District Mobile, 109 St. Joseph Street, Mobile, Alabama 36628.

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 dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the sites are located. This designation of a site offshore of Pascagoula, Mississippi, which is within Region IV, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under the Act (40 CFR ch. I, subchapter H, § 228.4) state that ocean

dumping 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 Pascagoula site as an interim site. The Proposed Rulemaking was published in the Federal Register (55 FR 30473) on July 26, 1990. Comments were incorporated into this final rulemaking.

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 Mobile District of the U.S. Army Corps of Engineers (COE), and the U.S. Naval Facilities Engineering Command, has prepared a final EIS entitled “Final Environmental Impact Statement for the Designation of an Ocean Dredged Material Disposal Site, Pascagoula, Mississippi”. This Final Rule includes EIS excerpts.

This action discussed in this rule is the final designation for use and expansion of the expired interim ocean dredged material disposal site near Pascagoula, Mississippi. The purpose of the action is to provide an environmentally acceptable location for ocean disposal of dredged material. The ***48107** 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 Pascagoula 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 335-338). 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 judgment, all provisions of MPRSA and the associated implementing regulations have not been met. Publication date in the Federal Register for the Notice of Availability of the draft EIS for public review and comment was July 27, 1990. The public comment period on the draft EIS closed on September 10, 1990. Publication date in the Federal Register for the Notice of Availability of the final EIS was August 16, 1991, with comment period ending September 16, 1991.

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 an Office of Water policy memorandum dated October 23, 1989, EPA has evaluated the site designation for consistency with the State of Mississippi's (the State) approved coastal management program. EPA has determined that the designation of the proposed site is consistent to the maximum extent practicable with the State coastal management program, and has submitted this determination to the State for review in accordance with EPA policy. The State subsequently provided concurrence with the EPA decision. 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 final EIS 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.

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. The National Marine Fisheries Service concurred, on January 24, 1991, that species under their jurisdiction will not be affected by the designation. FWS deferred to NMFS in this case.

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

Site Designation

The site is located south of Pascagoula, Mississippi, approximately 1.5 nautical miles southeast of Horn Island, and occupies an area of about 18.5 square nautical miles (nmi2). Water depths within the area range from 39 to 53 feet, averaging about 46 feet. The coordinates of the Pascagoula site proposed for final designation are as follows:

Boundary Coordinates:

30°12'06" N 88°44'30" W

30°11'42" N 88°33'24" W

30°08'30" N 88°37'00" W

30°08'18" N 88°41'54" W

Center Coordinates:

30°10'09" N 88°39'12" 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 dumping 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 40 CFR 228.5 of the EPA Ocean Dumping Regulations, and 40 CFR 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 are reviewed below in terms of these 11 criteria.

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

The northern boundary of the ODMDS is approximately two nautical miles south of Horn Island. The area is bounded on the east by the north-south safety fairway, on the south by the east-west safety fairway, and on the west by an imaginary line on the eastern boundary of Dog Keys Pass and is defined by the following coordinates:

Boundary Coordinates:

30°12'06" N 88°44'30" W

30°11'42" N 88°33'24" W

30°08'30" N 88°37'00" W

30°08'18" N 88°41'54" W

Center Coordinates:

30°10'09" N 88°39'12" W

This area represents approximately 18.5 nmi2 . Water depths range from 39 to 53 feet and average approximately 46 feet. Bottom topography within this site is relatively flat, sloping gently seaward.

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 northern Gulf of Mexico fish and shellfish species are estuarine dependent, spending a portion of their life cycle in an estuary such as Mississippi Sound. In general, the species spawn in the water of the Gulf of Mexico and eggs or larvae are carried by the currents into the estuaries through the barrier island passes. After a season or more, the species migrate through the pass into the gulf where spawning occurs. Literature surveys performed during the COE Mississippi Sound and Adjacent Areas Study (USACE 1984) indicate that the Horn Island Pass area is an important migration route as are all the other barrier island passes along the northern gulf coast. The use of the migratory ***48108** routes is heavier during the spring and early summer months than during late summer and fall/winter. The preferred site is about two and one-half miles from the shallow vegetated areas on the northern sides of the barrier islands and approximately nine miles from the extensive mainland marshes of the Pascagoula Delta and Point aux Chenes Bay area. The preferred site is not known to be located near any major breeding or spawning area.

In addition, a number of commercial, sport and recreational species such as grouper, ling, red snapper are known to utilize natural and artificial reef areas for feeding and refuge areas. In the vicinity of the ODMDS, a number of identified fish havens are located to the east, south of the entrance to Mobile Bay, to the west and to the south. Significant negative impacts from use of the site are not expected to occur on these sites.

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

The primary coastal amenity is the Gulf Islands National Seashore which includes Petit Bois, Horn, and Ship Islands to the north of the preferred ODMDS. The preferred ODMDS is approximately two nautical miles south of Horn Island or about 14 nautical miles south of the mainland, and about 24 nautical miles east of the Chandeleur Islands. The gulf beaches of these islands are used for recreational activities such as swimming, fishing, and sun bathing. Protection is afforded the Gulf Islands National Seashore since the predominant currents shoreward of the preferred site are parallel to the shoreline and any migration of material from the ODMDS would be alongshore rather than in an onshore direction.

Types and Quantities of Dredged Material Proposed to be Disposed of, and Proposed Methods of Release, Including Packing the Dredged Material, if Any (40 CFR 228.6(a)4)

The designated ODMDS will be used for disposal of new work and maintenance material dredged from the eastern Mississippi Sound area which meets the criteria specified in section 102 of the MPRSA. All material to be placed in the ODMDS would be fine-grained or sand-sized material. Estimated quantities of material to be placed in the ODMDS are given as follows:

New York:	
U.S. Navy	750,000-1,000,000 cubic yards.
Federal Navigation Project	11,000,000 cubic yards.
Operation and maintenance:	
.S. Navy	250,000 cubic yards/18 months.
ederal Navigation Project	1,000,000 cubic yards/18 months.

The material dredged from the entrance channel meets the exclusion criteria specified in 40 CFR 227.13(b)(1), i.e. "* * * dredged material composed predominantly of sand, gravel, rock, or any other naturally occurring bottom material with particle sizes larger than silt, and the material is found in areas of high current or wave energy such as streams with large bed loads or coastal areas with shifting bars and channels * * *", therefore no testing of the material was performed. The materials to be dredged from the lower Pascagoula River and upper Mississippi Sound channels were subjected to biological and chemical testing to determine toxicity and bioaccumulation potential utilizing three representative marine organisms. The toxicity of the six sediment samples tested was minimal. Testing of material to be dredged as a part of the Navy activities has also been conducted. The toxicity of the two samples tested was also minimal.

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

The location of the ODMDS presents no special problems for surveillance and monitoring. The site is 14 miles south of the mainland. Water depths range from 39 to 53 feet. These water depths are amenable to either surface sampling or diver collection and, under normal circumstances, do not require the use of a large oceanographic vessel. High turbidity may occasionally restrict diver operations and photography but is not expected to be a significant hindrance to surveillance and monitoring. Site surveillance can be accomplished by air from Jackson County Airport in Pascagoula, Mississippi or by water from numerous facilities in Mississippi Sound. A site management and monitoring plan has been developed to determine short- and long-term impacts to the marine ecosystem associated with disposal of dredged material into the ODMDS. This management and monitoring plan is included in the FEIS as an appendix.

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

Data collected within the Gulf of Mexico between November 1980 and September 1981 indicate that the progression of the tide through Horn Island Pass segments the gulf into eastern and western areas, dominating circulation within this portion of the gulf. The eastern area is between Horn Island Pass, Mississippi, and the main pass entering Mobile Bay, Alabama. The western area is between Horn Island Pass and the Chandeleur Islands. As the tide propagates from the gulf through Horn Island Pass, a general clockwise movement of water in the eastern area is set in motion, whereas, in the western area, a general counterclockwise movement occurs. In the shallow areas of the gulf, near the barrier islands, the wind and pressure forces tend to dilute the influence of the tide on the general circulation pattern, creating a highly variable pattern. It appears that a two-layer circulation pattern exists between surface and bottom waters when stratification

occurs. The stratification decouples the currents throughout the water column causing variable velocities and directions to occur.

The ODMDS occupies a small area relative to the area of the continental shelf near Pascagoula. Changes in bathymetry are small in relation to the water depths in the sites. Therefore, the discharge of dredged material into the ODMDS would have negligible impact on the circulation and mixing of the shelf waters.

The fine-grained dredged material proposed for discharge onto the ODMDS will be more easily transported than the existing bottom materials; i.e. the finer material can be moved by a lower current. Thus, the clay and silt size particles on the surface of the ODMDS can be expected to be winnowed out by the currents and the site will become armored with sand, shell, and “clay balls”. The fine-grained particles should become more difficult to erode over time as the material consolidates.

The environmental consequences of the transport of this fine-grained material on the marine ecosystem will vary depending on the proximity of the area in question to the actual disposal location. Impacts within the designated ODMDS are expected to be temporary and short-term. These impacts would range from direct burial of benthic resources and increased suspended solids concentrations in areas adjacent ***48109** to the disposal location to minimal impacts near the boundaries of the site. Recovery of affected benthic populations is expected to occur in a relatively short period of time. Impacts outside the designated ODMDS will be minimal because: (1) The site is being sized to contain the majority of the fine-grained material under normal hydrographic conditions and (2) the location of the site is being chosen to be a sufficient distance from any significant resources. Under abnormal hydrographic conditions, i.e. hurricane conditions, impacts due to the movement of ambient sediment particles would mask any impacts due to movement of fine-grained materials.

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

A portion of the preferred ODMDS has been utilized historically for the placement of dredged material from the eastern Mississippi Sound area. There have been no demonstrable adverse impacts to the marine ecosystem of this area due to this disposal.

Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)8)

The ODMDS was chosen to minimize interference with the activities listed. Fish, due to their motile nature, would not be directly affected by the discharge since they can avoid the area. However, some species would be indirectly affected due to the loss of benthic organisms which serve as a food source for these species. These impacts would be localized to the immediate area of the disposal operation and would be temporary in nature. Chemical analyses and bioassays of the dredged material indicate that no significant toxic effects are expected.

There are no known areas of shellfish culture in the vicinity of the site nor are there any known areas of special scientific importance in the vicinity; therefore, no impacts to these resources would result from the proposed action.

Although the possibility of oil and gas leasing operations within the vicinity of the ODMDS exists, experience suggests that offshore oil and gas operations and dredged material disposal are not mutually exclusive. As the need arises, the management plan for the use of the ODMDS will be revised to include any ongoing or proposed oil and gas leasing activities.

There are no military restricted areas that would be affected by designation and use of the ODMDS.

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

Past surveys and the baseline surveys conducted during the ODMDS siting activities show the water quality and other environmental characteristics of the ODMDS to be typical of the northern Gulf of Mexico where sand or sandy mud sediments predominate. The site does not possess unique characteristics which would preclude designation and use as an ODMDS.

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

Some change in benthic species composition on the designated ODMDS can be expected due to a difference in grain size from the existing bottom. However, there is no evidence to suggest that benthic species which would develop would be considered nuisance species. Some fecal coliform bacteria may be contained in the dredged material; however, it is improbable that these species would become established due to the existing salinity regime of the area.

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)

Review of literature pertaining to the cultural resources of the general area of the ODMDS suggests that there are no natural or cultural features of historical importance within the site or in the vicinity. Side scan sonar transects run during the site evaluation survey did not reveal the existence of any submerged features which might be of archealogical value. Coordination, by letter dated January 25, 1989, with the Mississippi State Historic Preservation Officer, indicates that the potential for shipwrecks in open water of these depths is considered extremely low.

Site Management

Site management of the Pascagoula 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 has been developed. This plan provides a framework for both site management and for the monitoring of effects of disposal activities. Site management may include 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 Site Management and Monitoring Plan may be changed by EPA to account for additional or lesser needs to manage and monitor the site.

Action

The EIS concludes that the site may appropriately be designated for use. The site is compatible with the general criteria used for site evaluation.

The designation of the Pascagoula site as an EPA-approved ODMDS is being published as Final Rulemaking. Overall management of this site is the responsibility of the Regional Administration 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, the COE must

evaluate federal projects or permit applications according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the dumping if it determines that environmental concerns under the Act have not been met.

The Pascagoula 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 Mississippi Sound and 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.

Under Executive Order 12291, EPA must judge whether a regulation is ***48110** "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 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: August 16, 1991.

Patrick M. Tobin,

Approved by: Patrick M. Tobin, Acting Regional Administrator.

In consideration of the foregoing, subchapter H of chapter I of title 40 is to be 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 from § 228.12(a)(3) in the Approved Interim Dumping Sites, the entry for Pascagoula, MS, and adding paragraph (b)(87) as follows:

40 CFR § 228.12

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

* * * * *

(b) * * *

(87) Pascagoula, Mississippi; Ocean Dredged Material Disposal Site—Region IV.

Location:

30°12'06" N 88°44'30" W

30°11'42" N 88°33'24" W

30°08'30" N 88°37'00" W

30°08'18" N 88°41'54" W

Center Coordinates:

30°10'09" N 88°39'12" W

Size: 18.5 square nautical miles.

Depth: Average 46 feet, range 38 to 53 feet.

Primary use: Dredged material.

Period of use: Continuing use.

Restriction: Disposal shall be limited to suitable dredged material from the Mississippi Sound and vicinity.

[FR Doc. 91-22870 Filed 9-23-91; 8:45 am]

BILLING CODE 6560-50-M

56 FR 48106-01, 1991 WL 187028 (F.R.)
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