RULES and REGULATIONS

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3546-9]

Ocean Dumping: Designation of Site

Friday, March 31, 1989

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates an existing dredged material disposal site located off the Louisiana coast at the mouth of the Mississippi River for the continued disposal of dredged material removed from the Southwest Pass Channel. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of this material. This final site designation is for an indefinite period of time but is subject to continued monitoring in order to insure that unacceptable impacts do not occur.

DATE: This designation shall become effective May 1, 1989.

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

EPA, Region 6 (E-FF), 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202.

Corps of Engineers, New Orleans District, Foot of Prytania Street, Room 296, New Orleans, Louisiana 70160.

FOR FURTHER INFORMATION CONTACT:Norm Thomas 214/655-2260.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. (“the Act”), gives the ***13187** 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 site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by publication in Part 228. A list of “Approved Interim and Final Ocean Dumping Sites” was published on January 11, 1977 (42 FR 2461 et seq.). That list established the Southwest Pass-Mississippi River site for the disposal of material dredged from the Southwest Pass Channel. In January 1980,

the interim status of the Southwest Pass site was extended indefinitely.

B. EIS Development

Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., ("NEPA") requires that Federal agencies prepare Environmental Impact Statements (EISs) on proposals for major Federal actions significantly affecting the quality of the human environment. 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 (39 FR 16186, May 7, 1974).

In August 1984 EPA distributed a Draft Environmental Impact Statement entitled "Environmental Impact Statement (EIS) for the Southwest Pass-Mississippi River Ocean Dredged Material Disposal Site Designation" to the public for a 45-day review and comment period. Eight comment letters were received on the Draft EIS. The Agency responded to the comments in the Final EIS. Editorial or factual corrections required by the comments were incorporated in the text and noted in the Agency's response. Comments which could not be appropriately treated as text changes were addressed point by point in the Final EIS. On December 9, 1988, a notice of availability of the Final EIS for public review and comment was published in the Federal Register. The public comment period on the Final EIS closed on January 9, 1989. One letter was received on the Final EIS; it contained "no comments". The EIS is available for review at the addresses given above.

The action discussed in the EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis. Prior to each use of the Corps of Engineers (COE) will comply with 40 CFR 227 by providing EPA a letter containing all the necessary information.

The EIS discussed the need for the action and examined ocean disposal sites and alternatives to the proposed action. Land based disposal alternatives were examined in a previously published EIS and the analysis was updated in EPA's Final EIS based on information from the COE.

About 1200 acres of marshes have been built on the west side of the Southwest Pass Channel using dredged material. However, use of the dredged material disposed at the Southwest Pass site for marsh creation purposes is not feasible because of technical and cost considerations. Long pipelines would be required to transport the material and the COE has determined that pipeline dredges in this area were impractical and unsafe because of the length of pipe and cable required, concerns over pipe breakage in rough seas and difficulties with currents in the area. Consideration was also given to the use of these materials for beach nourishment. The same difficulties associated with transport of the materials by pipeline for marsh creation would apply. Also the materials consist primarily of fines, which are generally considered unsuitable for beach nourishment. Upland disposal was also evaluated but there are no upland disposal sites located in the vicinity of the Gulf portion of Southwest Pass.

Four ocean disposal alternatives—two shallow water areas (including the proposed site), a mid-shelf area and a deepwater area—were evaluated. Use of the mid-shelf and deepwater sites would involve: (1) Increased transportation costs without any corresponding environmental benefits; (2) increased surveillance and monitoring costs due to the greater depths of water and distance from shore; and (3) increased safety hazards resulting from transporting dredged material greater distances through areas of active oil and gas development. Because of these reasons, the mid-shelf area and the deepwater area were eliminated from further consideration. An alternate shallow-water site located northeast or northwest of the existing site was also evaluated. However, no environmental benefits would be gained by its selection. Rather, the alternate site would be located in more biologic-

ally productive waters nearer to estuarine areas.

In accordance with the requirements of the Endangered Species Act, EPA has completed a biological assessment and determined that no adverse effects to endangered/threatened species will result from site designation. The National Marine Fisheries Service has concurred with this determination. EPA has also coordinated with the State of Louisiana under requirements of the Coastal Zone Management Act. The State of Louisiana has concurred with EPA's determination that final designation of the Southwest Pass disposal site is consistent, to the maximum extent practicable, with the Louisiana Coastal Resources Program.

The EIS evaluated the suitability of ocean disposal areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations and other applicable Federal environmental legislation. This final rulemaking notice serves the same purpose as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On January 3, 1989, EPA proposed designation of the Southwest Pass-Mississippi River disposal site for the continuing disposal of dredged materials from the Southwest Pass Channel. The public comment period on this proposed action closed on February 17, 1989. One comments letter from the Department of the Interior (DOI) was received. DOI indicated that the disposal site overlays a small portion of two existing Federal oil and gas leases. DOI expressed “no objection” to site designation if disposal activities would not unduly interfere with current or future outer continental shelf mineral development operations. Based on past experience, EPA does not anticipate that dredged material disposal will unduly interfere with mineral development activities.

The disposal site is located on the west side of the Southwest Pass Channel approximatley 1.75 nautical miles from shore. Water depths within the site range from 2.7 to 32.2 meters. The boundary coordinates are as follows: 28° 54' 12" N, 89° 27' 15" W; 28° 54' 12" N, 89° 26‘ 00" W; 28° 51' 00" N, 89 27' 15" W; 28° 51' 00" N, 89° 26' 00" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize ***13188** interference with other marine activities, to keep any temporary perturbations from 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 are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

EPA has determined, based on information presented in the Draft and Final EISs, that the existing site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the existing site has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment. The characteristics of the site are reviewed below in terms of the eleven specific factors.

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

Geographical position, average water depth, and distance from the coast for the disposal site are given above. Bottom topography is irregular.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The northwestern Gulf of Mexico is a breeding, spawning, nursery and feeding area for shrimp, menhaden and bottomfish. The Mississippi Delta in the vicinity of Southwest Pass is a highly productive area with a wide variety of plankton and nekton. Due to runoff from the Mississippi River, the Delta area near the mouth of Southwest Pass experiences changing salinity, temperature, turbidity and nutrient conditions over an annual cycle. During periods of active dredged material disposal, there would be short-term interferences with breeding, spawning, feeding and passage of the nekton. However, it would be difficult to differentiate this interference from that resulting from high flows of the Mississippi River. The existing disposal site is seaward of any estuaries or bays.

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

There are no beaches in the vicinity of the existing disposal site. The area around Southwest Pass is not readily accessible by land. Recreation in the area is limited to boating related activities, primarily sport fishing.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Wastes, If Any (40 CFR 228.6(a)(4))

Dredged material released at approved dredged material disposal sites must conform to the EPA criteria in the Ocean Dumping Regulations (40 CFR Part 227). The dredged material to be disposed of consists of about 4 percent sand and 96 percent fines. Historically, an average of 14.5 million cubic yards (mcy) of material is dredged annually, with a range of 1.8 to 32.5 mcy. Similar quantities will continue to be dredged and disposed of annually using either agitation dredging in high river flows or hopper dredges for transport during low flows. The dredged material will not be packaged in any way.

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

Surveillance and monitoring are both feasible at this site. Surveillance can be accomplished by inspection of logs, observation by ship riders or from aircraft and observation from the light station at the end of Southwest Pass. The shallow depth of the site and its close proximity to the shore facilitate monitoring at the site. Based on historic data, an intense monitoring program is not warranted. However, in order to provide adequate warning of environmental harm, EPA will develop a monitoring plan in coordination with the COE. The plan would concentrate on periodic depth soundings and sediment and water quality testing.

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))

The Mississippi River plume passes through the site in a westerly or southwesterly direction and may mask the turbidity plume from dredged material disposal. Prevailing currents at the site are southwest at speeds of 0 to 4 knots. Disposed dredged material fines become mixed with the Mississippi River plume and move generally southwest. Net movement of the heavier dredged materials which settle is to the west. Freshwater discharge from the Mississippi River results in stratification at the mouth of Southwest Pass; seaward of the Pass vertical

mixing increases.

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

The materials dredged from the Southwest Pass Channel are similar to the materials in the Mississippi River flow. And therefore, the sediments at the disposal site are similar to the sediments in the broad area off the mouth of Southwest Pass. Previous site surveys have not detected any effects of disposal at the existing site.

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))

Some interference with shipping, recreational and commercial fishing and boating are expected during dredged material disposal operations. Although there is no fish or shellfish culture within the site, there will be some impacts on naturally occurring fish and shellfish within the site. The only mineral extraction within the site is oil and gas; past experience has indicated no interference during dredged material disposal.

9. 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))

The water quality and ecology at the existing site is generally similar to the nearshore region off the Louisiana coast affected by discharges from the Southwest Pass of the Mississippi River. The water quality varies depending on the amount and mixing of fresh water runoff occurring at the time. Data gathered during the 1980 and 1981 surveys indicated that trace metal concentrations and clorinated hydrocarbon concentrations were comparable to historic data for the area.

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

Past disposal of dredged material at the existing site has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is not expected that continued disposal of dredged material ***13189** will result in the development of such 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))

There are no known features of historical or cultural significance that occur within the site. There are some shipwrecks located about 3.5 miles from the site.

E. Action

Based on the completed EIS process and available data, EPA concludes that the Southwest Pass-Mississippi River ocean dredged material disposal site may appropriately be designated for use. The existing site is compatible with the general criteria and specific factors used for site evaluation. The designation of the Southwest Pass site as an EPA approved ocean dumping site is being published as final rulemaking.

While the Corps does not administratively issue itself a permit, the requirements that must be met before dredged material derived from Federal projects can be discharged into ocean waters are the same as where a per-

mit would be required. EPA has the authority to approve or to disapprove or to propose conditions upon dredged material permits for ocean dumping.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which 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 site 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 the Office of 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: March 14, 1989.

Robert E. Layton Jr.,

Regional Administrator of Region 6.

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.

40 CFR § 228.12

2. Section 228.12 is amended by removing from paragraph (a)(3) under "Dredged Material Sites" the entry for Mississippi River, Baton Rouge to the Gulf of Mexico, La.—Southwest Pass and by adding paragraph b(73) to read as follows:

40 CFR § 228.12

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(73) Southwest Pass-Mississippi River, Louisiana—Region VI Location: 28°54' 12" N., 89°27'15" W.; 28°54'12" N., 89°26'00" W.; 28°51'00" N., 89°27'15" W.; 28°51°00" N., 89°26'00" W.

Size: 3.44 square nautical miles.

Depth: Ranges from 2.7 to 32.2 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the vicinity of the Southwest Pass Channel.

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