

## REGULATOR'S PERSPECTIVE — U.S. FISH AND WILDLIFE SERVICE

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Fish and Wildlife Service's name has been mentioned a couple of times this morning. These sorts of critical references, I believe, are, in the long run, positive to bring concerns out into the open and promote the kind of spirited discussion we will have here this morning.

To get started, my staff asked me to remind you all very clearly that Fish and Wildlife Service is not a regulator. I am not sure that will work. Technically, they are right. I guess to a lot of you, it probably does not make any difference. The impact and input Fish and Wildlife has into the 404 process through the Fish and Wildlife Coordination Act, while they are not officially a regulator, is through our comments that are being seriously considered by the Corps of Engineers. Therefore, we have some impact on the ultimate decision. The resources for which we serve as trust overseers of the United States are migratory birds and certain species of fishes, etc. In the Endangered Species Act arena, we are technically not a regulator either, because we provide opinions to other federal agencies. Yet again, because of the stringency of the act, those opinions are almost always taken and considered very thoroughly. I think compliance with those opinions is very high and therefore, for your purposes, we become a regulator. So I have to, I think, admit to that role.

What I would like to do this morning is just quickly review how we impact on the navigation processes. I have some familiarity with some of the issues brought up earlier, particularly the Port of Houston, since I was the Regional Director in Albuquerque throughout most of the 1980s. When those controversies arose in the mid-eighties I also played a minor role towards some of the solutions that are being looked at now.

Fish and Wildlife operates through some 60 field stations throughout the country. Many of those are concentrated in Port Areas. We have delegated those field station supervisors great authority and responsibility to comment on permit type applications dealing with Ports, or project development of the Corps. Also, they may write biological opinions, with the exception that jeopardy opinions, where a species may be jeopardized, must be signed by the regional director. Other than that, there is very strong reliance on our field offices. They have the responsibility to not only produce reports, but also to work cooperatively with local authorities: local, state, and federal levels. I have to admit that it is

difficult for them to do this with the number of permits they review. Basically, every permit the Corps issues, or a great majority of them, get reviewed, to some extent, by our people. Therefore, the work load can be very hectic in some of those offices.

In the Port review process, we have to say that we certainly agree that the process is not perfect. We also have to say that we do not necessarily think that there is anything inherently in the process that means that it could not work. I like the term used earlier by one of the speaker that it clearly needed to be managed. I think the process, in terms of timeliness, in terms of bringing people together, could benefit from management strategies.

So, I am going to step through some suggestions for the Fish and Wildlife Service as it has room for improvement. These are what I would call the standard ones, in the sense that we are trying to improve the training of our staff, both in terms of their understanding of their responsibilities and authorities. Also, these are what I call people skills, that are so critical to problem solving these days. That is the ability to form teams at the local levels, work through problems and to arrive at solutions in timely ways.

The central dilemmas, that I think, are ones that have to be addressed right up front. You have two classes of issues: 1) New port development and frequently that may mean deepening existing channels; 2) There is the separate issue of maintenance dredging.

Speaking of the first issue, the deeper channel issues, is clearly the driving force behind the problems in Houston. One of the fundamental questions that I think that we, as a nation, have not asked or dealt with in the restrained budgetary climate we are in now, is the fact that the federal government is paying a big hunk of these costs. Allocating public dollars should relate to some national view of how many deep channel ports do we want and where. We certainly faced that issue in Texas. As you look down there and decided that a very central problem right up front was, "Does everybody that wants a deeper channel get one?" Of course, from the Ports point of view, this is not an issue your community is anxious to deal with. But from the federal government budget perspective, I hope that as we study this issue, we insure that there is some examination of financial benefits. There may be a decision not to bring it up, but

it ought to be looked at clearly. If for no other reason than from the budgetary perspective. Every time you make a decision to deepen, then you have to make the ancillary decisions of where to put the extra materials.

Look at all the other decisions that flow from that. An obvious benefit is the increased traffic. But there are also the obvious regulatory aspects. I think one value to that kind of scrutiny, and some national decision making on the nature of our national port systems is that, when you get it all done, you have good national policy. It is a lot easier for federal regulators to dive into a problem and try to solve it once they know that some of the base issues have been addressed. There is a real national need to evaluate all of the proposals for improvement.

After that is settled, our first suggestion quickly goes to what the Port of Houston is doing now. We believe it should be done at the very early stages and that is sitting down with the constituencies. And that means all the constituencies. Recognizing that the kinds of decisions and environmental problems that are caused from new ports affects a great deal of the environmental resources that the Fish and Wildlife Service is responsible for. Get the interested people to the table early on and sit down and find out: what are the issues, what are the problems. Form the teams to begin working on them. I hope that is the long run impacts of things like national estuary plans, which we are a participant in Galveston, will mean that effective alliances will be formed early and can be relied upon to assist in the things like port improvements and maintenance. When a port authority comes to the table with a solution they have worked on for years, and just present it, then it makes it very difficult to appear to want input at late stages of project development. Some of the intransigence is already built in, and to some extent, on both sides. Perceptions of ritual intransigencies makes it more difficult to work cooperatively toward problem solutions.

The various approval process should be coordinated, with states as well as the federal sectors. We should, without a doubt, remove as much of the sequential

decision making and make things run concurrently. And then, to a great extent, we ought to look at the advanced identification aspects, whether it is under the EPA's authorities or under 4404B1 guidelines and find advanced sites for dredge material disposal.

Disposing of dredged material is clearly the root of the problem. We do need sites for disposal. Just as we need to work together to look at the overall project developments, we must be working together early on to designate the sites well in advance and to identify appropriate disposal methods, and disposal sites with sufficient long-run capacity. Fish and Wildlife Service would very much like to deal with some of these disposal site issues as few times as possible. When somebody comes to us with a project, we suspect that they are not the only people going to be using the local disposal site. If they are allowed to fill it themselves over a period of time, then we frequently are in the position of asking the question, "Why don't we find the sites that everybody can use, wants, instead of everybody coming and trying to find their own sites." A lot more coordination is needed there.

Regarding contaminated dredge materials, there is no reason to expect that these problems or issues are going to go away quickly. The more we learn, as a society, not just Fish and Wildlife Service, about the long-term chronic impacts from contaminants, the more reason there is for concern. While zero tolerances may be a trifle low, I think what we are learning is that the tolerances for some of these contaminants are going to continue to be low. We might as well expect that. We are going to have to find the methods to deal with them.

To conclude my remarks, two things I will stress again. The first is early planning, early sitting down with a community, the community at large. I commend the Port of Houston for the sort of work that is going on down there. Second, which is the key, focusing on the disposal site issues. We must find sites and develop methods that will allow them to be used for a long period of time.