COASTAL ZONE MANAGEMENT SERIES

PUBLIC ADMINISTRATION OF LOUISIANA'S COASTAL WETLANDS: 1820 TO 1976

W.H. CONNER

SEA GRANT PUBLICATION NO. LSU-T-77-001
CENTER FOR WETLAND RESOURCES · LOUISIANA STATE UNIVERSITY · BATON ROUGE, LOUISIANA 70803

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Abstract

This report traces the development of wetland management and the present permitting practices in coastal Louisiana. Of the various state and federal agencies that have been involved in water control activities, the U.S. Army Corps of Engineers and the Louisiana Wildlife and Fisheries Commission have emerged as the main agencies of control.

The Corps's New Orleans Office issues more than half of all U.S. dredging permits. The number of permits has doubled since passage of the Federal Water Pollution Control Act Amendment of 1972. The intensity and location of permit actions in 1970 and 1974 were examined by plotting the location of each permit on 1:250,000 orthophotomosaics. Computer analysis of permit information showed that the greatest concentration of permits exists in the Terrebonne and Barataria management units. The steadily increasing dredging activity converted 2,835 acres of wetland to open water in 1974.

The 1974 Constitution mandated consolidation of numerous management functions in an Office of Coastal and Marine Resources. This may strengthen future efforts to sustain multiple use and productivity of renewable coastal resources.

Introduction

Vast quantities of seafood, waterfowl, and furs come from the 10 million acres of coastal wetlands in Louisiana. Each year commercial fishermen harvest some 80 million pounds of shrimp, 10 million pounds of oysters, and close to a billion pounds of fish (mostly menhaden). Annually, sports fishermen catch an estimated 100 million pounds of estuarine fishes, and trappers market over 2 million pelts that yield about $10.8 million. The annual recreational value of the coastal area is estimated to exceed $120 million (Louisiana Advisory Commission on Coastal and Marine Resources [LACCMR] 1972).

In addition, large amounts of oil, gas, salt, and sulfur lie beneath the surface of the marsh. Extraction of these resources, the associated refining and manufacturing activities, and agriculture have placed stresses on the environment. Industrial growth has in turn increased the population and brought demands for roads, homes, and other services. The low wetland region is exposed to river flooding and Gulf storms; this has necessitated construction of extensive public works structures as well as port and navigational facilities. Even with these extensive multiple uses the region remains remarkably resilient, but some areas have reached critical levels of stress and deterioration. Consequently, the people of this state are becoming more concerned with matters relating to the environment and how these matters are administered. Many agencies have not yet adopted comprehensive policies for administration of the coastal zone as a unique entity and no special importance is ascribed to activities in the coastal area (LACCMR 1972).

Historically, the only governmental organizations having roles that approach a comprehensive overview of the region's many activities are the Louisiana Wildlife and Fisheries Commission and the U.S. Army Corps of Engineers. At present the Corps's New Orleans District annually issues more than half of all U.S. dredging permits. The existing permit system and recent court actions requiring the Corps of Engineers to exercise its full authority under the Federal Water Pollution Control Act--FWPCA--make the Corps the dominant federal element in Louisiana coastal zone planning. (Appendix contains Federal Register 40[144]: Rules and regulations giving U.S. Army Corps of Engineers its authority.)

Including the Louisiana Wildlife and Fisheries Commission, there are twenty-six state agencies that have varying degrees of interest and authority in coastal zone matters. Four or five of these agencies are truly active in coastal zone affairs and must issue "letters of no objection" to assure approval of project or permit requests. This report traces the development of controls on coastal environmental impact in Louisiana leading to the present permitting system. This is done by discussing the history, functions, and interactions of the different agencies in the state, and by looking at the trend in permit requests.

Louisiana state agencies vary widely in organization and relationship to one another. In addition, there is considerable variation in the method of appointing agency heads or boards and their selection of high-level executives. For example, at present the Department of Wildlife and Fisheries and the Department of Highways have appointed boards which in turn appoint the department heads who administer the respective programs. In the Department of Public Works, a governor-appointed board and department head share responsibility for administering the departmental program. In many cases the authority and responsibility for carrying out similar functions is widely dispersed, a situation which presents logistic problems. For example, 13 independently appointed statewide boards, commissions, and committees, and two state officials--in addition to the state commissioner and the Department of Agriculture--are involved in carrying out various agriculture programs (Public Affairs Research Council 1964). However, the state government was reorganized by the 1976 legislature to correct some of this overlap.

The more than 260 agencies in the state, each with its own function, present communication problems. Also, there are situations where no formalized standards, criteria, or environmental guidelines for reviewing projects exist. The lack of rules and regulations probably reflects the difficulties inherent in trying to accomodate all the varied interests that occur in the complex coastal region. In addition, the coastal parishes have a strong tradition of attempting to run their own affairs without state regulation or guidance.

Figure 1 shows the present distribution of resource management responsibilities in the coastal area. The list is incomplete since it shows only major activities that have significant effects on the coastal environment. Many agencies share decision-making, an overlap that creates problems.

History of Agency Development

Even before the Civil War several federal and state regulatory agencies existed in Louisiana. Among these were the U.S. Army Corps of Engineers and the state Board of Health, Land Office, and Board of Public Works. Of these, the Corps of Engineers exerted the most power and influence on the Gulf Coast region. Around 1820, the Corps was given civil project responsibilities. In 1824, the federal Survey Act authorized the President to employ the Corps in drawing up surveys, plans, and estimates for routes or roads of commercial or military importance. During the period 1824 to 1854, the Corps's main concern was clearing the Mississipppi River and improving it for navigation. With the election of Andrew Jackson in 1829 changes in governmental policy resulted in cutbacks of Corps activity in the South. After this the Corps concentrated on building fortifications around New Orleans. A full-scale program of development through the Corps was delayed until after the Civil War. However, this pre-war involvement of the Corps of Engineers does mark the beginning of concerns at the national level. The Corps's mode of organization evolved at the same time, and several important public works near New Orleans were initiated (Cowdrey 1971).

In the period 1830 through 1850, several state boards developed. The Board of Public Works was created (1832) to aid in alleviating flood problems. The Land Office was formed (1844) to locate state-owned lands and dispose of or sell them. The Board of Health was founded a few years later (1855) and its main duties involved trying to halt the spread of disease in Louisiana. The board examined ships arriving at Louisiana ports for contagious diseases and urged the deepening and maintenance of all drainage ditches.

Before the Civil War and immediately thereafter, Louisiana began to recognize the need for conservation practices and the necessity of protecting its wildlife. In 1857, the state enacted its first conservation law. This law prohibited anyone from shooting wild duck, snipe, or water hen in any state waters within St. Bernard Parish before 6 a.m. and after 2 p.m. The penalty, if caught, was a fine of not less than $10 and not more than $20. By 1870 an act covering oyster regulations had been passed. Between 1871 and 1896 this act was amended several times, repealed, and re-enacted (La. Dept. Cons. 1920).

In 1899 another conservation development occurred inadvertently at the national level. The River and Harbor Act was passed in that year forbidding the filling, dredging, erection of structures, and dumping of refuse in navigable waters of the United States without permission of the Corps. The limit of "navigable waters" was defined as reaching to the "high-water mark." This act was evidently passed solely to prevent obstructions to navigation, but later it would become useful for preventing water pollution (Cowdrey 1971).

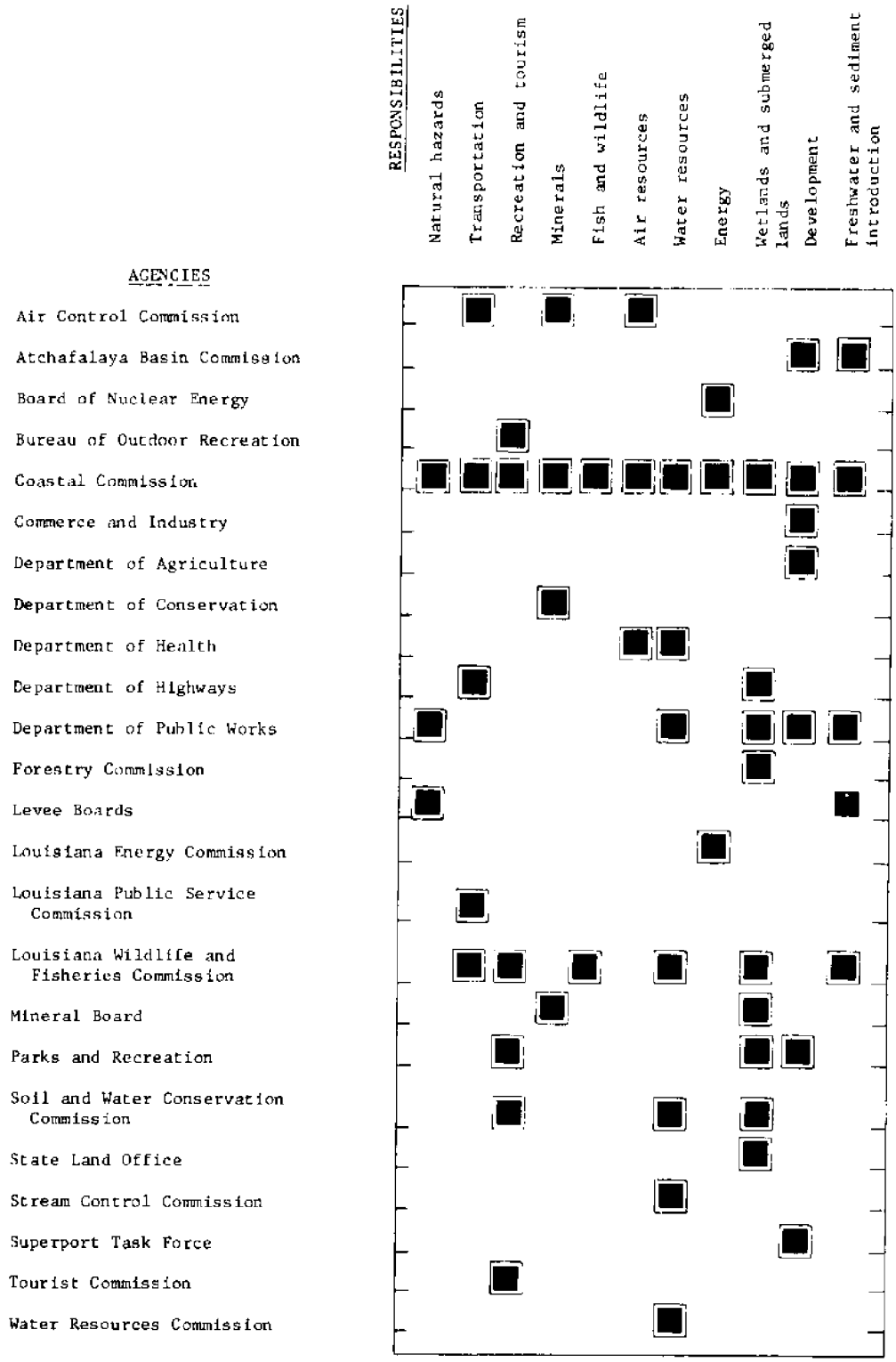

Fig. 1. Responsibilities of various state agencies in Louisiana before 1 July 1977.

In 1900 the legislature of Louisiana decided to study the needs of the oyster industry. In 1902 the Oyster Commission of Louisiana was created. At the same time the federal government enacted the second River and Harbor Act. Section 1 of this act required any individual or corporation wishing to do work in any navigable river to submit plans for approval by the Chief of Engineers of the Corps of Engineers. The regulatory authority established in the River and Harbor Acts provided guidelines for the Corps until 1972 (Federal Register, 25 July 1975).

The intensive exploitation of the state's resources--forests, fishes, minerals, and furbearers--began at the turn of the century. Under the national leadership of Theodore Roosevelt and with the cooperation of Louisiana's governor, the people in the state came to realize that controls had to be placed on those exploiting the resources. As a first step, the Oyster Commission and the Commission for the Protection of Birds, Game, and Fish (created in 1908) were combined in 1912 into the Conservation Commission of Louisiana. The commission was granted jurisdiction over all natural resources of the state and was charged with preserving, protecting, upbuilding, replenishing, and managing the resources. Along with preventing waste and exploitation, the 1912 act supported the economic use of the natural resources. The commission was specifically charged with:

- Improving, enlarging, and protecting the natural oyster reefs of the state
- Protecting and propagating, where possible, all species of birds and game of whatever description
- Establishing preserves and hatcheries to be maintained and operated under its control
- Enforcing all laws relative to the oyster industry
- Enforcing all laws relative to protection, propagation, and selling of birds, game, fish (freshwater and saltwater species), diamondback terrapin, and shrimp
- Enforcing all laws relating to natural mineral and forestry resources
- Assisting in protecting all leases of private bedding grounds
- Assisting in the protection of private fish ponds used in propagating fish
- Protecting game preserves
- Assisting in every possible way in developing the natural resources placed under its jurisdiction to the fullest extent

In 1916 the Department of Conservation was created to succeed the Conservation Commission. The department was charged with enforcing all

statewide laws involving natural resource use development. It was to control all exploitation of resources on land and water. Other states at that time had different commissions for each resource and the multiplication of control tended to impair the purposes of conservation.

In 1921 the Highway Commission was created to study, administer, construct, and maintain the state's public road system. From 1922 to 1975 miles of completed highways increased from 1,800 to 18,000.

In 1936 two other state agencies whose activities would affect the environment were created. The Mineral Board was delegated the exclusive power to grant, supervise, and enforce leases for the development of oil, gas, and other minerals on lands and water bottoms owned by the state. Since 1915 the governor of the state had granted leases. He was leasing land for about 20¢ per acre (Mineral Board 1940, 1942), enabling some interests to lease large areas of valuable marshlands. The Board of Commerce and Industry was created to promote the civic, industrial, and commercial interests and general welfare of the state. As an incentive for industry to locate or enlarge facilities in Louisiana, the Board of Commerce and Industry exempted such industry from taxes for a period of 10 years after it moved to Louisiana or enlarged its facilities.

The first instance of state governmental regulation in the Louisiana coastal zone occurred in the late 1930s. Until then, no true environmental regulations existed, and no major conflicts of interest had surfaced at the public interest level. However, in the late 1930s a conflict between the oil companies and the fishermen erupted over the effects of dynamite blasting used in seismographic work. The fishermen claimed that the blasts were killing fish and oysters. Because of the Department of Conservation's commitment to protect and preserve the resources of the state, they were forced into the position of settling this dispute. The department conducted some research and formulated a set of rules and regulations that allowed both sides to continue working in the same area.

In 1938 the Soil and Water Conservation Committee was created. Watershed projects sponsored by the committee have had a pronounced effect on the coastal region. Each watershed project is designed to provide more efficient drainage of agricultural lands for purposes such as flood control and irrigation. This is accomplished by constructing ditches and maintaining stream channels, which results in the loss of swamp and marsh lands. The Soil and Water Conservation Committee has the power to approve or disapprove watershed projects, basing its decisions on economic cost-benefit analyses.

The history of flood control in Louisiana dates back to the early 1700s when the French ruled the region. The first levee builders were the farmers along the Mississippi River and Bayou Lafourche. In dividing lands along these waterways, the french adopted the "arpent system," in which a tract of land commonly 8 arpents (1,670 feet) wide and 40 arpents (8,350 feet) deep fronting on the river was deeded to each farmer.

It was the landowner's responsibility to clear and drain his land and construct levees along the river (Kniffen 1968). This system proved unworkable. The landowners thought it unjust; they resented having to pay the entire bill for the stretch of levee on their land. Consequently the levee system was improperly maintained until the 1850s when levee districts were created. These districts are today the basic units for levee maintenance and flood fighting (Cowdrey 1971).

The year 1882 was a landmark year for flood-control interests. A severe flood forced Congress to vote large sums of money to the newly created Mississippi River Commission (part of the Corps of Engineers) for building levees. No provision in the Constitution allowed the federal government to perform works of flood control, but Congress justified its action in that levee crevasses caused shoaling of the river's channel and thus retarded navigation. For the first time the flood problem along the entire river was tackled.

In 1940 the Department of Public Works and the Stream Control Commission were created. The Department of Public Works inherited flood control responsibility from the Board of Public Works and the Board of Engineers. The latter two agencies and the Planning Commission, the Housing Commission, the Louisiana Flood Control and Water Conservation Commission, the Board of Control of the New Basin Canal and Shell Road, the Aeronautics Commission, and the Louisiana Flowage Right Commission were merged into the new Department of Public Works. These agencies were combined to increase efficiency of operations and eliminate overlap and duplication of effort. The overall functions of the department include:

- Planning, designing, constructing, and operating levees, canals, dams, locks, spillways, reservoirs, drainage systems, irrigation systems, aeronautical facilities, housing developments, inland navigation projects, flood control projects, and other public works.

- Rendering engineering advisory services to local governmental subdivisions and special districts including port and terminal districts and levee districts.

- Fostering the maintenance, improvement, and extension of the intracoastal canal system and its feeders.

- Initiating, sponsoring, and implementing all waterway projects with Louisiana.

- Draining marshlands and overflow lands within the state for the purpose of controlling floods and allowing use of the lands for agriculture.

- Issuing rules and regulations concerning activities within its jurisdiction.

In addition, the Department of Public Works reviews all proposed Soil Conservation Service and Corps of Engineer projects for adequacy of

design. It also investigates all drainage structures proposed by the Department of Highways as to their capacity to meet the drainage criteria of the Public Works Department.

The Stream Control Commission (SCC) was created to handle water pollution problems in the state. It is an ex-officio, non-budgeted agency. The chairman of the commission is the Director of Wildlife and Fisheries (the Department of Conservation in 1940), and he enforces the laws, rules, and regulations of the Stream Control Commission. Being non-budgeted, the commission also relies on the Water Pollution Control Division of the Wildlife and Fisheries Commission to serve its needs. By law the SCC is given jurisdiction over waste disposal into lakes, streams, rivers, and coastal waters. The SCC during the middle 1940s was challenged in court by a Texas oil company in an attempt to halt the enforcement of waste disposal regulations. The U.S. Supreme Court upheld the Louisiana pollution law, and today the Stream Control Commission is the principal state agency for handling water pollution problems. Passage of the Federal Water Pollution Control Act (FWPCA) Amendments of 1972 tightened control of waste discharges. Not only must an applicant get a discharge permit from the SCC, it must also get a permit from the EPA. The latter permit is not a permit to dump, but it constitutes approval of the applicant's scheduled program of pollutant discharge abatement whereby all harmful discharges will be eliminated by 1985. The SCC may require the EPA permit to specify limitations exceeding federal guidelines, even though the EPA administers the federal permit.

In 1944, the Department of Wildlife and Fisheries and the Forestry Commission split from the Department of Conservation. The Department of Conservation retained power to handle only those matters pertaining directly to mineral resources, while the Department of Wildlife and Fisheries was granted the power to protect, conserve, and propagate the wildlife of the state, including wild game and non-game animals, oysters, fish, and other aquatic life. The Forestry Commission was established to deal with forestry practices.

At about the same time that Wildlife and Fisheries was separated from the Department of Conservation, a crisis arose once again over seismic work. The use of floating charges as recommended in the first rules and regulations was creating trenches and spoil banks along the water bottoms, and shrimp trawls were being damaged when they caught on these banks. So the guidelines were changed to require that the dynamite must be exploded in holes drilled to depths of 100 to 200 feet. This option to tighten up or loosen the guidelines as more information is obtained marks the beginning of a pattern important to present-day management policies.

The Department of Conservation has several objectives in conserving the state's mineral, oil, and gas resources:

- Enforce rules and regulations

- Make inquiries and investigations to determine whether resources are wasted and take necessary actions to prevent it
- Require reports showing the location of all oil and gas wells
- File well logs and other drilling records
- Limit and prorate the production of oil and gas for the prevention of waste
- Grant permits for the building and operation of plants to burn natural gas and carbon black

Most of the Department of Conservation's work is concentrated in the coastal zone because of the large amount of oil and gas activity in the marshes, bays, and offshore areas. The department prescribes rules and regulations that cover drilling, well abandonment, water pollution (by oil and gas field wastes and brine), production comingling (so as to allow fewer production platforms and facilities), well spacing, dual completions, and other exploration and production activities. In its water pollution control activities, the department's Division of Water Pollution Control works in cooperation with the Stream Control Commission. In offshore areas, the department shares jurisdiction with the Stream Control Commission, Wildlife and Fisheries Commission, the Department of Health, and the Air Control Commission.

The Forestry Commission does not play a large role in management within the coastal area because of the general lack of forests in the region. Also, the Forestry Commission's functions are mainly fire prevention and public education concerning the value of forest conservation. The agency does cooperate with the Wildlife and Fisheries Commission, the Parks and Recreation Commission, the Department of Public Works, the Planning Office, the Louisiana State University Cooperative Extension Service, and others.

With creation of the Mineral Board in 1936, another problem occurred in the coastal area. Under the Constitution, the Department of Wildlife and Fisheries had control over water bottoms in the state, including the right to lease these areas to oyster fishermen. In 1936 the Mineral Board began to lease state-owned land, including water bottoms, for development and production of minerals, oil, and gas. Problems arose when oil leases, which are large rectangular areas, overlapped oyster leases. Both leases were legal under state regulations. It remained that Wildlife and Fisheries was the only agency that was in a position (and willing) to settle the argument. Part of the argument centered around repeal of a previous law that required oil companies to settle disputes with the fishermen before they moved onto an overlapping oil and oyster lease. In 1950 the statutes were revised and, without an open hearing, the law was repealed. The new law allowed the oil company to offer a reparation to the oysterman; and, if he refused it, the oil company could proceed to install its rig before final court settlement. The argument was resolved when Wildlife and Fisheries persuaded

the Mineral Board to stipulate in its leases that any operations on oyster or fishing areas had to be cleared through Wildlife and Fisheries. Also, the company had to follow rules and regulations set up by the Department of Wildlife and Fisheries. This type of interaction was occurring prior to inauguration of the state's present system of permitting (Lyle St. Amant, pers. comm.).

Wildlife and Fisheries was also forced to assume active jurisdiction over water pollution by the oil companies. During the 1920s and even through the 1940s there was no stream control or pollution control. By the mid 1940s the entire Barataria Bay complex was extensively affected by oil pollution (Lyle St. Amant, pers. comm.). At about the same time, severe oyster mortality occurred and the oystermen accused the oil companies and sued. Studies (Owen 1955, Mackin and Wray 1952, Mackin and Hopkinson 1961) indicated that oil was not directly the cause, and the case was eventually settled out of court. Later studies showed that the worst effects of oil on oysters are a bad taste and odor, which makes them unsuitable for market (Mackin and Sparks 1959, Blumer et al. 1970). This involvement led to Wildlife and Fisheries' development of guidelines on oil containment and drilling mud disposal.

In 1946 the Fish and Wildlife Coordination Act Amendment, basically an environmental law, was passed. This act called for consultations with the Fish and Wildlife Service and the head of the state agency that exercises administration over state wildlife resources prior to the work of any agency attempting to impound, divert, or deepen a stream or other water body for any purpose. Wildlife and Fisheries Commission then had employees in the coastal area who were working with oyster and marsh problems as well as the environmental coordination problem. They began to intermesh the two problems, and from that they basically developed the present environmental approach to wetlands management in this state.

In 1952, the Louisiana Constitution created the Louisiana Wildlife and Fisheries Commission (LWFC; then called Wild Life and Fisheries) in place of the old Department of Wildlife and Fisheries. The new commission was created to formulate policies and evaluate effectiveness of all policies, plans, rules, regulations, and procedures for management of living resources in the state.

Around 1958 LWFC determined that to administer their environmental responsibilities they had to work with the Corps of Engineers on permit procedures. By this time, the Corps of Engineers, under authority of the River and Harbor Acts of 1899 and 1902 was issuing permits for projects relating to filling, dredging, erecting of structures, and dumping refuse in navigable waters. Through various court determinations, the term "refuse" had been broadened to include waste products as well as commodities having economic value such as oil or gasoline. However, the system of review and enforcement had not developed to the point where environmental concerns played an important role in the management process (Clotworthy 1976). The LWFC obtained a commitment

from the Corps that allowed them an opportunity to review the permits, and, in effect, write "letters of no objection."

Just before the Corps agreed to coordinate permit requests with LWFC another step toward environmental management and effective water pollution control took place. This was the Federal Water Pollution Control Act of 1956, which required the Corps to consider the effects on fish and wildlife of any project in enforcing the Refuse acts.

Subsequently the National Environmental Policy Act of 1969 (NEPA) declared that all agencies of the federal government must give appropriate consideration to environmental values in decision-making. Later in 1969, the Zabel v. Tabb decision required the Corps of Engineers to consider environmental matters as mandated by NEPA.

In 1972 the Federal Water Pollution Control Act Amendments granted the Environmental Protection Agency primary responsibility for cleaning up the nation's waters. In establishing EPA's authority, Section 402 of the FWPCA transferred the permit program from the Corps of Engineers, which had held jurisdiction over discharges since enactment of the River and Harbor Act in 1899. The new permit program was known as the National Pollutant Discharge Eliminations System (NPDES). Under this program any person proposing a point source discharge of a pollutant in navigable waters must first obtain an NPDES discharge permit. In using this program as a management tool, EPA is attempting to clean up the nation's water by the eventual control of major point sources (Clotworthy 1976).

Section 404 of the FWPCA left the responsibility of issuing permits for the discharge of dredge and fill material into U.S. navigable waters with the Corps of Engineers (Clotworthy 1976). Navigable waters in this law are defined as all waters of the United States. Despite passage of this law, the Corps continued to follow the navigable waters definition (waters shoreward to the high water mark) as set forth by the 1899 River and Harbor Act. Then in March 1975, the U.S. District Court for the District of Columbia in NRDC v. Callaway ordered the Corps to regulate dredge and fill activities in all the navigable waters as defined by the 1972 law. The Corps responded with a three-phase program which will culminate 1 July 1977, at which time its jurisdiction will extend to all waters of the United States. Areas that are periodically flooded to the extent that aquatic vegetation can grow will fall under the Corps's jurisdiction (Clotworthy 1976). Other examples of dredge and fill permitting include:

- Site development fills for recreational, industrial, commercial, residential, or other uses
- Causeways or road fills
- Dams or dikes
- Artificial islands

- Property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and bulkheads
- Beach nourishment
- Levees
- Sanitary landfills and backfills

Exempted are normal farming practices such as plowing, cultivating, seeding, and harvesting. Also exempt are such farm practices as terracing, land leveling, and check dam construction. Damming of major streams, diking, and discharge of dredged or fill material in wetlands associated with farm practices require permits. Since this section (§404) was enacted, the number of permit applications has almost doubled (Lyle St. Amant, pers. comm.).

The Corps of Engineers is responsible for managing federal public works such as navigation and flood control projects, as well as for granting permits for private interests and other governmental units. Environment Impact Statements (EIS) are required (since the NEPA legislation) for all major federal actions significantly affecting quality of the human environment.

Stresses on the environment are not adequately understood for the purpose of permit decision-making. Especially needed is knowledge concerning the synergism of a project or projects of a similar nature within a given area and the combined impacts from multiple-uses. All projects should be considered together in cases where the combined effect of several small projects may be greater than a large single project. A method for systematically analyzing cumulative impacts has yet to be developed.

At present, permit requests are submitted directly to the New Orleans District Corps of Engineers. The Corps makes an immediate preliminary determination as to whether an EIS is required but it reserves the option to reverse this decision if warranted by new information or public concern. In the simplest case--where an EIS is not needed--the Corps sends out public notices to a large number of people and agencies within the state. Notices are also sent to the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency. The applicant must obtain "letters of no objection" from the Department of Public Works, Louisiana Wildlife and Fisheries Commission, the Stream Control Commission, and the local governing body (town or parish, levee district, or port commission, for example). Even if no objection to the proposed project is raised by the public or any agency, the Corps of Engineers can deny a permit approval based on its own objection (Charles Decker, USACOE, pers. comm.).

When an EIS is required, further processing of the permit is suspended until the study is completed. The Corps prepares the EIS, but the applicant is required to submit data and may be assessed for preparation

expenses. Some applicants withdraw their requests when they learn that an EIS is required and that delays of a year or more may ensue. The permit may be refused if the EIS shows that the work would be environmentally harmful, in which case the applicant would have lost both time and money (Wiley Hunt, USACOE, pers. comm.).

Public hearings or meetings are sometimes called by the District Engineer to allow interested parties to express their views and present pertinent data to aid in evaluating the permit application. The District Engineer must consider holding a public hearing when requested by any party who may be affected by approval of the permit. This applies to Sec. 404 permits only. The District Engineer may decide against holding a hearing if he determines that the likelihood of additional information being presented is slight (Charles Decker, USACOE, pers. comm.).

At one time blanket permits were granted to oil companies allowing them to carry out any operation within a given location. Such permits are no longer granted in areas with extensive wetlands although they may be obtained for open water situations, such as offshore areas and large bays. Even then, the company must present written notice of each intended activity for approval. This notice does not go through a public review, but the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency are given 15 days to review the proposed action and present objections if they desire (Wiley Hunt, pers. comm.). Also, the blanket permittee must obtain letters of no objection from the state agencies mentioned above and, in many cases, the parish governing body. About ten of the parishes require oil companies to furnish information on each item of work under a blanket permit for their review. Several of the parishes even have permit programs of their own for some of these activities (Charles Decker, USACOE, pers. comm.).

A new type of permit presently coming into use is the general permit for certain clearly described categories of work. After a general permit is granted, individual activities within these authorized categories do not require separate permits. For example, consider the many miles of highways in the wetlands of Louisiana. Any maintenance work by the Department of Highways requires a permit from the Corps under the established system. But with one general permit, the Highway Department will be able to perform most maintenance work without having to re-apply to the Corps (Wiley Hunt, USACOE, pers. comm.).

Along with the Corps of Engineers, the U.S. Coast Guard has some jurisdiction in navigable waters. In 1966 the Secretary of Transportation was granted authority to approve locations and plans for bridges and causeways across navigable waterways. Then in 1967 this authority was passed down to the Commandant of the Coast Guard. There is still some state agency interaction (bridge and causeway decisions) stemming from requirements of the Fish and Wildlife Coordination Act. An applicant must include with the permit request copies of letters from the

appropriate state agencies showing that proposed construction will not violate water quality standards of the state.

The Coast Guard consults with the Corps when any significant restriction of passage through or under a bridge is contemplated or when a waterway is to be temporarily closed. The District Commander of the Coast Guard sends notices of applications for permits for bridge or causeway construction, modification, or removal, to the District Engineer of the Corps of Engineers. The Corps in return sends notices of applications for permits for other structures on dredge and fill work to Coast Guard District Commanders.

Even before the Federal Water Pollution Control Act (FWPCA) and the question of cumulative impact analysis arose, there was a growing awareness in Louisiana that the biologic and economic productivity of the coastal zone was being imperiled by fragmented management, improper development, and lack of systematic research. In 1971, the governor established the Louisiana Advisory Commission on Coastal and Marine Resources to investigate the situation. This commission was composed of ten members, including a balanced representation among coastal landowners, conservationists, oil and gas developers, agriculturists, labor interests, state resource administrators, water transportation interests, industrialists, fishermen, and academic scientists. Although each commission member represents a special interest group, a spirit of cooperation was readily achieved that led to effective identification of public and state "best interest" in coastal zone management. From their work, the Louisiana Wetlands Prospectus was published. This report includes over forty recommendations concerning coastal needs and problems and forms the foundation for much of the work presently being conducted in Louisiana under Sec. 305 of the federal Coastal Zone Management Act of 1972.

The Coastal Zone Management Act of 1972 was intended to give the state the primary responsibility for determining land and water uses affecting its coastal zone. This act is specifically designed to encourage state and local groups to upgrade coastal management practices. The coastal zone management program is formally submitted to the Secretary of Commerce for approval. He then forwards it to the Office of Coastal Zone Management (OCZM) within the National Oceanographic and Atmospheric Administration (NOAA) for review. The associate administrator who heads OCZM holds statutory responsibility for approving the plan under the Coastal Zone Management Act of 1972. Once the program is approved, the state has the authority for the management of the coastal zone including the power to administer land and water use regulations, control development, and resolve conflicts among competing uses (Hershman 1975, Hershman and Mistric 1976).

The Coastal Zone Management Act was broadened in 1976 to include any outer continental shelf (OCS) activity. Once a coastal state's management plan is approved, any plan for exploration, development, or production from an area leased under provisions of the OCS Lands Act will

have to comply with the state's management plan. OCS activity includes both offshore and onshore impacts.

Permit Trends

The permitting process has grown since its introduction with the passage of the River and Harbor Act of 1899. Primary changes in the process were brought about by the pollution controversy starting in the 1950s. The passage of NEPA (1969) and FWPCA (1972) expanded the Corps of Engineers' jurisdiction to wetland regions, increasing the number of permits to be evaluated. As the permitting process developed LWFC and other state agencies have become involved through their writing of "letters of no objection" to permit requests.

To obtain some information on the number and location of permit requests, permit records from LWFC for the years 1970 and 1974 were analyzed. Distribution and intensity of permits were determined by plotting locations on 1:250,000 orthophotomosaics (Fig. 2-15). The number of permits in 1974 (2,259) increased greatly over 1970 (972), likely reflecting passage of Sec. 404 of the FWPCA.

All the available permit information was put into a computer compatible format for easy reference. (It was assumed that all permit transactions were completed.) Permits were categorized as follows:

- Pipeline activities--installation and maintenance.
- Oil company dredge and fill activities--canals, maintenance dredging, drainage.
- Oil company drilling activities--gas lift lines, well jacket installation, platform, keyways.
- Oil company construction activities--bulkheads, piers, docks, wharves, levees, cable crossing.
- Blanket permits.
- Non-petroleum dredge and fill activities--canals, maintenance dredging.
- Non-petroleum construction activities--bulkheads, docks, repairs, levees, boatsheds, pilings, wharves.
- Others--such as seismographic work.

Data by parish and activity are presented in Table 1. In Table 2, the data is grouped according to the type of land affected by each activity. Dredge and fill, drilling, and non-petroleum construction activities had the greatest change in permit numbers. Again, this increase probably represents the expanded jurisdiction that the Corps now has under Sec. 404. From Figures 2 through 15 and Table 1, show that areas where

Table 1. Number of Permits by Parish and Activity, 1970 and 1974.

	ACTIVITY																	
	Pipeline		Dredge And Fill		Drilling		Construction		Blanket		Non-Petroleum Dredge & Fill		Non-Petroleum Construction		Seismographic		Total	
PARISH	1970	1974	1970	1974	1970	1974	1970	1974	1970	1974	1970	1974	1970	1974	1970	1974	1970	1974
Ascension	1	4	--	1	--	--	--	--	--	--	--	--	1	2	--	--	2	7
Assumption	9	2	4	5	3	2	--	--	--	--	--	--	6	15	--	--	22	24
Calcasieu	4	8	3	2	1	2	1	2	--	--	1	2	3	9	--	2	12	27
Cameron	6	8	4	31	6	21	--	3	8	5	--	--	1	14	--	--	25	83
Iberia	8	25	14	36	20	37	1	5	2	4	2	--	--	4	1	--	48	111
Iberville	1	11	7	10	2	1	--	4	--	1	--	1	--	5	--	--	10	33
Jefferson	8	26	10	37	17	50	--	1	1	3	--	4	10	61	1	1	47	183
Lafourche	16	43	14	87	19	103	3	5	6	3	5	5	24	46	1	--	88	292
Livingston	2	--	--	1	--	--	--	--	--	--	--	1	1	4	--	--	2	5
Orleans	8	--	8	1	6	--	2	--	--	--	--	8	--	9	--	1	24	18
Plaquemines	16	79	33	98	40	99	4	18	21	5	1	3	12	10	--	1	127	313
St. Bernard	4	--	11	4	11	4	3	--	2	--	--	--	1	4	--	--	32	12
St. Charles	7	5	1	4	9	16	--	--	1	--	--	--	3	18	--	--	21	43
St. James	--	2	1	--	--	3	--	5	--	--	--	--	--	2	--	--	2	12
St. John the Baptist	--	1	1	3	2	1	--	--	--	--	2	2	2	8	--	--	7	15
St. Landry	--	2	--	5	--	--	--	--	--	--	--	--	--	--	--	--	--	7
St. Martin	4	8	18	35	36	35	--	3	--	--	3	--	--	4	--	1	61	86
St. Mary	33	21	6	33	47	119	3	4	8	7	1	7	5	18	--	--	103	209
St. Tammany	1	--	5	4	--	--	--	--	--	--	1	2	2	8	1	1	10	15
Tangipahoa	--	1	--	1	--	--	--	--	--	--	--	1	--	1	--	--	--	4
Terrebonne	30	31	24	82	38	135	--	5	3	4	1	9	15	97	2	--	113	363
Vermilion	8	10	16	19	12	9	--	4	3	4	--	3	--	14	--	--	39	63
Gulf of Mexico	57	45	--	3	69	226	1	4	52	56	--	--	1	--	--	1	180	335

Table 2. Number and type of permits by year and land type.

Activity	Wetland 1970	Wetland 1974	Dryland 1970	Dryland 1974	Water 1970	Water 1974
Number of blanket permits	8	8	--	--	100	84
Oil company pipeline	40	79	2	10	181	243
Oil company dredge and fill	113	267	3	9	63	223
Oil company drilling	77	144	1	2	257	715
Oil company construction	4	13	--	2	12	49
Non-petroleum dredge and fill	4	13	2	2	9	33
Non-petroleum construction	24	116	2	24	62	213
Seismographic	2	2	--	1	4	6

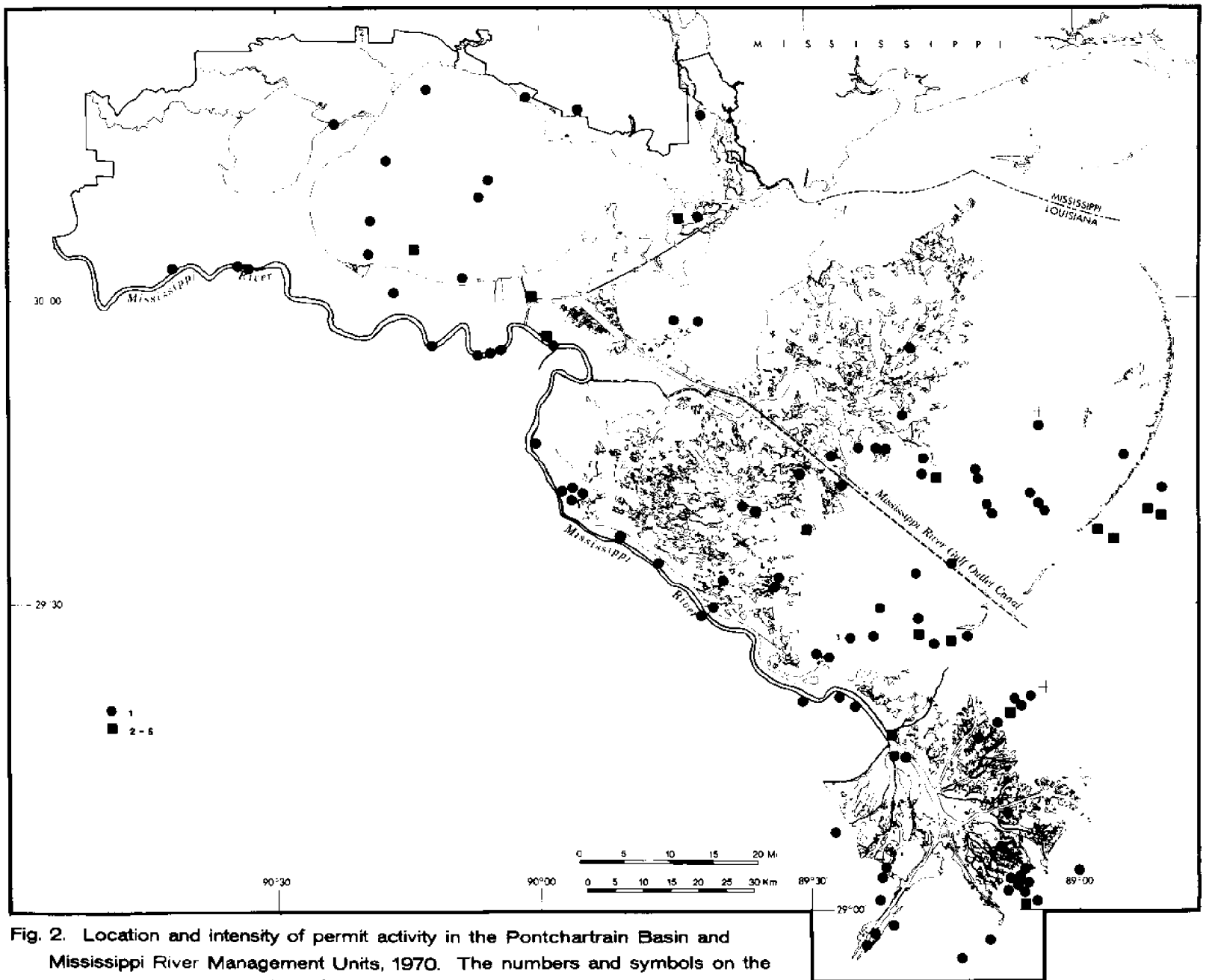

Fig. 2. Location and intensity of permit activity in the Pontchartrain Basin and Mississippi River Management Units, 1970. The numbers and symbols on the map represent the number of permits processed.

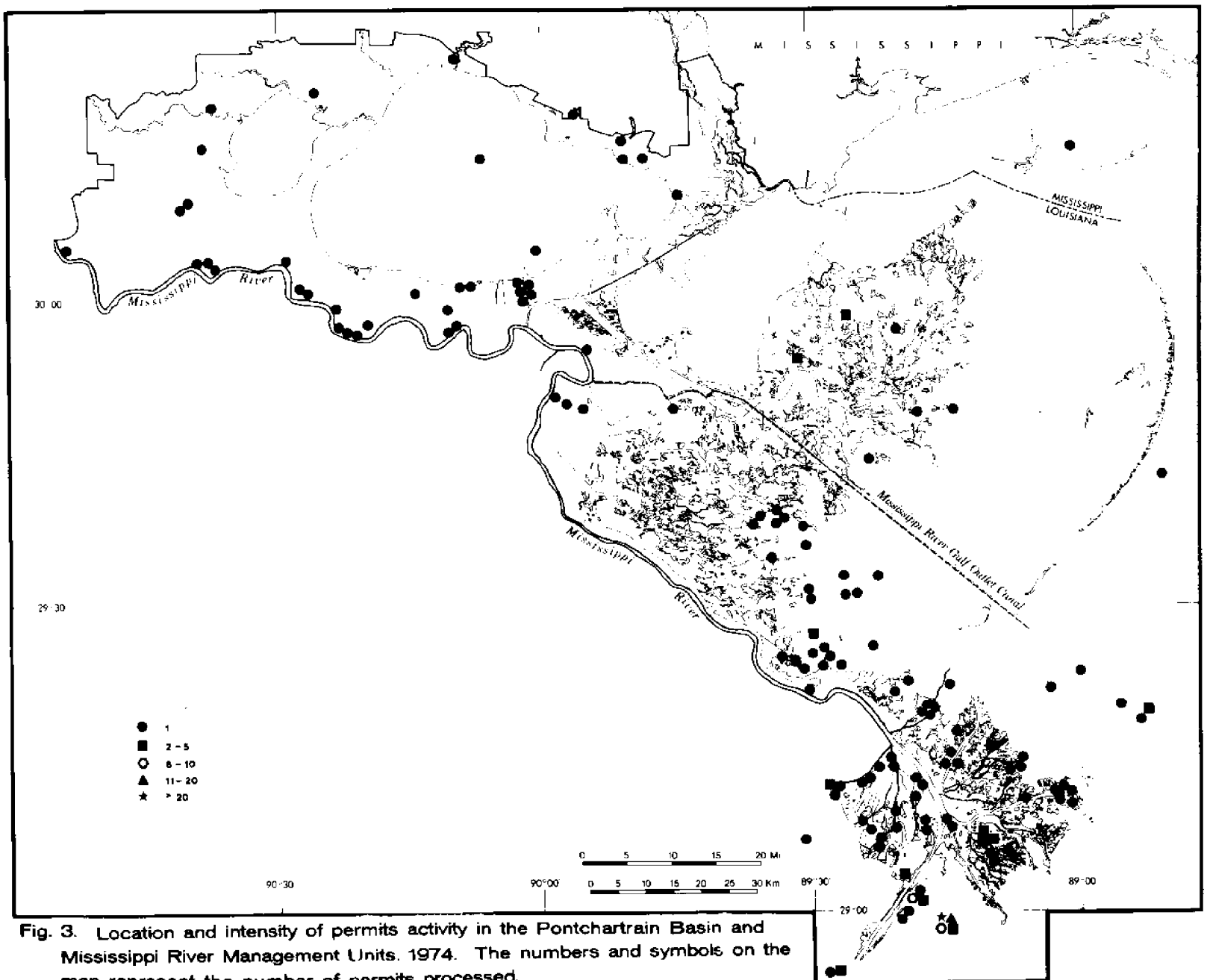

Fig. 3. Location and intensity of permits activity in the Pontchartrain Basin and Mississippi River Management Units. 1974. The numbers and symbols on the map represent the number of permits processed.

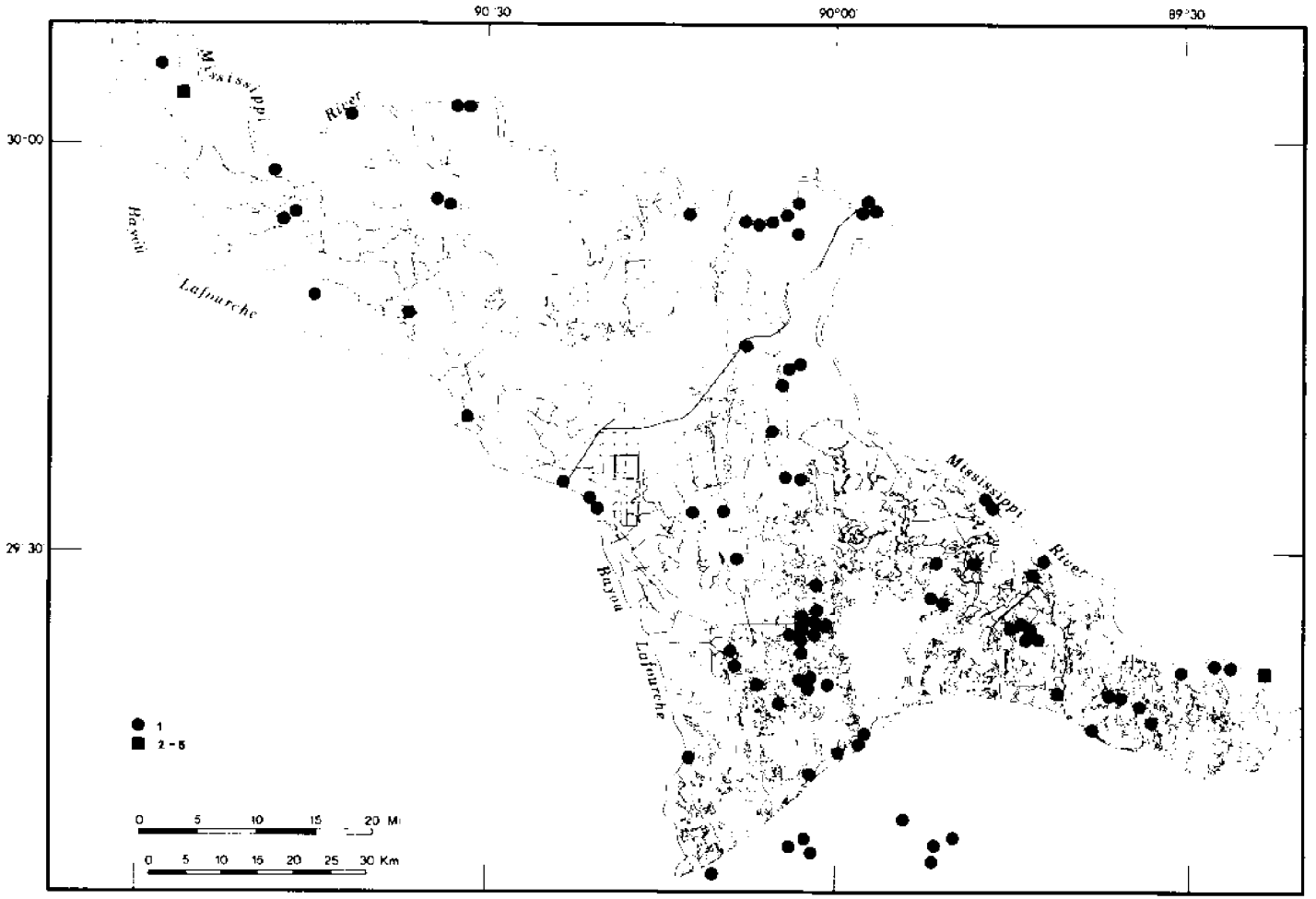

Fig. 4. Location and intensity of permit activity in the Barataria Basin Management Unit, 1970. The numbers and symbols on the map represent the number of permits processed.

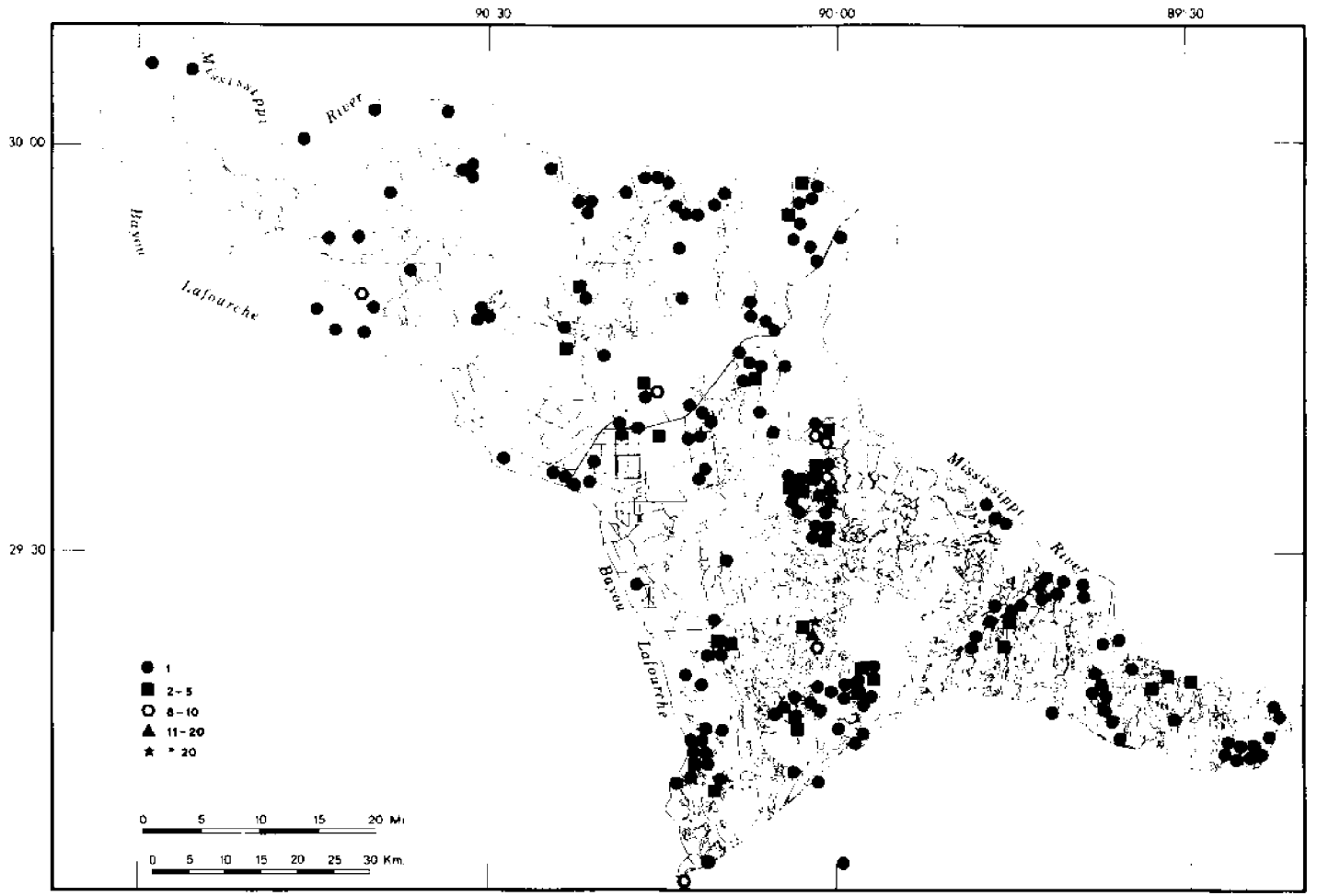

Fig. 5. Location and intensity of permit activity in the Barataria Basin Management Unit , 1974. The numbers and symbols on the map represent the number of permits processed.

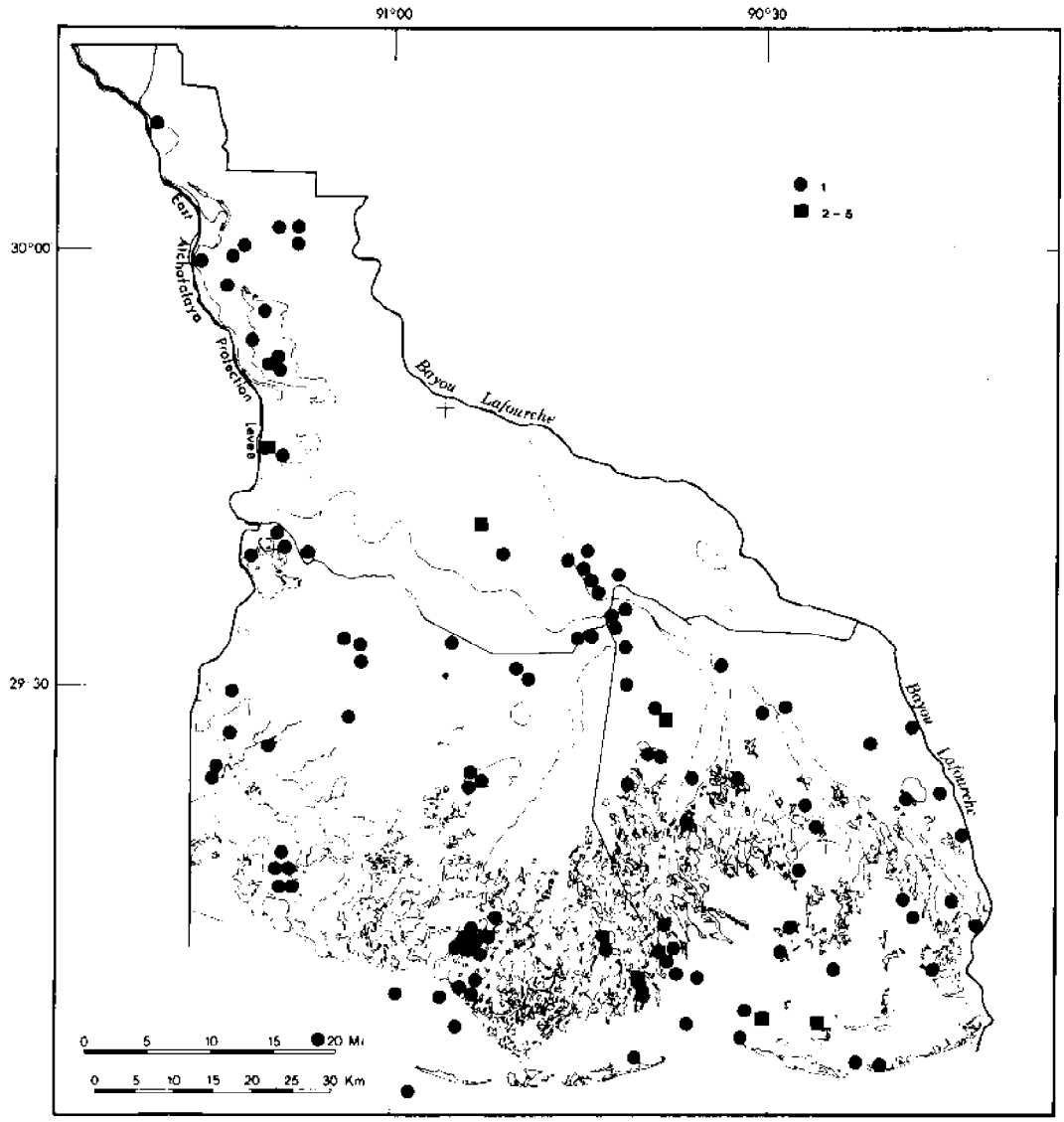

Fig. 6. Location and intensity of permit activity in the Terrebonne Basin Management Unit, 1970. The numbers and symbols on the map represent the number of permits processed.

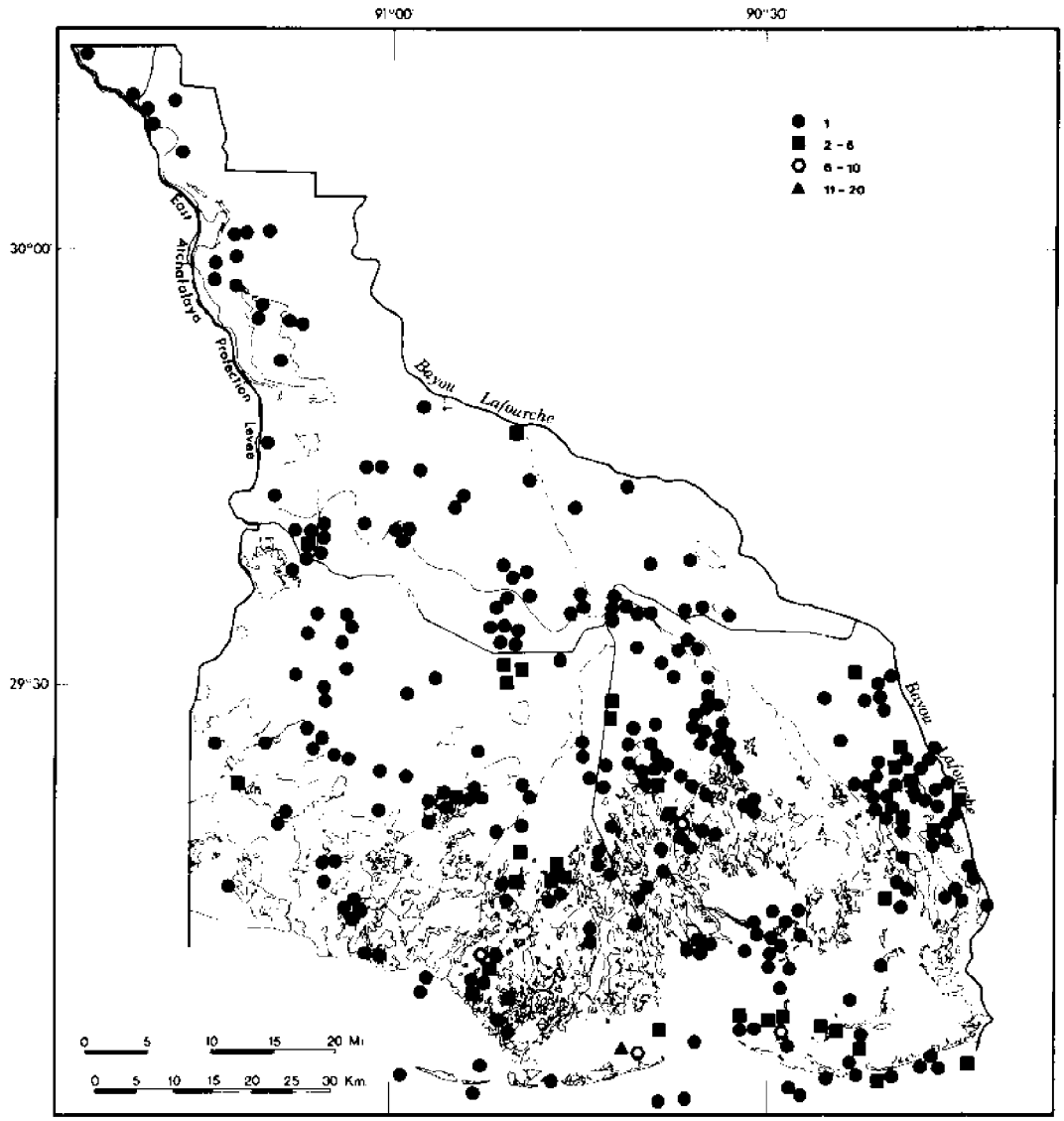

Fig. 7. Location and intensity of permit activity in the Terrebonne Basin Management Unit, 1974. The numbers and symbols on the map represent the number of permits processed.

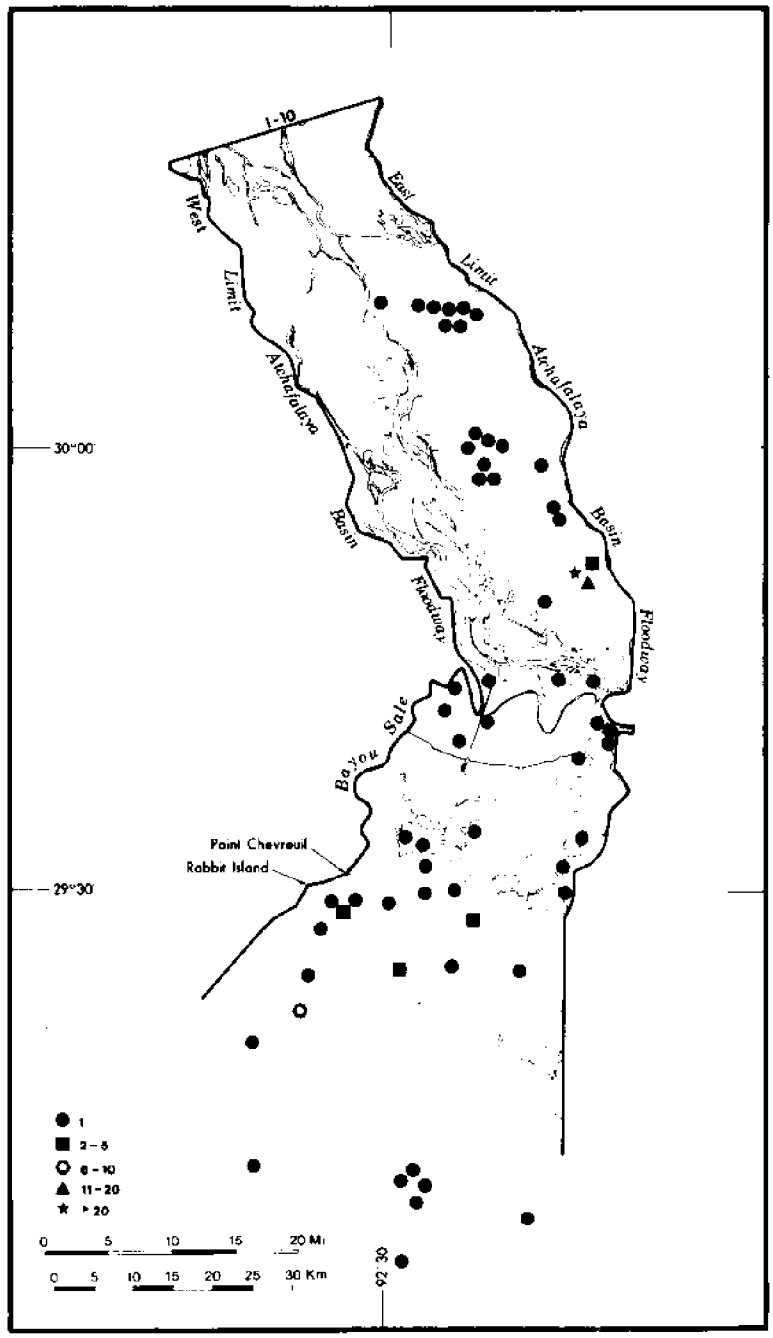

Fig. 8. Location and intensity of permit activity in the Atchafalaya River Management Unit, 1970. The numbers and symbols on the map represent the number of permits processed.

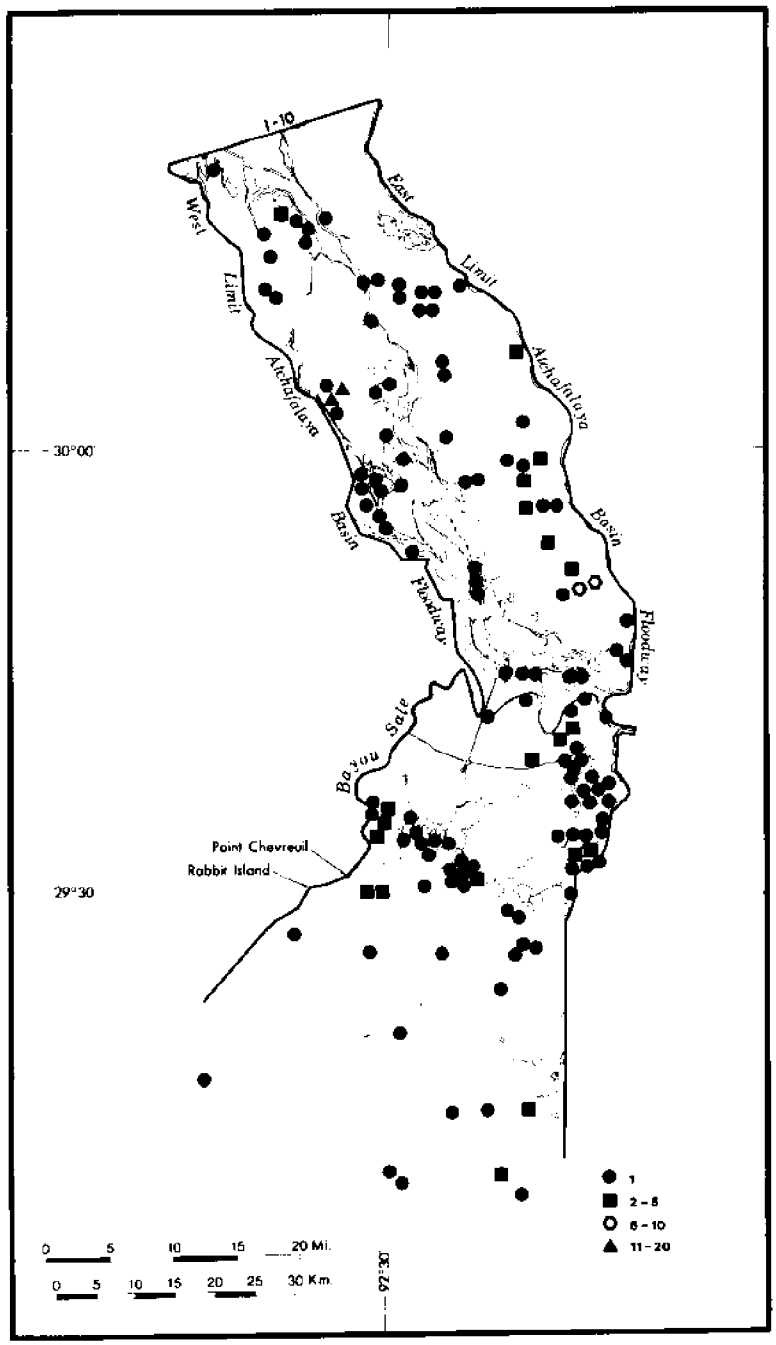

Fig. 9. Location and intensity of permit activity in the Atchafalaya River Management Unit, 1974. The numbers and symbols on the map represent the number of permits processed.

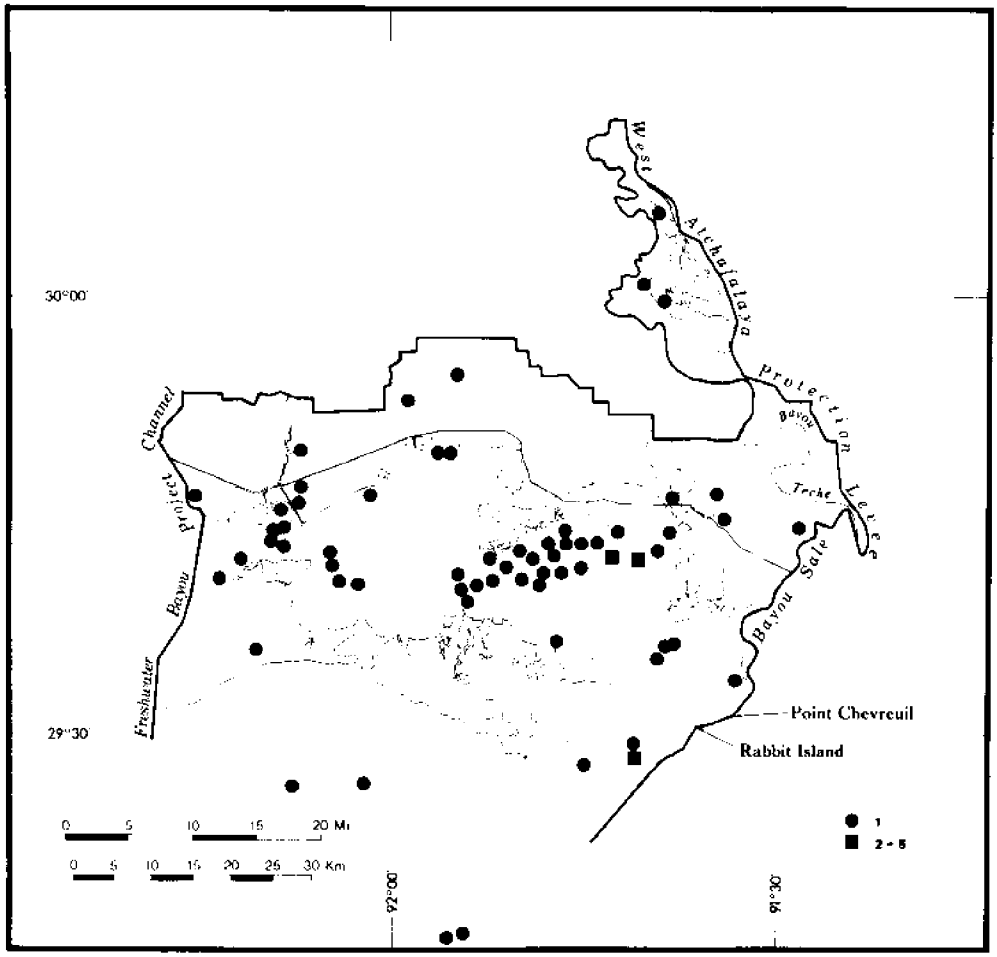

Fig. 10. Location and intensity of permit activity in the Vermilion Basin Management Unit,1970. The numbers and symbols on the map represent the number of permits processed.

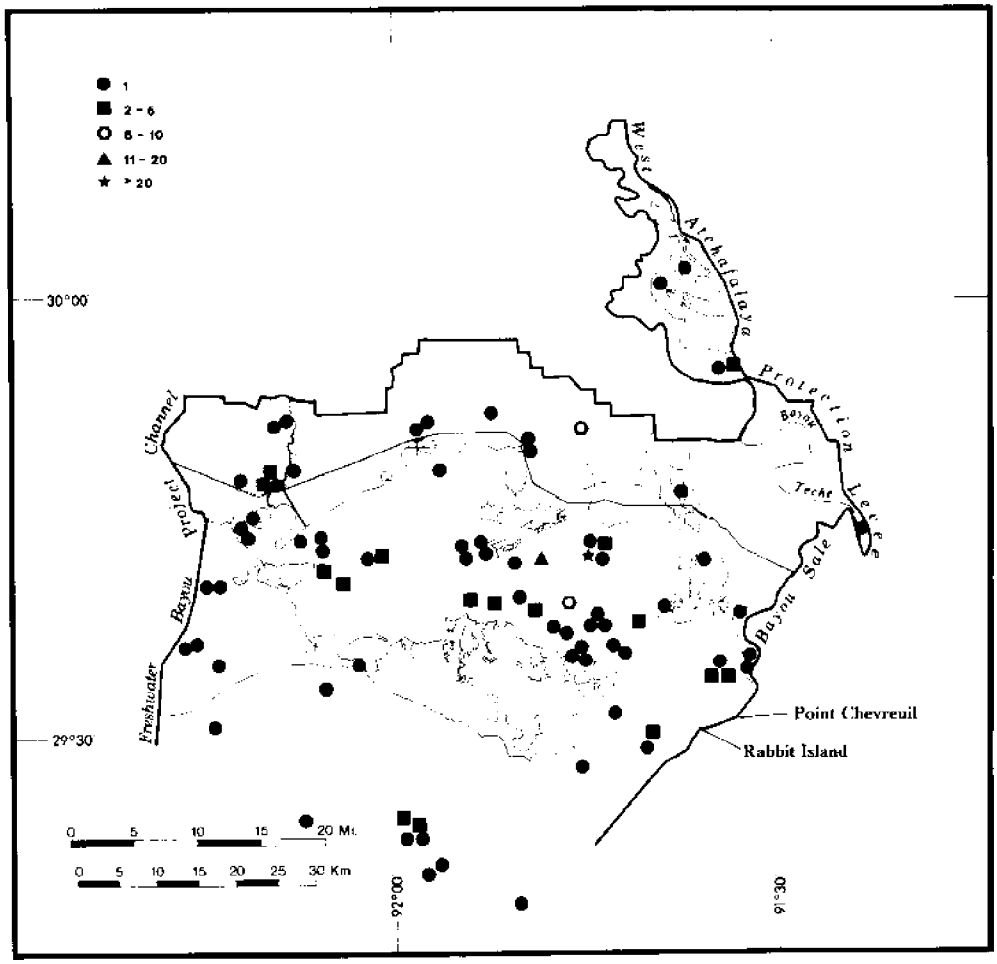

Fig. 11. Location and intensity of permit activity in the Vermilion Basin Management Unit, 1974. The numbers and symbols on the map represent the number of permits processed.

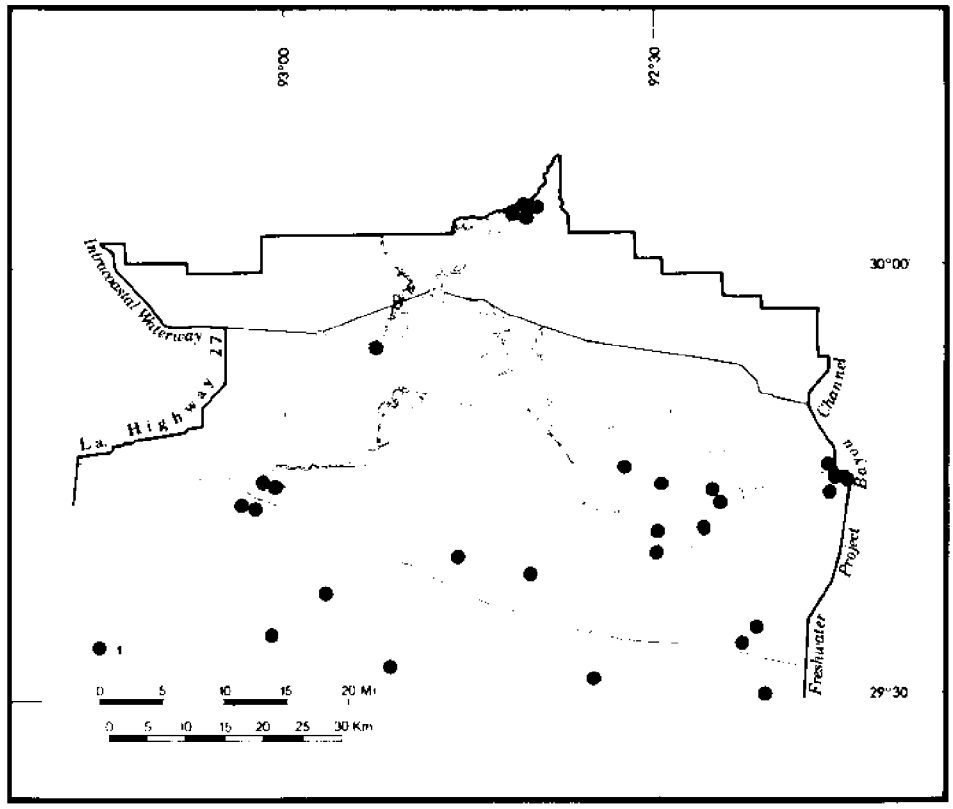

Fig. 12. Location and intensity of permit activity in the Mermentau Basin Management Unit, 1970. The numbers and symbols on the map represent the number of permits processed.

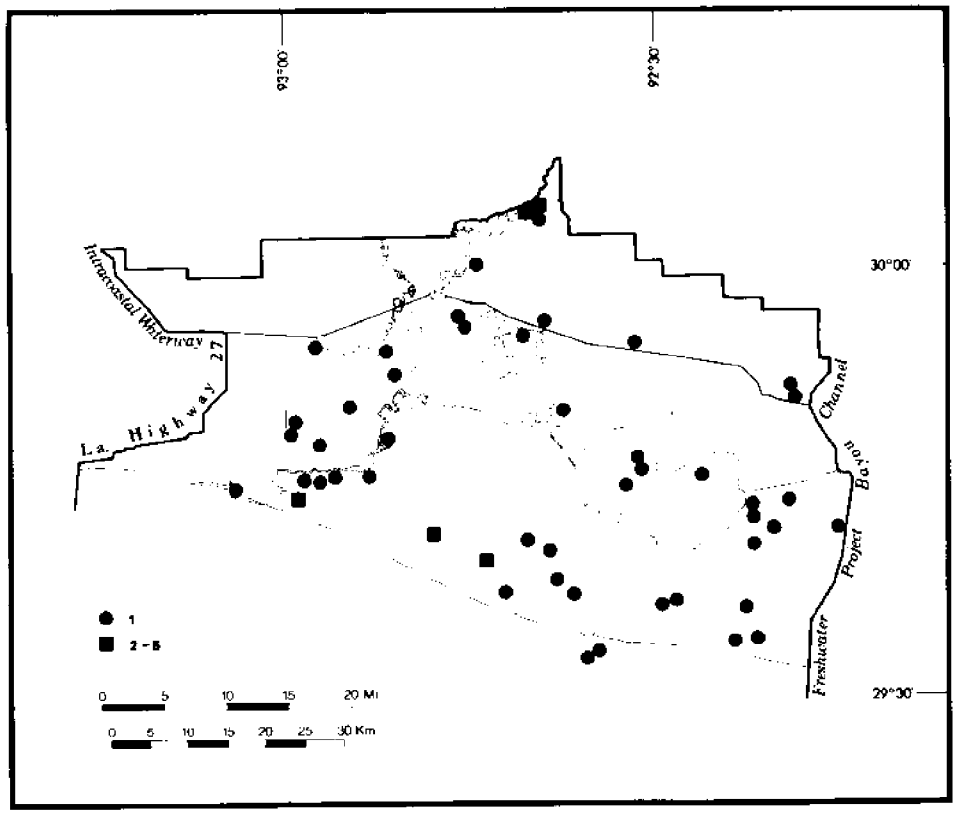

Fig. 13. Location and intensity of permit activity in the Mermentau Basin Management Unit, 1974. The numbers and symbols on the map represent the number of permits processed.

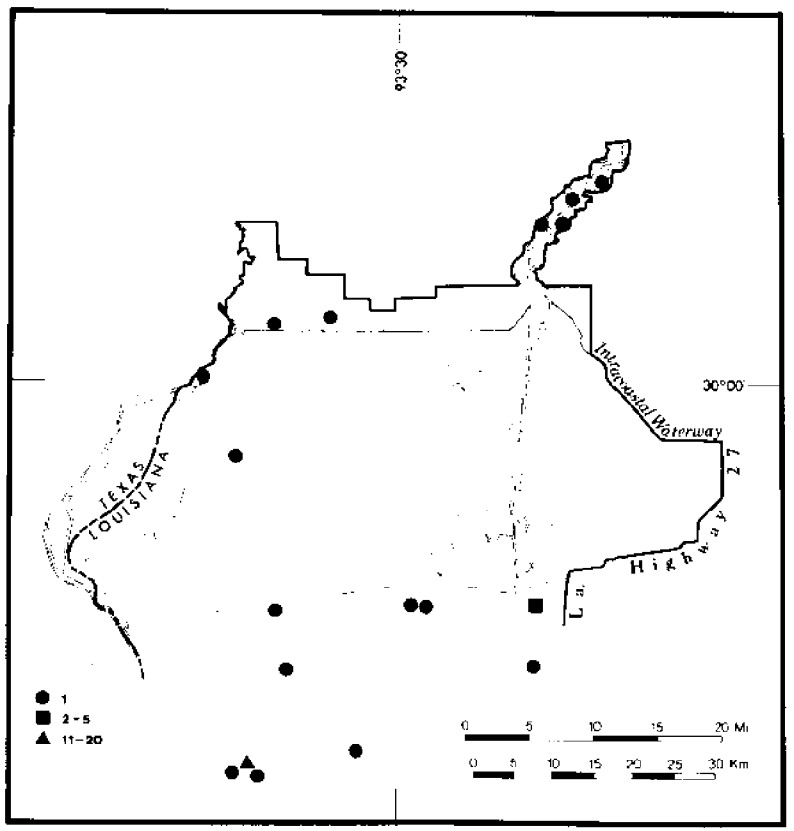

Fig. 14. Location and intensity of permit activity in the Calcasieu/Sabine Basin Management Unit, 1970. The numbers and symbols on the map represent the number of permits processed.

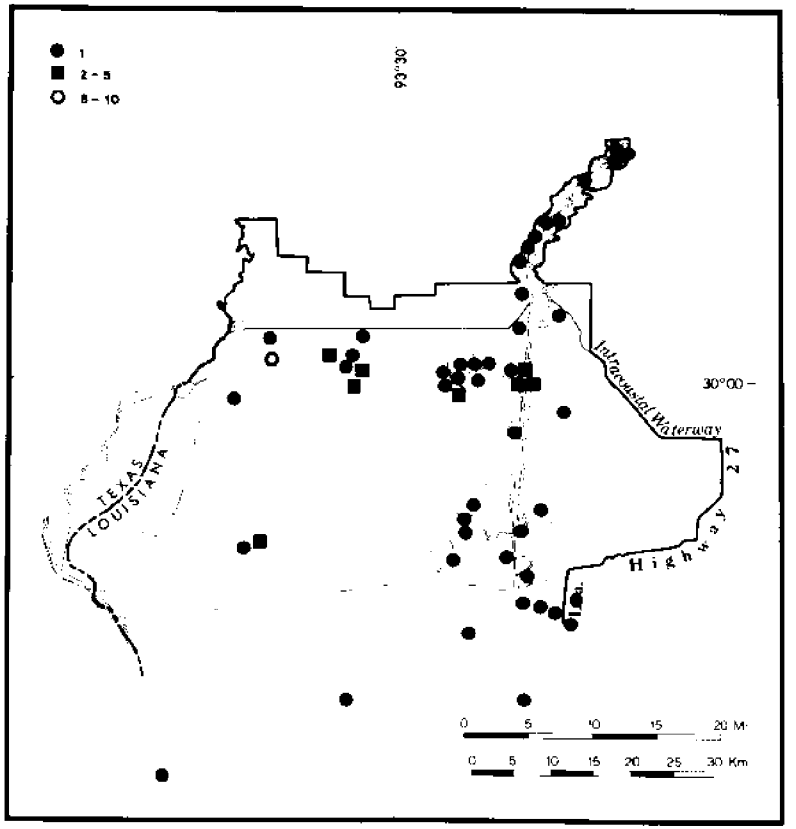

Fig. 15. Location and intensity of permit activity in the Calcasieu/Sabine Basin Management Unit, 1974. The numbers and symbols on the map represent the number of permits processed.

the most activity takes place lie in St. Mary, Terrebonne, Lafourche, Jefferson, and Plaquemines parishes. These parishes also represent areas of extensive marshlands and high fishery yields.

Concentration of permits in Terrebonne and Barataria management units (hydrologic units) is indicative of the amount of oil and gas activity in the region. Approximately half of the state's crude oil and natural gas production is derived from the coastal zone. Of this, 28 percent of the natural gas comes from these two management units.

Analysis of permitting by activity category and land or water type is shown in Table 3. The greatest percentages of permits were issued for activity involving wetland and water environments.

The amount of land converted to water--as indicated by the permitting transaction--is represented in Table 4. (Once a permit is issued it is not known whether the activity requested actually occurred.) For the year 1970, if all permits issued resulted in completed projects, some 244.6 acres of land would have been converted from land to water. The figure for 1974 is 2,835 acres.

Table 3. Permitting activity by land type, 1970 and 1974.

	No. of Permits 1970	No. of Permits 1974
Pipeline activities		
wetland	40	74
dryland	2	8
water	181	250
Petroleum dredging activities		
wetland	113	263
dryland	3	7
water	63	230
Petroleum drilling activities		
wetland	77	139
dryland	1	2
water	259	720
Petroleum construction activities	4	13
wetland	0	2
dryland	12	49
water		
Blanket permits		
wetland	9	8
dryland	0	0
water	99	84
Non-petroleum dredging activities		
wetland	4	13
dryland	2	2
water	9	33
Non-petroleum construction activities		
wetland	24	112
dryland	2	21
water	62	220
Other activities		
wetland	2	2
dryland	0	1
water	4	6
Total	972	2,259

Table 4. The conversion of land to water by dredging activities, 1970 and 1974.

Parish	1970 (sq. ft.)	1974 (sq. ft)
Cameron	152,500	3,466,208
Calcasieu	113,300	115,900
Vermilion	654,850	1,530,350
Iberia	872,750	1,735,910
St. Mary	468,350	1,433,119
St. Martin	873,225	26,184,000
Assumption	227,500	176,610
Terrebonne	1,928,900	74,517,984
Lafourche	268,460	6,261,555
Plaquemines	1,597,500	4,942,000
St. Bernard	663,504	554,000
Orleans	517,000	220,000
St. Tammany	176,250	14,800
St. John the Baptist	--	120,250
Jefferson	1,534,850	1,038,110
St. James	80,500	--
Ascension	--	17,450
Livingston	--	14,625
St. Charles	66,000	478,500
Gulf of Mexico	--	260,000
Iberville	458,100	431,883
St. Landry	--	46,760
Total	16,653,539 sq. ft.	123,560,014 sq. ft.
	= 990,779.1 sq. m	11,478,725.3 sq. m
	= 244.6 acres*	2,835.2 acres*

*These estimates are low since not all of the dredging applications gave the dimensions of the area to be dredged.

Changes Mandated by the New Constitution

The Louisiana Constitution, enacted in 1974 calls for combining all departments, offices, agencies, and instrumentalities into twenty departments. Twelve of the twenty departments are new, created by Act 513 of the 1976 legislature. Figure 16 illustrates some of the new departments and their responsibilities. After 1 July 1977, seven agencies will assume the responsibility formerly held by the twenty-four agencies shown in Figure 1.

Of the new departments, Natural Resources and Wildlife and Fisheries will exercise the most authority in matters dealing with the coastal zone. As it is presently understood Natural Resources will be responsible for the conservation, management, and development of water, minerals, timber, and other natural resources of the state, as well as for the administration and supervision of state lands. To carry out these duties Natural Resources has been divided into four offices: Conservation, Mineral Resources, State Lands, and Forestry. The Office of Conservation's duties include the regulation and conservation of state natural resources that are not within the jurisdiction of other state departments. Conservation of the state's gas and oil resources; promotion and encouragement of exploration, production, and refining efforts for oil, intrastate gas, and other hydrocarbons; the control and allocation of energy supplies; and the lease or construction of intrastate pipeline systems are some of its other duties. The Office of Mineral Resources will lease state lands and water bottoms for the development and production of minerals, oil, and gas. The Office of State Lands will administer and supervise all state lands; the Office of Forestry will perform the duties relating to the practice of forestry.

The Department of Wildlife and Fisheries will control and supervise all wildlife programs of the state (including fish and other aquatic life). Whereas the Division of Oysters, Water Bottoms and Seafoods of the Wildlife and Fisheries Commission now handles problems in the coastal area, the 1974 Constitution called for creation of an Office of Coastal and Marine Resources within the department. This office will administer, operate, and enforce all programs, including research, relating to oysters, water bottoms, and seafoods. Other duties include (1) regulation of the oyster, shrimp, and marine fishing industries, (2) leasing of and regulation of the use of water bottoms for the cultivation and propagation of oysters and for the dredging of shells, sand, gravel, and fill materials, (3) regulation of seismic operations, (4) licensing of vessels engaged in the industry, (5) establishing and maintaining oyster seed grounds, and (6) control of the shrimp fishery and shrimp industry in the state, including the licensing of people engaged therein. The office will also be responsible for water pollution control and prevention and will be particularly responsible for the control of waste disposal into waters of the state or any tributaries or drains flowing into these waters. The regulation of drainage of salt water

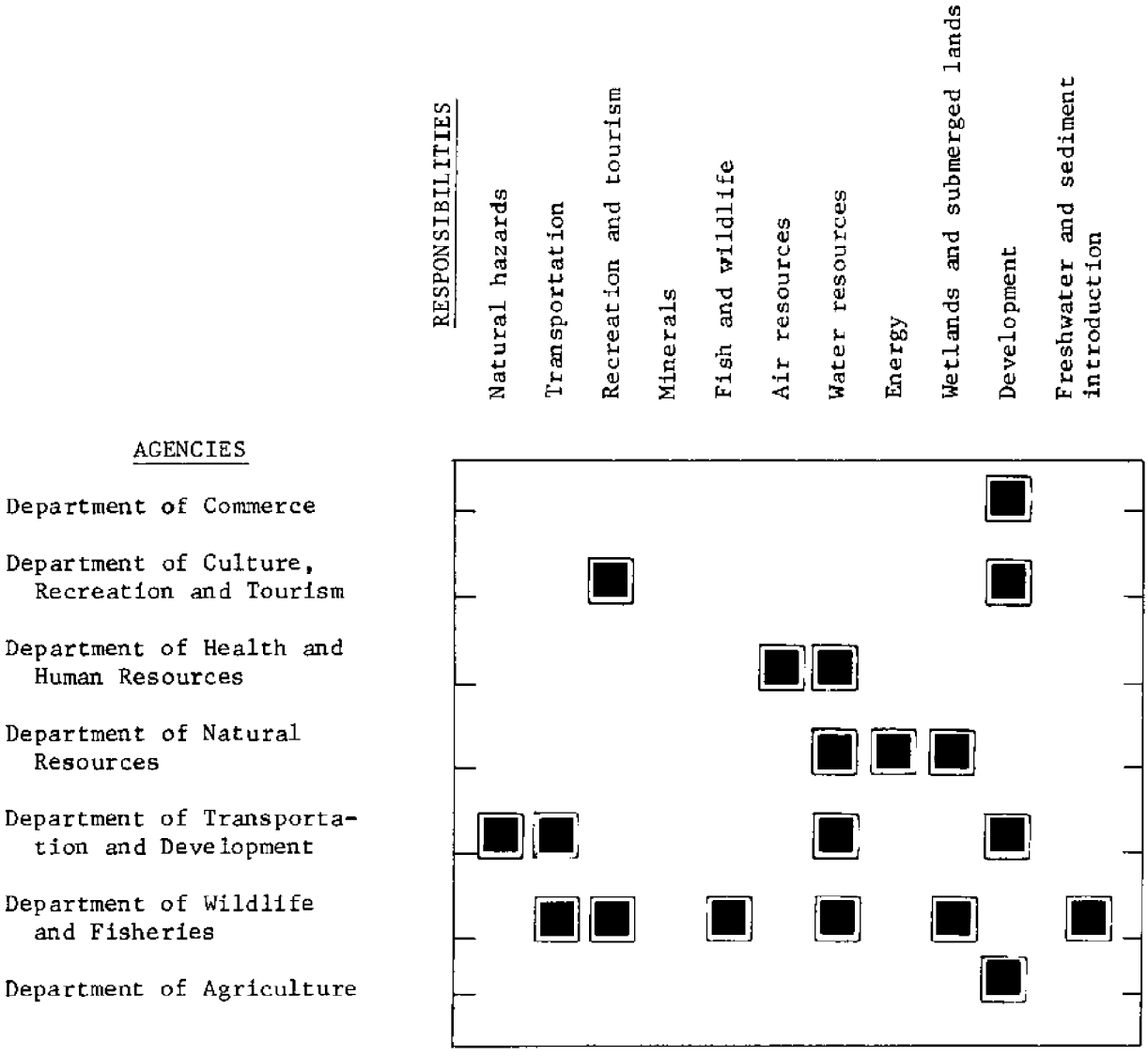

Fig. 16. Responsibilities of selected state agencies in Louisiana after 1 July 1977.

and other noxious substances into natural streams of the state is also included in its duties.

During the 1976 session the Louisiana Legislature reestablished the Louisiana Coastal Commission (LCC) and directed LCC to propose legislation concerning coastal management to the Joint Natural Resources Committee on or before 1 March 1977 (Act 582, 1976).

Summary

The present permitting policies in the state constitute the primary efforts for maintaining environmental controls. These evolved largely through conflicts between water and land use practices and fishery concerns. Through initiatives taken by LWFC, the agency became a party to the permitting procedures administered by the Corps of Engineers. Even though environmental impact statements (EIS) are required on some projects, the permitting process hardly constitutes an effective planning and management program. The need for an effective coastwide and local management program to institute a long range multiple use planning and management effort is critical.

Permit records analyzed for 1970 and 1974 are indicative of the large number of permits processed, their geographic concentrations, and the use activities that the permits represent. Oil and gas activities in Terrebonne Parish and Barataria Basin constitute the heaviest concentration of permit requests. Long-term trends cannot be interpreted from records for only two years, but they do indicate the intense activity in the wetlands. Although oil and gas production is declining, this activity will continue for several years. The possibility exists that gas production can be increased by tapping gas-saturated geopressured waters at great depths below the marsh surface in the Terrebonne-Barataria basins area. If this potential is developed, permitting will likely accelerate.

The Louisiana coast is tremendously productive, diverse, and complex. It produces abundant fisheries and wildlife harvests that are heavily dependent upon one-year classes of estuarine organisms such as shrimp, oysters, menhaden, muskrat, nutria, and waterfowl. The area is truly unique. This potential is not present on either the East or West coasts of the United States. This fishery and wildlife production is heavily dependent upon nutrient-producing marshlands. The loss of marshes results in diminished production of nutrients available to support the estuarine food chain that includes shrimp and other annually produced commercial species.

Land loss from coastal retreat, rapid rates of deterioration in the brackish and saltwater marshes, saltwater intrusion from the Gulf, and increasing volumes of oxygen-starved, polluted waters in the inner estuaries are placing stresses on the productivity potential. The environment is remarkably resilient; with proper planning and management high productivity and multiple uses can continue.

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Appendix

RULES AND REGULATIONS

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 209—ADMINISTRATIVE PROCEDURE

Permits for Activities in Navigable Waters or Ocean Waters

On May 6, 1975, the Department of the Army, acting through the Corps of Engineers, published four alternative proposed regulations in response to the order of the United States District Court for the District of Columbia in *NRDC* v. *Callaway*, et al., ____ F. Supp. ____, 7 ERC 1784, (D.D.C., March 27, 1975). Each of the four alternative proposed regulations pertained to the regulation, by the Corps of Engineers, of those activities involving the discharge of dredged or fill material in navigable waters pursuant to section 404 of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter referred to as the FWPCA). Each of these alternatives offered an administrative definition of the term "navigable waters" for public review and comment, as well as a definition of the terms "fill material" and "dredged material" and varying procedures to implement the regulatory permit program under Section 404 of the FWPCA.

Over 4,500 comments were received in response to this regulation. Those responding to the regulation included a large number of Governors; members of Congress; Federal, State, and local agencies; environmental organizations; commercial, industrial, and trade organizations; port authorities; agricultural organizations; and individual members of the public. A large number of these comments addressed the issue of whether there should or should not be a Federal permit program to regulate the discharge of dredged or fill material in navigable waters (defined in the FWPCA as "waters of the United States") rather than the particular provisions in the four alternative proposed regulations under review. Many comments appeared to be responses to the wide spread news coverage of the proposed regulation.

Those comments which did address substantive aspects of the regulation were helpful in meeting the dual purposes of the FWPCA: First, the development of a workable program; and, second, the needs of water quality. The regulation has clarified the activities which are included in the program and has incorporated administrative mechanisms to lessen the impacts of the regulation on affected Federal and State agencies, and on the public. To further refine the program the Corps will again need the help of the public and of State and Federal agencies in identifying activities and bodies of water that can be excluded from the Section 404 program without adverse impact on the chemical, physical, or biological integrity of the nation's waters.

We look forward to again working with the public and the State and Federal agencies on these further changes.

The Corps of Engineers wishes to take this opportunity to express its appreciation to every individual, organization, and governmental agency and representative that submitted comments during this rule-making exercise.

The Department of the Army, acting through the Corps of Engineers, is publishing herewith an interim final regulation which prescribes the policies, practice, and procedures to be followed in the processing of Department of the Army permits for activities in navigable or ocean waters including the discharge of dredged or fill material in navigable waters. Interim final regulations are being published in order to begin immediately to implement a permit program under Section 404 of the FWPCA in those waters which will be included in the Corps regulatory jurisdiction as a result of the decision in *NRDC* v. *Callaway*. However, while this regulation becomes effective July 25, 1975, there will be an additional comment period of 90 days in order that the public can comment further on any of its provisions. Thereafter, these comments will be reviewed and the regulation modified, if necessary.

The development of a permit program to regulate the discharge of dredged material and fill material in all waters of the United States has been the subject of intensive discussions between the Corps of Engineers and the Environmental Protection Agency since the decision in *NRDC* v. *Callaway*. We have worked together in an effort to develop a program that is manageable, responsive to the concerns of protecting vital national water resources from destruction through irresponsible and irreversible decisions, and sensitive to the often conflicting needs and desires of people who utilize these resources. We have attempted to create a program that recognizes the need to interweave all concerns of the public—environmental, social, and economic—in the decision-making process; that recognizes that present limitations on manpower preclude its immediate implementation throughout the country; and that we believe to be responsive to the overall objectives and needs of the Federal Water Pollution Control Act to the extent that the law now allows.

We recognize that this program, in its effort to protect water quality to the full extent of the commerce clause, will extend Federal regulation over discharges of dredged or fill material to many areas that have never before been subject to Federal permits or to this form of water quality protection. We therefore strongly urge the public to review and comment further on this interim final regulation in order that it can be modified, where necessary and legally permissible, to fully address your concerns, desires, goals, and objectives. To assist you in your analysis and understanding of this regulation, representatives from the Corps of Engineers intend to travel throughout the country during the next 90 days and conduct public hearings on this regulation. We urge your participation in these hearings when they are scheduled in your area.

As we move into this new program, we also urge your support and understanding. To the extent that enforcement of its provisions becomes necessary, the Corps of Engineers intends to request the Department of Justice and the Environmental Protection Agency to take appropriate action. However, we intend to pursue a reasonable enforcement program over these activities that have never before been subject to Federal regulation, relying initially on an intensive public information campaign to make the public aware of the requirements of Section 404 of the FWPCA. It is our desire and intention to work closely with the Department of Justice and the Environmental Protection Agency to achieve this purpose.

On May 6, 1975, the Environmental Protection Agency, in conjunction with the Department of the Army, published proposed guidelines for public comment which are required by section 404(b) of the FWPCA in the review of a permit application for the discharge of dredged or fill material. It is anticipated that final guidelines will be published about August 15, 1975. During the interim, the present procedures will be utilized by Corps District Engineers in the review of permit applications for the discharge of dredged or fill material in navigable waters.

There follows a brief discussion of the pertinent sections of this regulation which address the discharge of dredged or fill material in navigable waters:

Paragraph (d)(2): This paragraph defines the term "navigable waters" and in so doing identifies those waters of the United States which are subject to Corps Jurisdiction under section 404 of the FWPCA.

With respect to the coastal regions of the country, Corps jurisdiction would extend to all coastal waters subject to the ebb and flow of the tide shoreward to their mean high water mark (mean higher high water mark on the Pacific Coast) and also to all wetlands, mudflats, swamps, and similar areas which are contiguous or adjacent to coastal waters. This would include wetlands periodically inundated by saline or brackish waters that are characterized by the presence of salt water vegetation capable of growth and reproduction, and also wetlands (including marshes, shallows, swamps and similar areas) that are periodically inundated by freshwater and normally characterized by the prevalence of vegetation that requires saturated soil conditions for growth and reproduction. In months to come, we intend to publish a list of fresh, brackish, and salt water vegetation that can be used as one of the indicators in determining the extent of Corps jurisdiction in these areas.

With respect to the inland areas of the country, Corps jurisdiction under Section 404 of the FWPCA would extend to all rivers, lakes, and streams that are navigable waters of the United States, to all tributaries (primary, secondary, tertiary, etc.) of navigable waters of the United States, and to all interstate waters. In addition, Corps jurisdiction would extend to those waters located en-

tirely within one state that are utilized by interstate travelers for water related recreational purposes, or to remove fish for sale in interstate commerce, or for industrial purposes or the production of agricultural commodities sold or transported in interstate commerce. Corps jurisdiction over these water bodies would extend landward to their ordinary high water mark and up to their headwaters, as well as to all contiguous or adjacent wetlands to these waters which are periodically inundated by freshwater, brackish water, or salt water and are characterized by the prevalence of aquatic vegetation, as described in the preceding paragraph, that are capable of growth and reproduction. Manmade canals which are navigated by recreational or other craft are also included in this definition. Drainage and irrigation ditches have been excluded.

We realize that some ecologically valuable water bodies or environmentally damaging practices may have been omitted. To insure that these waters are also protected, we have given the District Engineer discretionary authority to also regulate them on a case by case basis.

Paragraph (d)(2)(ii): Several additional definitions amplify the definition of navigable waters and are expressed in this paragraph. "Ordinary high water mark", used as a measurement point to determine the extent of Federal jurisdiction in inland freshwater rivers, streams, and lakes that do not have wetlands contiguous or adjacent to them, is established as that point on shore which is inundated 25% of the time (derived by a flow duration curve based on available water stage data).

"Headwaters" has been defined as the point on a stream beyond which the flow of the water body is normally less than five cubic feet per second. However, other factors, such as the volume of flow and point and nonpoint source discharge characteristics in the area will also be considered in determining these limits. Finally, "lakes" have been defined to include all natural bodies of water greater than five acres in surface area and also all bodies of standing water created by impounding any navigable water. This would not include stock watering ponds and settling basins, other than those that result from the impoundment of a navigable water.

During the 90 day comment period, the public is urged to carefully review these various definitions, particularly with respect to "ordinary high water mark," "headwaters," and "lakes" and furnish comments and recommended revisions to assist in the development of a final definition of this term that is consistent with the goals and objectives of the FWPCA to protect water quality.

Paragraph (d)(4): The term "dredged material" has been defined to include any material that is excavated or dredged from any of the waters of the United States identified in the preceding paragraphs. It would not include material which is obtained from some other source beyond a water of the United States, and also would not include materials produced in normal farming, silvaculture, and ranching activities such as plowing, cultivating, seeding, and harvesting.

Paragraph (d)(5): The term "discharge of dredged material" has been added to the lists of definitions in an effort to clarify the types of activities that fall under this term. Under this definition, therefore, any material which is excavated or dredged from a navigable water and then reintroduced through a point source into a navigable water would fall under this term. The types of activities encompassed by this term would include the depositing into navigable waters of dredged material if it is placed alongside of a newly dredged canal which has been excavated in a wetland area. It would also include maintenance of these canals if excavated material is placed in navigable waters. Also included is the runoff or overflow from a contained land or water disposal area.

The term "discharge of dredged material" does not include the discharge of pollutants into navigable waters that occur during the subsequent land based processing of dredged material extracted for commercial use even though the operation of extracting the materials itself may require a permit from the Corps of Engineers under section 10 of the River and Harbor Act of 1899. Discharges of materials from land based commercial washing operations are regulated under section 402 of the FWPCA.

Paragraph (d)(6): The term "fill material" has been defined to mean any pollutant used to create fill in the traditional sense of replacing an aquatic area with dry land or changing the bottom elevation of a water body for any purpose. Again, materials resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting for the production of food, fiber, and forest products, would not fall within this term. Farm conservation practices such as terracing, check dams and landleveling would also not be regulated unless they occur in navigable waters. In addition, maintenance or emergency reconstruction of existing structures such as dikes, dams, or levees, will not be regulated.

Paragraph (d)(7): A new term "discharge of fill material" has been added to identify the types of activities to be regulated under section 404 of the FPWCA if, and only if, they are performed in a navigable water as that term has been defined in the regulation and discussed in the preceding paragraphs. Those activities falling within this term include site development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and bulkheads and fills; beach nourishment; levees; sanitary landfills; backfill required for the placement of structures such as sewage treatment facilities, intake and outfall pipes associated with power plants, and subaqueous utility lines; and artificial reefs.

Paragraph (e)(2): In view of manpower and budgetary constraints it is necessary that this program be phased in over a two year period. Provision for such a phase-in approach exists in this paragraph. Thus, under Phase I, this regulation would become immediately operative in all coastal waters and contiguous or adjacent wetlands as well as inland rivers, lakes and streams that are navigable waters of the United States (which the Corps of Engineers is already regulating) and their contiguous or adjacent wetlands. In Phase II, which would begin on July 1, 1976, we would continue to regulate all of those discharges of dredged material occurring in those waters identified in Phase I, and also begin to regulate discharges of dredged or fill material in primary tributaries (the main stems of tributaries directly connecting to navigable waters of the United States), their contiguous or adjacent wetlands, and all lakes. Finally, in Phase III, all discharges of dredged or fill material in navigable waters would be regulated after July 1, 1977.

We believe that the initial thrust of this phase-in program will enable the protection of those wetland and water resources areas that are in immediate danger of being further destroyed through unregulated development. As we move to implement these phases, we will endeavor to utilize general categorical permits to the maximum possible extent relying on individual permit actions to regulate only those environmentally significant activities. We will also attempt to identify additional categories of activities which can be excluded at a later date.

Discharges of dredged or fill material that occur before a particular water body falls under a particular phase are permitted by the regulation in paragraph (e)(2)(i), provided certain prescribed conditions are met before the discharge occurs. Included in these conditions is the requirement to obtain a State water quality certification (or to have the State waive its right to so certify) and the requirement to certify under section 307 (c)(3) of the Coastal Zone Management Act of 1972 that the discharge will be in compliance with an approved coastal zone management program. This paragraph does not automatically exempt all discharges of dredged or fill material not covered by a particular phase from the permitting requirements of this regulation, for it still gives the District Engineer the option of exercising jurisdiction over any activity involving the discharge of dredged or fill material in those cases where the activity will have a significant impact on the environment.

Paragraph (e)(2)(iii): This paragraph "grandfathers" all discharges of dredged or fill material in waters other than navigable waters of the United States which were completed before the date of this regulation and also permits any discharge of dredged or fill material of less than 500 cubic yards which was commenced before the date of this regulation and is completed within six months. This 500 cubic yard exemption

to the requirements of this regulation only pertains to a single and complete project, and would not encompass cumulative discharges of dredged or fill material, each less than 500 cubic yards, in a large number of projects which comprise and are associated with a complete plan of development. The term "commenced" as used in this paragraph is satisfied if there has been some discharge of dredged or fill material at a specified disposal site or the entering into a written contract to do such before the date of the regulation. The "grandfathering" of these activities does not avoid the legal requirement to comply with the State water quality certification requirements of section 401 of the FWPCA or to furnish a coastal zone management certification, however.

Paragraph (e)(2)(iv): This paragraph permits, (without the need for the processing of a individual permit application through the procedures in the regulation), minor bulkheads and fills that are constructed in waters other than navigable waters of the United States provided they are less than 500 feet in length, constructed for property protection, and involve the discharge of less than an average of one cubic yard per running foot. However, while these types of discharges are permitted through the regulation, conditions have also been imposed that must be met before the discharge can occur (including the need to obtain a water quality certification and furnish a coastal zone management certification). In addition, the District Engineer can still exercise jurisdiction over these activities in those cases where he determines that the discharge will have a significant impact on the environment.

We believe that this administrative mechanism of authorizing this type of activity through the regulation is essential in order to make this program manageable from a manpower and resources point of view, and still protect the aquatic environment. In addition, it serves as a mechanism to alleviate the administrative burdens which are encountered in the normal processing of individual permits. To this end, we intend to rely heavily on the general public to bring to the attention of the District Engineer those minor bulkhead and fill activities which, while falling within the protection of this paragraph, should be regulated on a case by case basis.

Paragraph (e)(4): Activities of Federal agencies that involve the discharge of dredged material or of fill material into navigable waters are not exempt from the provisions of this regulation. Activities of the Corps of Engineers involving such discharges are reviewed and regulated pursuant to the policies and procedures expressed in Title 33 of the Code of Federal Regulations, Part 209.145.

Paragraph (f)(3): We believe there is considerable merit in having the States become directly involved in the decision-making process to the maximum extent possible under the law. Indeed, many states already have ongoing permit programs which address many, and, in some cases all, of the concerns which are addressed in the Corps decision-making process. Three ways will be used to involve the States in this decision-making process. We have embodied these three mechanisms in an effort to make the program manageable and publicly acceptable, and in response to the overwhelming number of comments which supported the basic concept.

First, since each discharge of dredged or fill material into a navigable water is, in effect, the discharge of a pollutant into the water, a State water quality certification is required under section 401 of the FWPCA before that discharge can be lawfully undertaken. Provision has therefore been made in the opening paragraph of this section to indicate this legal requirement. Thus, any State may cause the denial of a section 404 permit if it chooses to deny a water quality certification. Similar situations also exist in those states with approved coastal zone management plans: An individual in states with such plans must also certify that his activity will comply with the approved plan. On the other hand, where the state does not have such a certification program or delays the processing of its certification, we will still begin to process the section 404 permit. In absence of a timely response from the State, the section 404 permit will be processed to a conclusion.

Second, we are mindful that many states have existing permit programs to regulate the same types of activities that will be regulated through section 404 of the FWPCA by the Corps of Engineers. To the extent possible, it is our desire to support the state in its decision. Thus, where a state denies a permit, the Corps will not issue a section 404 permit. On the other hand, if a state issues a permit, the Corps would not deny its permit unless there are overriding national factors of the public interest which dictate such action. We believe that this type of situation can be kept to a minimum provided the State's permit program has built into it the policies, procedures, goals, requirements, and objectives embodied in the Corps permit program and the national legislation which molded and supports it. This would include, for example, the concerns and requirements of the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the Coastal Zone Management Act, and the FWPCA. In view of this objective, a section 404 permit will generally be issued following a favorable State determination unless overriding national factors of the public interest are revealed during the final processing of the section 404 permit application and provided the concerns, policies, goals, and requirements expressed in the above cited statutes, the Corps policies, and the guidelines have been addressed. In those States without any type of permit program to regulate the types of activities envisioned by section 404, we believe that the objectives expressed in this subparagraph should give them guidance in the formulation of their respective programs should they choose to do so.

Finally, provision has been made in subparagraph (v) of this section to allow the District Engineer to enter into an agreement with those States having ongoing permit programs which would enable joint processing of the Department of the Army and the state permit application to an independent conclusion by each entity. This would include joint public notices, joint public hearings, and the joint development, review, and analysis of information which leads to the final decision on a permit application. We strongly encourage States to work with our District Engineers in this effort for we feel that this is a valuable mechanism to make this program manageable and publicly acceptable as well as a means to avoid unnecessary duplication of effort.

Paragraph (f)(2)(ix): We have also adopted a procedure, found in this paragraph, to process general permits for certain clearly described categories. A general permit once issued would preclude the need for any further permit for similar work and would prescribe conditions to be followed in the future performance of such work. We hope this mechanism will go far in making our entire regulatory program administratively manageable, and we will attempt to use the general permit for many categories in Phases II and III prior to the effective date of those phases. We intend to urge our District Engineers to utilize this mechanism as often as possible, and we request that those Federal agencies, organizations, and members of the public who review and comment on public notices for general permits do so in a spirit of cooperation, constructive criticism and suggestion.

During the next 90 days, comments addressing this interim final regulation should be submitted in writing to the Chief of Engineers, Forrestal Building, Washington, D.C. 20314, ATTN: DAEN-CWO-N.

It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.

Dated: July 22, 1975.

ROBERT B. HUGHES,
Colonel, Corps of Engineers, Assistant Chief, Construction-Operations, Directorate of Civil Works.

§ 209.120 Permits for activities in Navigable Waters or Ocean Waters.

(a) *Purpose.* This regulation prescribes the policy, practice, and procedure to be followed by all Corps of Engineers installations and activities in connection with applications for permits authorizing structures and work in or affecting navigable waters of the United States, the discharge of dredged or fill material into navigable waters, and the transportation of dredged material for the purpose of dumping it into ocean waters.

(b) *Laws requiring authorization of structures or work.* (1) Section 9 of the

River and Harbor Act approved March 3, 1899 (30 Stat. 1151; 33 U.S.C. 401) prohibits the construction of any dam or dike across any navigable water of the United States in the absence of Congressional consent and approval of the plans by the Chief of Engineers and the Secretary of the Army. Where the navigable portions of the waterbody lie wholly within the limits of a single State, the structure may be built under authority of the legislature of that State, if the location and plans or any modification thereof, are approved by the Chief of Engineers and by the Secretary of the Army. The instrument of authorization is designated a permit. Section 9 also pertains to bridges and causeways but the authority of the Secretary of the Army and Chief of Engineers with respect to bridges and causeways was transferred to the Secretary of Transportation under the Department of Transportation Act on October 16, 1966 (80 Stat. 941, 49 U.S.C. 1165g(8)(A)).

(2) Section 10 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1151; 33 U.S.C. 403) prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States, the excavation from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters are unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The instrument of authorization is designated a permit or letter of permission. The authority of the Secretary of the Army to prevent obstructions to navigation in the navigable waters of the United States was extended to artificial islands and fixed structures located on the outer continental shelf by section 4(f) of the Outer Continental Shelf Lands Act of 1953 (67 Stat. 463; 43 U.S.C. 1333(f)).

(3) Section 11 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1151; 33 U.S.C. 404) authorizes the Secretary of the Army to establish harbor lines channelward of which no piers, wharves, bulkheads, or other works may be extended or deposits made without approval of the Secretary of the Army. Regulations (ER 1145-2-304) have been promulgated relative to this authority and published at § 209.150. By policy stated in those regulations effective May 27, 1970, harbor lines are guidelines only for defining the offshore limits of structures and fills insofar as they impact on navigation interests. Except as provided in paragraph (e)(1) of this section below, permits for work shoreward of those lines must be obtained in accordance with section 10 of the same Act, cited above.

(4) Section 13 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407) provides that the Secretary of the Army, whenever the Chief of Engineers determines that anchorage and navigation will not be injured thereby, may permit the discharge of refuse into navigable waters. In the absence of a permit, such discharge of refuse is prohibited. While the prohibition of this section, known as the Refuse Act, is still in effect, the permit authority of the Secretary of the Army has been superseded by the permit authority provided the Administrator, Environmental Protection Agency, under sections 402 and 405 of the Federal Water Pollution Control Act (PL 92-500, 86 Stat. 816, 33 U.S.C. 1342 and 1345).

(5) Section 14 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1152; 33 U.S.C. 408) provides that the Secretary of the Army on the recommendation of the Chief of Engineers may grant permission for the temporary occupation or use of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States. This permission will be granted by an appropriate real estate instrument in accordance with existing real estate regulations.

(6) Section 1 of the River and Harbor Act of June 13, 1902 (32 Stat. 371; 33 U.S.C. 565) allows any persons or corporations desiring to improve any navigable river at their own expense and risk to do so upon the approval of the plans and specifications by the Secretary of the Army and the Chief of Engineers. Improvements constructed under this authority, which are primarily in Federal project areas, remain subject to the control and supervision of the Secretary of the Army and the Chief of Engineers. The instrument of authorization is designated a permit.

(7) Section 404 of the Federal Water Pollution Control Act (PL 92-500, 86 Stat. 816, 33 U.S.C. 1344) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into the navigable waters at specified disposal sites. The selection of disposal sites will be in accordance with guidelines developed by the Administrator of the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army. Furthermore, the Administrator can prohibit or restrict the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shell fish beds and fishery areas, wildlife or recreational areas.

(8) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (PL 92-532, 86 Stat. 1052, 33 U.S.C. 1413) authorizes the Secretary of the Army to issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it in ocean waters. However, similar to the EPA Administrator's limiting authority cited in paragraph (b)(7) of this section, the Administrator can prevent the issuance of a permit under this authority if he finds that the dumping of the material will result in an unacceptable adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries or recreational areas.

(9) The New York Harbor Act of June 29, 1888, as amended (33 U.S.C. 441 et seq.) provides for the issuance of permits by the Supervisors of the New York, Baltimore, and Hampton Roads Harbors for the transportation upon and/or discharge in those harbors of a variety of materials including dredgings, sludge and acid. The District Engineers of New York, Baltimore and Norfolk have been designated the Supervisors of these harbors, respectively. However, section 511 (b) of the Federal Water Pollution Control Act (PL 92-500, 86 Stat. 816) provides that the discharge of these materials into navigable waters shall be regulated pursuant to that Act and not the New York Harbor Act except as to the effect on navigation and anchorage. In addition, section 106(a) of the Marine Protection, Research and Sanctuaries Act of 1972 (PL 92-532, 86 Stat. 1052) provides that all permits for discharges in ocean waters shall only be issued in accordance with the Act after April 23, 1973. Therefore, the supervisors of these three harbors will no longer issue permits under the authority of the New York Harbor Act, as amended, for transportation and/or discharge of these materials.

(c) *Related Legislation.* (1) Section 401 of the Federal Water Pollution Control Act (PL 92-500; 86 Stat. 816, 33 U.S.C. 1411) requires any applicant for a Federal license or permit to conduct any activity which may result in a discharge into navigable waters to obtain a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that the discharge will comply with the applicable effluent limitations and water quality standards. A certification obtained for the construction of any facility must also pertain to the subsequent operation of the facility.

(2) Section 307(c)(3) of the Coastal Zone Management Act of 1972 (PL 92-583, 86 Stat. 1280, 16 U.S.C. 1456(c)(3)) requires any applicant for a Federal license or permit to conduct an activity affecting land or water uses in the State's coastal zone to furnish a certification that the proposed activity will comply with the State's coastal zone management program. Generally, no permit will be issued until the State has concurred with the applicant's certification. This provision becomes effective upon approval by the Secretary of Commerce of the State's coastal zone management program.

(3) Section 302 of the Marine Protection, Research, and Sanctuaries Act of 1972 (Pub. L. 92-532, 86 Stat. 1052, 16 U.S.C. 1432) authorizes the Secretary of Commerce, after consultation with other interested Federal agencies and with the approval of the President, to designate as marine sanctuaries those areas of the ocean waters or of the Great Lakes and their connecting waters or of other coastal waters which he determines necessary for the purpose of preserving or

restoring such areas for their conservation, recreational, ecological, or esthetic values. After designating such an area, the Secretary of Commerce shall issue regulations to control any activities within the area. Activities in the sanctuary authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with the purposes of Title III of the Act and can be carried out within the regulations for the sanctuary.

(4) The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) declares the national policy to encourage a productive and enjoyable harmony between man and his environment. Section 102 of that Act directs that "to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall * * * insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision making along with economic and technical considerations * * *." See also paragraph (l)(1) of this section on environmental statements.

(5) The Fish and Wildlife Act of 1956 (16 U.S.C. 742a, et seq.), the Migratory Marine Game-Fish Act (16 U.S.C. 760c–760g) and the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c) and other acts express the concern of Congress with the quality of the aquatic environment as it affects the conservation, improvement and enjoyment of fish and wildlife resources. Reorganization Plan No. 4 of 1970 transferred certain functions, including certain fish and wildlife-water resources coordination responsibilities, from the Secretary of the Interior to the Secretary of Commerce. Under the Fish and Wildlife Coordination Act and Reorganization Plan No. 4, any Federal Agency which proposes to control or modify any body of water must first consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, as appropriate, and with the head of the appropriate State agency exercising administration over the wildlife resources of the affected State.

(6) The Federal Power Act of 1920 (41 Stat. 1063; 16 U.S.C. 791a et seq.), as amended, authorizes the Federal Power Commission (FPC) to issue licenses for the construction, operation and maintaining of dams, water conduits, reservoirs, power houses, transmission lines, and other physical structures of a power project. However, where such structures will affect the navigable capacity of any navigable waters of the United States (as defined in 16 U.S.C. 796), the plans for the dam or other physical structures affecting navigation must be approved by the Chief of Engineers and the Secretary of the Army. In such cases, the interests of navigation should normally be protected by a recommendation to the FPC for the inclusion of appropriate provisions in the FPC license rather than the issuance of a separate Department of the Army permit under 33 U.S.C. 401 et seq. As to any other activities in navigable waters not constituting construction, operation and maintenance of physical structures licensed by the FPC under the Federal Power Act of 1920, as amended, the provisions of 33 U.S.C. 401 et seq. remain fully applicable. In all cases involving the discharge of dredged or fill material into navigable waters or the transportation of dredged material for the purpose of dumping in ocean waters, Department of the Army permits under section 404 of the Federal Water Pollution Control Act, or under section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 will be required.

(7) The National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470) created the Advisory Council on Historic Preservation to advise the President and Congress on matters involving historic preservation. In performing its function the Council is authorized to review and comment upon activities licensed by the Federal Government which will have an effect upon properties listed in the National Register of Historic Places.

(8) The Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) prohibits any developer or agent from selling or leasing any lot in a subdivision unless the purchaser is furnished in advance a printed property report including information which the Secretary of Housing and Urban Development may, by rules or regulations, require for the protection of purchasers. In the event the lot in question is in a wetlands area, the report is required by Housing and Urban Development regulation to state that no permit has been granted by the Corps of Engineers for the development under Section 10 of the River Harbor Act of 1899.

(9) The Water Resources Planning Act (42 U.S.C. 1962 et seq.) provides for the possible establishment upon request of the Water Resources Council or a State of river basin water and related land resources commissions. Each such commission shall coordinate Federal, State, interstate, local and nongovernmental plans for the development of water and related land resources in its area, river basin, or group of river basins. In the event the proposed Corps of Engineers permits to non-governmental developers or other agencies under section 10 of the River and Harbor Act of 1899 and section 404 of the Federal Water Pollution Control Act may affect the plans of such river basin commissions, the permits will be coordinated with the appropriate concerned river basin commissions. The same is true of Corps of Engineers authorizations to private persons or corporations to improve navigable rivers at their own expense under section 1 of the River and Harbor Act of 1902.

(d) Definitions. For the purpose of issuing or denying authorizations under this regulation.

(1) *"Navigable waters of the United States."* The term, "navigable waters of the United States," is administratively defined to mean waters that have been used in the past, are now used, or are susceptible to use as a means to transport interstate commerce landward to their ordinary high water mark and up to the head of navigation as determined by the Chief of Engineers, and also waters that are subject to the ebb and flow of the tide shoreward to their mean high water mark (mean higher high water mark on the Pacific Coast). See 33 CFR 209.260 (ER 1165–2–302) for a more definitive explanation of this term.

(2) *"Navigable waters".* (i) The term, "navigable waters," as used herein for purposes of Section 404 of the Federal Water Pollution Control Act, is administratively defined to mean waters of the United States including the territorial seas with respect to the disposal of fill material and excluding the territorial seas with respect to the disposal of dredged material and shall include the following waters:

(*a*) Coastal waters that are navigable waters of the United States subject to the ebb and flow of the tide, shoreward to their mean high water mark (mean higher high water mark on the Pacific coast);

(*b*) All coastal wetlands, mudflats, swamps, and similar areas that are contiguous or adjacent to other navigable waters. "Coastal wetlands" includes marshes and shallows and means those areas periodically inundated by saline or brackish waters and that are normally characterized by the prevalence of salt or brackish water vegetation capable of growth and reproduction;

(*c*) Rivers, lakes, streams, and artificial water bodies that are navigable waters of the United States up to their headwaters and landward to their ordinary high water mark;

(*d*) All artificially created channels and canals used for recreational or other navigational purposes that are connected to other navigable waters, landward to their ordinary high water mark;

(*e*) All tributaries of navigable waters of the United States up to their headwaters and landward to their ordinary high water mark;

(*f*) Interstate waters landward to their ordinary high water mark and up to their headwaters;

(*g*) Intrastate lakes, rivers and streams landward to their ordinary high water mark and up to their headwaters that are utilized:

(*1*) By interstate travelers for water-related recreational purposes;

(*2*) For the removal of fish that are sold in interstate commerce;

(*3*) For industrial purposes by industries in interstate commerce; or

(*4*) In the production of agricultural commodities sold or transported in interstate commerce;

(*h*) Freshwater wetlands including marshes, shallows, swamps and, similar areas that are contiguous or adjacent to other navigable waters and that support freshwater vegetation. "Freshwater wetlands" means those areas that are periodically inundated and that are normally characterized by the prevalence of vegetation that requires saturated soil

conditions for growth and reproduction; and

(i) Those other waters which the District Engineer determines necessitate regulation for the protection of water quality as expressed in the guidelines (40 CFR 230). For example, in the case of intermittent rivers, streams, tributaries, and perched wetlands that are not contiguous or adjacent to navigable waters identified in paragraphs (a)–(h), a decision on jurisdiction shall be made by the District Engineer.

(ii) The following additional terms are defined as follows:

(a) *"Ordinary high water mark"* with respect to inland fresh water means the line on the shore established by analysis of all daily high waters. It is established as that point on the shore that is inundated 25% of the time and is derived by a flow-duration curve for the particular water body that is based on available water stage data. It may also be estimated by erosion or easily recognized characteristics such as shelving, change in the character of the soil, destruction of terrestrial vegetation or its inability to grow, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area;

(b) *"Mean high water mark"* with respect to ocean and coastal waters means the line on the shore established by the average of all high tides (all higher high tides on the Pacific Coast). It is established by survey based on available tidal data (preferably averaged over a period of 18.6 years because of the variations in tide). In the absence of such data, less precise methods to determine the mean high water mark may be used, such as physical markings or comparison of the area in question with an area having similar physical characteristics for which tidal data are already available;

(c) *"Lakes"* means natural bodies of water greater than five acres in surface area and all bodies of standing water created by the impounding of navigable waters identified in paragraphs (a)–(h), above. Stock watering ponds and settling basins that are not created by such impoundments are not included;

(d) *"Headwaters"* means the point on the stream above which the flow is normally less than 5 cubic feet per second; *provided, however,* the volume of flow, point and nonpoint source discharge characteristics of the watershed, and other factors that may impact on the water quality of waters of the United States will be considered in determining this upstream limit; and

(e) *"Primary tributaries"* means the main stems of tributaries directly connecting to navigable waters of the United States up to their headwaters and does not include any additional tributaries extending off of the main stems of these tributaries.

(3) *"Ocean waters"*. The term "ocean waters," as defined in the Marine Protection, Research, and Sanctuaries Act of 1972 (P.L. 92-532, 86 Stat. 1052), means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(4) *"Dredged material"*. The term "dredged material" means material that is excavated or dredged from navigable waters. The term does not include material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for production of food, fiber, and forest products.

(5) *"Discharge of dredged material"*. The term "discharge of dredged material" means any addition of dredged material, in excess of one cubic yard when used in a single or incidental operation, into navigable waters. The term includes, without limitation, the addition of dredged material to a specified disposal site located in navigable waters and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into navigable waters resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to section 402 of the Federal Water Pollution Control Act even though the extraction of such material may require a permit from the Corps of Engineers under section 10 of the River and Harbor Act of 1899.

(6) *"Fill material."* The term "fill material" means any pollutant used to create fill in the traditional sense of replacing an aquatic area with dry land or of changing the bottom elevation of a water body for any purpose. "Fill material" does not include the following:

(i) Material resulting from normal farming, silviculture, and ranching activities, such as plowing, cultivating, seeding, and harvesting, for the production of food, fiber, and forest products;

(ii) Material placed for the purpose of maintenance, including emergency reconstruction of recently damaged parts of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures.

(iii) Additions to these categories of activities that are not "fill" will be considered periodically and these regulations amended accordingly.

(7) *"Discharge of fill material."* The term "discharge of fill material" means the addition of fill material into navigable waters for the purpose of creating fastlands, elevations of land beneath navigable waters, or for impoundments of water. The term generally includes, without limitation, the following activities: placement of fill that is necessary to the construction of any structure in a navigable water; the building of any structure or impoundment requiring rock, sand, dirt, or other pollutants for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands, property protection and/or reclamation devices such as riprap, groins, seawalls, breakwalls, and bulkheads and fills; beach nourishment; levees; sanitary landfills; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants, and subaqueous utility lines; and artificial reefs.

(8) *"Person"*. The term "person" means any individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, any interstate body, or any agency or instrumentality of the Federal Government, other than the Corps of Engineers (see 33 CFR 209.145 for procedures for Corps projects).

(9) *"Coastal zone."* The term "coastal zone" means the coastal waters and adjacent shorelands designated by a State as being included in its approved coastal zone management program under the Coastal Zone Management Act of 1972.

(e) *Activities Requiring Authorizations.* (1) Structures or work in navigable waters of the United States. Department of the Army authorizations are required under the River and Harbor Act of 1899 (See paragraph (b) of this section) for all structures or work in navigable waters of the United States except for bridges and causeways (see Appendix A), the placement of aids to navigation by the U.S. Coast Guard, structures constructed in artificial canals within principally residential developments where the canal has been connected to a navigable water of the United States (see paragraph (g)(11) below), and activities that were commenced or completed shoreward of established harbor lines before May 27, 1970 (see 33 CFR § 209.150) other than those activities involving the discharge of dredged or fill material in navigable waters after October 18, 1972.

(i) Structures or work are in the navigable waters of the United States if they are within limits defined in 33 CFR 209.260. Structures or work outside these limits are subject to the provisions of law cited in paragraph (b) of this section if those structures or work affect the course, location, or condition of the water body in such a manner as to significantly impact on the navigable capacity of the water body. A tunnel or other structure under a navigable water of the United States is considered to have a significant impact on the navigable capacity of the water body.

(ii) Structures or work licensed under the Federal Power Act of 1920 do not require Department of the Army authorizations under the River and Harbor Act of 1899 (see paragraphs (b) and (c) of this section); provided, however, that any part of such structures or work that involves the discharge of dredged or fill material into navigable waters or the transportation of dredged material for the purpose of dumping it into ocean waters will require Department of the Army authorization under Section 404 of the Federal Water Pollution Control Act and Section 103 of the Marine Protection, Research, and Sanctuaries Act, as appropriate.

(2) *Discharges of dredged material or of fill material into navigable waters.* (i)

Except as provided in subparagraphs (ii) and (iii) below, Department of the Army permits will be required for the discharge of dredged material or of fill material into navigable waters in accordance with the following phased schedule:

(a) *Phase I:* After the effective date of this regulation, discharges of dredged material or of fill material into coastal waters and coastal wetlands contiguous or adjacent thereto or into inland navigable waters of the United States and freshwater wetlands contiguous or adjacent thereto are subject to the procedures of this regulation.

(b) *Phase II:* After July 1, 1976, discharges of dredged material or of fill material into primary tributaries, freshwater wetlands contiguous or adjacent to primary tributaries, and lakes are subject to the procedures of this regulation.

(c) *Phase III:* After July 1, 1977, discharges of dredged material or of fill material into any navigable water are subject to the procedures of this regulation.

(ii) All other discharges of dredged or fill material that occur before the dates specified in subparagraphs (i) (b) and (c) above, are hereby permitted for purposes of Section 404 of the Federal Water Pollution Control Act without further processing under this regulation; *provided, however*, That the procedures of this regulation including those pertaining to individual and general permits (see paragraph (i)(2)(ix), below) shall apply to any discharge(s) of dredged or fill material if the District Engineer determines that the water quality concerns as expressed in the guidelines (see 40 CFR 230) indicate the need for such action; and *further provided*, That the following conditions are met:

(a) That a water-quality certification under section 401 of the Federal Water Pollution Control Act (see paragraph (c)(1) of this section) is obtained before the discharge is commenced or the State has waived its right to so certify;

(b) That a certification of compliance with a State's approved coastal zone management program pursuant to section 307(c)(3) of the Coastal Zone Management Act (see paragraph (c)(2), above), is furnished, if applicable, before the discharge is commenced;

(c) That the discharge will not be located in the proximity of a public water supply intake;

(d) That the discharge will not contain unacceptable levels of pathogenic organisms in areas used for sports involving physical contact with the water;

(e) That the discharge will not occur in areas of concentrated shellfish production; and

(f) That the discharge will not destroy or endanger the critical habitat of a threatened or endangered species, as identified under the Endangered Species Act.

(iii) Discharges of dredged or fill material in waters other than navigable waters of the United States that have been completed by the effective date of this regulation and discharges of dredged or fill material of less than 500 cubic yards into waters other than navigable waters of the United States that are part of an activity that was commenced before the publication of this regulation, that will be completed within six months of the publication of this regulation, and that involves a single and complete project and not a number of projects associated with complete development plans are hereby authorized for purposes of Section 404 of the Federal Water Pollution Control Act without further processing under this regulation; *provided, however*, That the exemption of these types of activities from the requirements of this regulation shall not be construed as a waiver of the requirement to obtain a State water-quality certification under section 401 of the Federal Water Pollution Control Act or a certification of compliance with a State's approved coastal zone management program pursuant to section 307(c)(3) of the Coastal Zone Management Act in those cases where the discharge of dredged or fill material has not been completed by the date of this regulation; and *further provided*, That the procedures of this regulation shall apply to any activity involving the discharge of dredged or fill material commenced before the date of this regulation if the District Engineer determines that the interests of water quality as expressed in the guidelines (see 40 CFR Part 230) so require. The term "commenced" as used herein shall be satisfied if there has been, before the date of this regulation, some discharge of dredged or fill material into the navigable water as a part of the above activity or an entering into of a written contractual obligation to have the dredged or fill material discharged at a designated disposal site by a contractor.

(iv) All bulkhead and fill activities involving discharges of dredged material or of fill material in navigable waters other than navigable waters of the United States that are less than 500 feet in length, are constructed for property protection, and involve less than an average of one cubic yard per running foot are hereby permitted for purposes of section 404 of the Federal Water Pollution Control Act without further processing under this regulation; *provided, however*, That the procedures of this regulation including those pertaining to individual and general permits (see paragraph (i)(2)(ix), below) shall apply to any discharge(s) of dredged or fill material if the District Engineer determines that the water-quality concerns as expressed in the guidelines (see 40 CFR 230) indicate the need for such action; and *further provided*, That the conditions specified in subparagraph (ii)(a)-(f) are met.

(3) *Transportation of dredged material for the purpose of dumping it in ocean waters and construction of artificial islands and fixed structures on the outer continental shelf.* Department of the Army authorizations are required for the transportation of dredged material for the purpose of dumping it in ocean waters and construction of artificial islands and fixed structures on the outer continental shelf pursuant to Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 and Section 4(f) of the Outer Continental Shelf Lands Act, respectively.

(4) *Activities of Federal Agencies.* Except as specifically provided in this subparagraph, activities of the type described in paragraph (c)(1), (2), and (3) of this section done by or on behalf of any Federal agency, other than the Corps of Engineers, are subject to the authorization procedures of this regulation. Agreement for construction or engineering services performer for other agencies by the Corps of Engineers do not constitute authorization under the regulation. Division and District Engineers will therefore advise Federal agencies accordingly and cooperate to the fullest extent in the expediting processing of their applications.

(i) By section 10 of the Act of March 3, 1899 (see paragraph (b)(2) above), Congress has delegated to the Secretary of the Army and the Chief of Engineers the duty of authorizing or prohibiting certain work or structures in navigable waters of the United States. The general legislation by which Federal agencies are empowered to act generally is not considered to be sufficient authorization by Congress to satisfy the purposes of section 10. If an agency asserts that it has Congressional authorization meeting the test of section 10 or would otherwise be exempt from the provisions of section 10, the legislative history and/or provisions of the Act should clearly demonstrate that Congress was approving the exact location and plans from which Congress could have considered the effect on navigable waters of the United States or that Congress intended to exempt that agency from the requirements of section 10. Very often such legislation reserves final approval of plans or construction for the Chief of Engineers. In such cases, evaluation and authorization under this regulation are limited by the intent of the statutory language involved.

(ii) The policy provisions set out in paragraph (f)(3) of this section, relating to State or local authorizations, do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy. Federal agencies are required to comply with the substantive State, interstate, and local water-quality standards and effluent limitations as are applicable by law that are adopted in accordance with or effective under the provisions of the Federal Water Pollution Control Act, as amended, in the design, construction, management, operation, and maintenance of their respective facilities. (See Executive Order No. 11752, dated 17 Dec. 73.) They are not required, however, to obtain and provide certification of compliance with effluent limitations and water-quality standards from State or interstate water pollution control agencies in connection with activities involving discharges into navigable waters.

(f) *General Policies for Evaluating Permit Applications.* (1) The decision

whether to issue a permit will be based on an evaluation of the probable impact of the proposed structure or work and its intended use on the public interest. Evaluation of the probable impact that the proposed structure or work may have on the public interest requires a careful weighing of all those factors that become relevant in each particular case. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal and, if authorized, the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process (e.g., see § 209.400, Guidelines for Assessment of Economic, Social and Environmental Effects of Civil Works Projects). That decision should reflect the national concern for both protection and utilization of important resources. All factors that may be relevant to the proposal must be considered; among those factors are conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood-damage prevention, land-use classifications, navigation, recreation, water supply, water quality, and, in general, the needs and welfare of the people. No permit will be granted unless its issuance is found to be in the public interest.

(2) The following general criteria will be considered in the evaluation of every application:

(i) The relative extent of the public and private need for the proposed structure or work.

(ii) The desirability of using appropriate alternative locations and methods to accomplish the objective of the proposed structure or work.

(iii) The extent and permanence of the beneficial and/or detrimental effects that the proposed structure or work may have on the public and private uses to which the area is suited.

(iv) The probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated structures or work in the general area.

(3) Permits will not be issued where certification or authorization of the proposed work is required by Federal, State, and/or local law and that certification or authorization has been denied. Initial processing of an application for a Department of the Army permit will proceed until definitive action has been taken by the responsible State agency to grant or deny the required certification and/or authorization. Where the required State certification and/or authorization has been denied and procedures for reconsideration exist, reasonable time not to exceed 90 days will be allowed for the applicant to attempt to resolve the problem and/or obtain reconsideration of the denial. If the State denial of authorization cannot be thus resolved, the application will be denied in accordance with paragraph (p) of this section.

(i) Where officially adopted State, regional, or local land-use classifications, determinations, or policies are applicable to the land or water areas under consideration, they shall be presumed to reflect local factors of the public interest and shall be considered in addition with the other national factors of the public interest identified in paragraph (f)(1), above.

(ii) A proposed activity in a navigable water may result in conflicting comments from several agencies within the same State. While many States have designated a single State agency or individual to provide a single and coordinated State position regarding pending permit applications, where a State has not so designated a single source, District Engineers will elicit from the Governor an expression of his views and desires concerning the application (see also paragraph (j)(3), below) or, in the alternative, an expression from the Governor as to which State agency represents the official State position in this particular case. Even if official certification and/or authorization is not required by State or Federal law, but a State, regional, or local agency having jurisdiction or interest over the particular activity comments on the application, due consideration shall be given to those official views as a reflection of local factors of the public interest.

(iii) If a favorable State determination is received, the District Engineer will process the application to a conclusion in accordance with the policies and procedures of this regulation. In the absence of overriding national factors of the public interest that may be revealed during the subsequent processing of the permit application, a permit will generally be issued following receipt of a favorable State determination provided the concerns, policies, goals, and requirements as expressed in paragraphs (f) (1) and (2), above, the guidelines (40 CFR 230), and the following statutes have been followed and considered: the National Environmental Policy Act; the Fish and Wildlife Coordination Act; the Historical and Archaeological Preservation Act; the National Historic Preservation Act; the Endangered Species Act; the Coastal Zone Management Act; the Marine Protection, Research, and Sanctuaries Act of 1972; and the Federal Water Pollution Control Act (see paragraph c, above).

(iv) If the responsible State agency fails to take definitive action to grant or deny required authorizations or to furnish comments as provided in subparagraph (ii) above within six months of the issuance of the public notice, the District Engineer shall process the application to a conclusion.

(v) The District Engineer may, in those States with ongoing State permit programs for work or structures in navigable waters of the United States or the discharge of dredged or fill material in navigable waters, enter into an agreement with the States to jointly process and evaluate Department of the Army and State permit applications. This may include the issuance of joint public notices; the conduct of joint public hearings, if held; and the joint review and analysis of information and comments developed in response to the public notice, public hearing, the environmental assessment and the environmental impact statement (if necessary), the Fish and Wildlife Coordination Act, the Historical and Archaeological Preservation Act, the National Historic Preservation Act, the Endangered Species Act, the Coastal Zone Management Act, the Marine Protection, Research, and Sanctuaries Act of 1972, and the Federal Water Pollution Control Act. In such cases, applications for Department of the Army permits may be processed concurrently with the processing of the State permit to an independent conclusion and decision by the District Engineer and appropriate State agency.

(4) The District Engineer shall consider the recommendations of the appropriate Regional Director of the Bureau of Sport Fisheries and Wildlife, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the Regional Administrator of the Environmental Protection Agency, the local representative of the Soil Conservation Service of the Department of Agriculture, and the head of appropriate State agencies in administering the policies and procedures of the regulation.

(g) *Policies on particular factors of consideration.* In applying the general policies cited above to the evaluation of a permit application, Corps of Engineers officials will also consider the following policies when they are applicable to the specific application:

(1) *Interference with adjacent properties or water resource projects.* Authorization of work or structures by the Department of the Army does not convey a property right, nor authorize any injury to property or invasion of other rights.

(i) (a) Because a landowner has the general right to protect his property from erosion, applications to erect protective structures will usually receive favorable consideration. However, if the protective structure may cause damage to the property of others, the District Engineer will so advise the applicant and inform him of possible alternative methods of protecting his property. Such advice will be given in terms of general guidance only so as not to compete with private engineering firms nor require undue use of government resources. A significant probability of resulting damage to nearby properties can be a basis for denial of an application.

(b) A landowner's general right of access to navigable waters is subject to the similar rights of access held by nearby landowners and to the general public's right of navigation on the water surface. Proposals which create undue interference with access to, or use of, navigable waters will generally not receive favorable consideration.

(ii) (a) Where it is found that the work for which a permit is desired may interfere with a proposed civil works project

of the Corps of Engineers, the applicant and the party or parties responsible for fulfillment of the requirements of local cooperation should be apprised in writing of the fact and of the possibility that a civil works project which may be constructed in the vicinity of the proposed work might necessitate its removal or reconstruction. They should also be informed that the United States will in no case be liable for any damage or injury to the structures or work authorized which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claims or right to compensation will accrue from any such damage.

(b) Proposed activities which are in the area of a civil works project which exists or is under construction will be evaluated to insure that they are compatible with the purposes of the project.

(2) *Non-Federal dredging for navigation.* (i) The benefits which an authorized Federal navigation project is intended to produce will often require similar and related operations by non-Federal agencies (e.g., dredging an access channel to dock and berthing facilities or deepening such a channel to correspond to the Federal project depth). These non-Federal activities will be considered by Corps of Engineers officials in planning the construction and maintenance of Federal navigation projects and, to the maximum practical extent, will be coordinated with interested Federal, State, regional and local agencies and the general public simultaneously with the associated Federal projects. Non-Federal activities which are not so coordinated will be individually evaluated in accordance with paragraph (f) of this section. In evaluating the public interest in connection with applications for permits for such coordinated operations, equal treatment will, therefore, be accorded to the fullest extent possible to both Federal and non-Federal operations. Furthermore, permits for non-Federal dredging operations will contain conditions requiring the permittee to comply with the same practices or requirements utilized in connection with related Federal dredging operations with respect to such matters as turbidity, water quality, containment of material, nature and location of approved spoil disposal areas (non-Federal use of Federal contained disposal areas will be in accordance with laws authorizing such areas and regulations governing their use), extent and period of dredging, and other factors relating to protection of environmental and ecological values. (See also paragraph (g)(17) of this section.)

(ii) A permit for the dredging of a channel, slip, or other such project for navigation will also authorize the periodic maintenance dredging of the project. Authority for maintenance dredging will be subject to revalidation at regular intervals to be specified in the permit. Revalidation will be in accordance with the procedures prescribed in paragraph (n)(5) of this section. The permit, however, will require the permittee to give advance notice to the District Engineer each time maintenance dredging is to be performed.

(3) *Effect on wetlands.* (i) Wetlands are those land and water areas subject to regular inundation by tidal, riverine, or lacustrine flowage. Generally included are inland and coastal shallows, marshes, mudflats, estuaries, swamps, and similar areas in coastal and inland navigable waters. Many such areas serve important purposes relating to fish and wildlife, recreation, and other elements of the general public interest. As environmentally vital areas, they constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest.

(ii) Wetlands considered to perform functions important to the public interest include:

(a) Wetlands which serve important natural biological functions, including food chain production, general habitat, and nesting, spawning, rearing and resting sites for aquatic or land species;

(b) Wetlands set aside for study of the aquatic environment or as sanctuaries or refuges;

(c) Wetlands contiguous to areas listed in paragraph (g)(3)(ii) (a) and (b) of this section, the destruction or alteration of which would affect detrimentally the natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics of the above areas;

(d) Wetlands which are significant in shielding other areas from wave action, erosion, or storm damage. Such wetlands often include barrier beaches, islands, reefs and bars;

(e) Wetlands which serve as valuable storage areas for storm and flood waters; and

(f) Wetlands which are prime natural recharge areas. Prime recharge areas are locations where surface and ground water are directly interconnected.

(iii) Although a particular alteration of wetlands may constitute a minor change, the cumulative effect of numerous such piecemeal changes often results in a major impairment of the wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it is part of a complete and interrelated wetland area. In addition, the District Engineer may undertake reviews of particular wetland areas, in response to new applications, and in consultation with the appropriate Regional Director of the Bureau of Sport Fisheries and Wildlife, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the Regional Administrator of the Environmental Protection Agency, the local representative of the Soil Conservation Service of the Department of Agriculture, and the head of the appropriate State agency to assess the cumulative effect of activities in such areas.

(iv) Unless the public interest requires otherwise, no permit shall be granted for work in wetlands identified as important by subparagraph (ii), above, unless the District Engineer concludes, on the basis of the analysis required in paragraph (f) of this section, that the benefits of the proposed alteration outweigh the damage to the wetlands resource and the proposed alteration is necessary to realize those benefits.

(a) In evaluating whether a particular alteration is necessary, the District Engineer shall primarily consider whether the proposed activity is dependent upon the wetland resources and environment and whether feasible alternative sites are available.

(b) The applicant must provide sufficient data on the basis of which the availability of feasible alternative sites can be evaluated.

(v) In accordance with the policy expressed in paragraph (f)(3) of this section, and with the Congressional policy expressed in the Estuary Protection Act, PL 90-454, state regulatory laws or programs for classification and protection of wetlands will be given great weight. (See also paragraph (g)(18) of this section).

(4) *Fish and wildlife.* (i) In accordance with the Fish and Wildlife Coordination Act (see paragraph (c)(5) of this section) Corps of Engineers officials will in all permit cases, consult with the Regional Director, U.S. Fish and Wildlife Service, the Regional Director, National Marine Fisheries Service, and the head of the agency responsible for fish and wildlife for the state in which the work is to be performed, with a view to the conservation of wildlife resources by prevention of their loss and damage due to the work or structures proposed in a permit application (see paragraphs (i)(1)(ii) and (j)(2) of this section). They will give great weight to these views on fish and wildlife considerations in evaluating the application. The applicant will be urged to modify his proposal to eliminate or mitigate any damage to such resources, and in appropriate cases the permit may be conditioned to accomplish this purpose.

(ii) The Division Engineer may issue a permit over an unresolved objection based on fish and wildlife considerations by the regional representative of Federal fish and wildlife agencies unless otherwise directed by the Chief of Engineers; provided, however, that the policies and procedures stated in the Memorandum of Understanding between the Department of the Army and the Department of the Interior (Appendix B) will be followed with respect to all activities involving dredging, excavation, filling and other related work.

(5) *Water quality.* (i) Applications for permits for activities which may affect the quality of navigable waters will be evaluated with a view toward compliance with applicable effluent limitations and water quality standards during both the construction and operation of the proposed activity. Certification of compliance with applicable effluent limitations and water quality standards required under provisions of Section 401 of the

Federal Water Pollution Control Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, Environmental Protection Agency (EPA), advises of other water quality aspects to be taken into consideration. If the certification provided is to the effect that no effluent limitation and water quality standards have been established as applicable to the proposed activity, or if certification is not required for the proposed activity, the advice of the Regional Administrator, EPA, on water quality aspects will be given great weight in evaluating the permit application. Any permit issued may be conditioned to implement water quality protection measures.

(ii) If the Regional Administrator, EPA, objects to the issuance of a permit on the basis of water quality considerations and the objection is not resolved by the applicant or the District Engineer, and the District Engineer would otherwise issue the permit, the application will be forwarded through channels to the Chief of Engineers for further coordination with the Administrator, EPA, and decision. (See also paragraphs (b)(7) and (b)(8), above, and (g)(17) and (i)(2)(i) of this section.)

(6) *Historic, scenic, and recreational values.* (i) Applications for permits covered by this regulation may involve areas which possess recognized historic, cultural, scenic, conservation, recreational or similar values. Full evaluation of the general public interest requires that due consideration be given to the effect which the proposed structure or activity may have on the enhancement, preservation, or development of such values. Recognition of those values is often reflected by State, regional, or local land use classifications (see paragraph (f)(3) of this section), or by similar Federal controls or policies. In both cases, action on permit applications should, insofar as possible, be consistent with, and avoid adverse effect on, the values or purposes for which those classifications, controls, or policies were established.

(ii) Specific application of the policy in paragraph (g)(6)(i) of this section, applies to:

(a) Rivers named in Section 3 of the Wild and Scenic Rivers Act (82 Stat. 906, 16 U.S.C. 1273 et seq.), and those proposed for inclusion as provided by sections 4 and 5 of the Act, or by later legislation.

(b) Historic, cultural, or archeological sites or practices as provided in the National Historic Preservation Act of 1966 (83 Stat. 852, 42 U.S.C. 4321 et seq.) (see also Executive Order 11593, May 13, 1971, and Statutes there cited). Particular attention should be directed toward any district, site, building, structure, or object listed in the National Register of Historic Places. Comments regarding such undertakings shall be sought and considered as provided by paragraph (i)(2)(iii) of this section.

(c) Sites included in the National Registry of Natural Landmarks which are published periodically in the FEDERAL REGISTER.

(d) Any other areas named in Acts of Congress or Presidential Proclamations as National Rivers, National Wilderness Areas, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, and such areas as may be established under Federal law for similar and related purposes, such as estuarine and marine sanctuaries.

(7) *Structures for small boats.* As a matter of policy, in the absence of overriding public interest, favorable consideration will be generally be given to applications from riparian proprietors for permits for piers, boat docks, moorings, platforms and similar structures for small boats. Particular attention will be given to the location and general design of such structures to prevent possible obstructions to navigation with respect to both the public's use of the waterway and the neighboring proprietors' access to the waterway. Obstructions can result from both the existence of the structure, particularly in conjunction with other similar facilities in the immediate vicinity, and from its inability to withstand wave action or other forces which can be expected. District Engineers will inform applicants of the hazards involved and encourage safety in location, design and operation. Corps of Engineers officials will also encourage cooperative or group use facilities in lieu of individual proprietor use facilities.

(i) Letters transmitting permits for structures for small boats will, where applicable, include the following language: "Notice is hereby given that a possibility exists that the structure permitted may be subject to damage by wave wash from passing vessels. Your attention is invited to special condition ..... of the permit." The appropriate designation of the permit condition placing responsibility on the permittee and not on the United States for integrity of the structure and safety of boats moored thereto will be inserted.

(ii) Floating structures for small recreational boats or other recreational purposes in lakes owned and operated by the Corps of Engineers under a Resources Manager are normally subject to permit authorities cited in paragraph (b), above when those waters are regarded as navigable waters of the United States. (See 33 CFR 209.260). However, such structures will not be authorized under this regulation but will be regulated under applicable regulations of the Chief of Engineers published in Chapter III, Part 327.19 of Title 36, Code of Federal Regulations if the land surrounding those lakes is under complete Federal ownership. District Engineers will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the lake Resources Manager's office.

(8) *Aids to navigation.* (i) The placing of non-Federal fixed and floating aids to navigation in a navigable water of the United States is within the purview of section 10 of the River and Harbor Act of 1899. Furthermore, these aids are of particular interest to the U.S. Coast Guard because of their control of marking, lighting and standardization of such navigation aids. Applications for permits for installation of aids to navigation will, therefore, be coordinated with the appropriate District Commander, U.S. Coast Guard, and permits for such aids will include a condition to the effect that the permittee will conform to the requirements of the Coast Guard for marking, lighting, etc. Since most fixed and floating aids to navigation will not ordinarily significantly affect environmental values, the usual form of authorization to be used will be a letter of permission.

(ii) Fishing structures and appliances in navigable waters of the United States will be lighted for the safety of navigation as follows: Lights will be displayed between sunset and sunrise. They will be placed at each end of the structure, except where the inner end terminates at such a point where there could be no practicable navigation between it and the high-water line of the adjacent coast. In such case no inner light will be required. The outer light will be white, and the inner light will be red. The size, capacity, and manner of maintenance of the lights will be specified in the Department of the Army permit authorizing the erection of the structure or appliances. When several structures or appliances are placed on one line with no navigable passage between them, they will be considered for lighting purposes as one structure.

(9) *Outer continental shelf.* Artificial islands and fixed structures located on the outer continental shelf are subject to the standard permit procedures of this regulation. Where the islands or structures are to be constructed on lands which are under mineral lease from the Bureau of Land Management, Department of the Interior, that agency, in cooperation with other Federal agencies, fully evaluates the potential effect of the leasing program on the total environment. Accordingly, the decision whether to issue a permit on lands which are under mineral lease from the Department of the Interior will be limited to an evaluation of the impact of the proposed work on navigation and national security. The public notice will so identify the criteria (see paragraph (j)(1)(viii) (b) of this section).

(10) *Effect on limits of the territorial sea.* Structures or work affecting coastal waters may modify the coast line or baseline from which the three mile belt is measured for purposes of the Submerged Lands Act and International Law. Generally, the coast line or base line is the line of ordinary low water on the mainland; however, there are exceptions where there are islands or low-tide elevations off shore. (See the Submerged Lands Act, 67 Stat. 29, U.S. Code section 1301(c), and United States v. California, 381 U.S. 139 (1965), 382 U.S. 448 (1966)). All applications for structures or work affecting coastal waters will therefore be reviewed specifically to determine whether the coast line or baseline might be altered. If it is determined that such a change might occur, coordination with

the Attorney General and the Solicitor of the Department of the Interior is required before final action is taken. The District Engineer will submit a description of the proposed work and a copy of the plans to the Solicitor, Department of the Interior, Washington, D.C. 20240, and request his comments concerning the effects of the proposed work on the outer continental rights of the United States. These comments will be included in the file of the application. After completion of standard processing procedures, the file will be forwarded to the Chief of Engineers. The decision in the application will be made by the Secretary of the Army after coordination with the Attorney General.

(11) *Canals and other artificial waterways connected to navigable waters.* (i) A canal or similar artificial waterway is subject to the regulatory authorities discussed in paragraph (b)(2) of this section if it constitutes a navigable water of the United States, or if it is connected to navigable waters of the United States in a manner which affects their course, condition, or capacity. In all cases the connection to navigable waters of the United States requires a permit. Where the canal itself constitutes a navigable water of the United States, evaluation of the permit application and further exercise of regulatory authority will be in accordance with the standard procedures of this regulation. For all other canals the exercise of regulatory authority is restricted to those activities which affect the course, condition, or capacity of the navigable waters of the United States. Examples of the latter may include the length and depth of the canal; the currents circulation, quality and turbidity of its waters, especially as they affect fish and wildlife values; and modifications or extensions of its configuration.

(ii) The proponent of canal work should submit his application for a permit, including a proposed plan of the entire development, and the location and description of anticipated docks, piers and other similar structures which will be placed in the canal, to the District Engineer before commencing any form of work. If the connection to navigable waters of the United States has already been made without a permit, the District Engineer will proceed in accordance with paragraph (g)(12)(i) of this section. Where a connection has not yet occurred, but canal construction is planned or has already begun, the District Engineer will, in writing, advise the proponent of the need for a permit to connect the canals to navigable waters of the United States. He will also ask the proponent if he intends to make such a connection and will request the immediate submission of the plans and permit application if it is so intended. The District Engineer will also advise the proponent that any work is done at the risk that, if a permit is required, it may not be issued, and that the existence of partially-completed excavation work will not be allowed to weigh favorably in evaluation of the permit application.

(12) *Unauthorized activities.* The following procedures will be followed with respect to activities which are performed without proper authorization.

(i) When the District Engineer becomes aware of any unauthorized activity which is still in progress, he shall immediately issue a cease and desist order to all persons responsible for and/or involved in the performance of the activity. In appropriate cases, the District Engineer may also order interim protective measures to be taken in order to protect the public interest. If there is noncompliance with this cease and desist order, the District Engineer shall forward a factual report immediately to the local U.S. Attorney with a request that a temporary restraining order and/or preliminary injunction be obtained against the responsible persons.

(ii) In all cases, the District Engineer shall commence an immediate investigation to ascertain the facts surrounding the unauthorized activity. In making this investigation, the District Engineer shall solicit the views of appropriate Federal, State and local agencies, and shall request the persons involved in the unauthorized activity to provide appropriate information on this activity which will assist him in evaluating the activity and recommending the course of action to be taken. The District Engineer shall evaluate the information and views developed during this investigation in conjunction with the factors and criteria cited in paragraph (f) of this section and shall formulate recommendations as to the appropriate administrative and/or legal action to be taken, subject to the following:

(a) Except where the activity was performed in nontidal waters prior to an administrative, judicial or legislative determination that the water is a navigable water of the United States, the District Engineer is not authorized to process or accept for processing any permit application received.

(*1*) The District Engineer shall in all cases other than those covered by paragraph (g)(12)(ii)(*a*)(*2*) of this section prepare and forward a report to the Chief of Engineers, ATTN: DAEN-GCK, which shall contain an analysis of the data and information obtained during this investigation and recommend appropriate civil and criminal action. In those cases where the analysis of the facts developed during his investigation, when made in conjunction with the factors and criteria in paragraph (f) of this section leads to the preliminary conclusion that removal of the unauthorized activity is in the public interest, the District Engineer shall also recommend restoration of the area to its original condition.

(*2*) In those cases to which the provisions of paragraph (*m*)(3), below, apply, the District Engineer may refer the matter directly to the local United States Attorney for appropriate legal action.

(*b*) If criminal and/or civil action is instituted against the responsible person, the District Engineer shall not accept for processing any application until final disposition of all judicial proceedings, including the payment of all prescribed penalties and fines and/or the completion of all work ordered by the court. Thereafter, the District Engineer may accept an application for a permit; Provided, that with respect to any judicial order requiring partial or total restoration of an area, the District Engineer, if so ordered by the court, shall supervise this restoration effort and may allow the responsible persons to apply for a permit for only that portion of the unauthorized activity for which restoration has not been so ordered.

(c) In those cases where the District Engineer determines that the unauthorized activity was performed in nontidal waters, prior to an administrative, judicial or legislative determination that the water is a navigable water of the United States, the District Engineer shall instruct the responsible persons to immediately file for a permit, unless he determines on the basis of all the facts and circumstances that immediate legal action is warranted. In such cases, the District Engineer will follow the procedures of paragraph (g)(12)(ii) (*a*) and (*b*) of this section.

(iii) Processing and evaluation of applications for after-the-fact authorizations for activities undertaken without the required Department of the Army authorizations will in all other respects follow the standard procedures of this regulation. Thus, authorizations may still be denied in accordance with the policies and procedures of this regulation.

(iv) Where after-the-fact authorization in accordance with this paragraph is determined to be in the public interest, the standard permit form for the activity will be used, omitting inappropriate conditions, and including whatever special conditions the District Engineer may deem appropriate to mitigate or prevent undesirable effects which have occurred or might occur.

(v) Where after-the-fact authorization is not determined to be in the public interest, the notification of the denial of the permit will prescribe any corrective actions to be taken in connection with the work already accomplished and establish a reasonable period of time for the applicant to complete such actions. The District Engineer, after denial of the permit, will again consider whether civil or criminal action is appropriate.

(vi) If the applicant declines to accept the proposed permit conditions, or fails to take corrective action prescribed in the notification of denial, or if the District Engineer determines, after denying the permit application, that legal action is appropriate, the matter will be referred to the Chief of Engineers, ATTN: DAEN-GCK, with recommendations for appropriate action.

(vii) Applications will generally not be required for work or structures completed before 18 December 1968, nor where potential applicants had received expressions of disclaimer prior to the date of this regulation; *provided, however,* That the procedures of paragraph

(g)(12)(i) of this section shall apply to all work or structures which were commenced or completed on or after 18 December 1968, and may be applied to all specific cases, regardless of date of construction or previous disclaimers, for which the District Engineer determines that the interests of navigation so require.

(13) *Facilities at the borders of the United States.* (i) The construction, operation, maintenance, or connection of facilities at the borders of the United States are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official.

(*a*) Applications for permits for the construction, operation, maintenance, or connection at the borders of the United States of facilities for the transmission of electric energy between the United States and a foreign country, or for the exportation or importation of natural gas to or from a foreign country, must be made to the Federal Power Commission. (See Executive Order 10485, September 3, 1953, 16 U.S.C. 824(a)(e), 15 U.S.C. 717b, and 18 CFR Parts 32 and 153).

(*b*) Applications for the landing or operation of submarine cables must be made to the Federal Communications Commission. (See Executive Order 10530, May 10, 1954, 47 U.S.C. 34 to 39, and 47 CFR 1.767).

(*c*) The Secretary of State is to receive applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of: (*1*) pipelines, conveyors belts, and similar facilities for the exportation or importation of petroleum products, coals, minerals, or other products to or from a foreign country; (*2*) facilities for the exportation or importation of water or sewage to or from a foreign country; (*3*) monorails, aerial cable cars, aerial tramways and similar facilities for the transportation of persons or things, or both, to or from a foreign country. (See Executive Order 11423, August 16, 1968).

(ii) A Department of the Army permit under Section 10 of the River and Harbor Act of March 3, 1899 is also required for all of the above facilities which affect the navigable waters of the United States, but in each case in which a permit has been issued as provided above, the decision whether to issue the Department of the Army permit will be based primarily on factors of navigation, since the basic existence and operation of the facility will have been examined and permitted as provided by the Executive Orders. Furthermore, in those cases where the construction, maintenance, or operation at the above facilities involves the discharge of dredged or fill material in navigable waters or the transportation of dredged material for the purpose of dumping it into ocean waters, appropriate Department of the Army authorizations under section 404 of the Federal Water Pollution Control Act or under section 103 of the Marine Protection Research and Sanctuaries Act of 1972 are also required. Evaluation of applications for these authorizations will be in accordance with paragraph (g)(17) of this section.

(14) *Power transmission lines.* (i) Permits under section 10 of the River and Harbor Act of March 3, 1899, (33 U.S.C. 403) are required for power transmission lines crossing navigable waters of the United States unless those lines are part of a water power project subject to the regulatory authorities of the Federal Power Commission under the Federal Water Power Act of 1920 (16 U.S.C. 797). If an application is received for a permit for lines which are part of a water power project, the applicant will be instructed to submit his application to the Federal Power Commission. If the lines are not part of a water power project, the application will be processed in accordance with the procedures prescribed in this regulation.

(ii) The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code.

Nominal system voltage, kV:	*Minimum additional clearance (ft.) above clearance required for bridges*
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
760–765	45

(15) *Seaplane operations.* Structures in navigable waters of the United States associated with seaplane operations require Department of the Army permits, but close coordination with the Federal Aviation Administration (FAA), Department of Transportation, is required on such applications.

(i) The FAA must be notified by an applicant whenever he proposes to establish or operate a seaplane base. The FAA will study the proposal and advise the applicant, District Engineer, and other interested parties as to the effects of the proposal on the use of airspace. The District Engineer will therefore refer any objections regarding the effect of the proposal on the use of airspace to the FAA, and give due consideration to their recommendations when evaluating the general public interest.

(ii) If the seaplane base will serve air carriers licensed by the Civil Aeronautics Board, the applicant must receive an airport operating certificate from the FAA. That certificate reflects determination and conditions relating to the installation, operation, and maintenance of adequate air navigation facilities and safety equipment. Accordingly, the District Engineer may, in evaluating the general public interest, consider such matters to have been primarily evaluated by the FAA.

(16) *Foreign Trade Zones.* The Foreign Trade Zones Act (48 Stat. 998–1003, 19 U.S.C. sections 81a to 81u, as amended) authorizes the establishment of foreign-trade zones in or adjacent to United States ports of entry under terms of a grant and regulations prescribed by the Foreign-Trade Zones Board. Pertinent regulations are published at Title 15 of the Code of Federal Regulations, Part 400. The Secretary of the Army is a member of the Board, and construction of a zone is under the supervision of the District Engineer. Laws governing the navigable waters of the United States remain applicable to foreign-trade zones, including the general requirements of this regulation. Evaluation by a District Engineer of a permit application may give recognition to the consideration by the Board of the general economic effects of the zone on local and foreign commerce, general location of wharves and facilities, and other factors pertinent to construction, operation, and maintenance of the zone.

(17) *Discharge of dredged or fill material in navigable waters or dumping of dredged material in ocean waters.* (i) Applications for permits for the discharge of dredged or fill material into navigable waters at specific disposal sites will be reviewed in accordance with guidelines promulgated by the Administrator, EPA, under authority of section 404(b) of the Federal Water Pollution Control Act. If the EPA guidelines alone prohibit the designation of a proposed disposal site, the economic impact on navigation and anchorage of the failure to authorize the use of the proposed disposal site in navigable waters will also be considered in evaluating whether or not the proposed discharge is in the public interest.

(ii) Applications for permits for the transporting of dredged material for the purpose of dumping it into ocean waters will be evaluated to determine that the proposed dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. In making the evaluation, Corps of Engineers officials will apply criteria established by the Administrator, EPA, under authority of section 102 (a) of the Marine Protection, Research and Sanctuaries Act of 1972, and will specify the dumping sites, using the recommendations of the Administrator, pursuant to section 102(c) of the Act, to the extent feasible. (See 40 CFR Part 220). In evaluating the need for the dumping as required by paragraph (f)(2)(i) of this section, Corps of Engineers officials will consider the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States.

(iii) Sites previously designated for use as disposal sites for discharge or dumping of dredged material will be specified to the maximum practicable extent in permits for the discharge or dumping of dredged material in navigable waters or ocean waters unless restricted by the Administrator, EPA, in accordance with section 404(c) of the Federal Water Pollution Control Act or section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972.

(iv) Prior to actual issuance of permits for the discharge or dumping of dredged or fill material in navigable or ocean waters, Corps of Engineers officials will advise appropriate Regional Administrators, EPA, of the intent to so issue permits. If the Regional Administrator advises, within fifteen days of the advice of the intent to issue, that he objects to the issuance of the permits, the case will be forwarded to the Chief of Engineers in accordance with paragraph (s), below, for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain an analysis for a determination by the Secretary of the Army that there is no economically feasible method or site available other than that to which the Regional Administrator objects. (See also paragraphs (b)(7) and (b)(8) of this section.)

(18) *Activities in coastal zones and marine sanctuaries.* (i) Applications for Department of the Army authorizations for activities in the coastal zones of those States having a coastal zone management program approved by the Secretary of Commerce will be evaluated with respect to compliance with that program. No permit will be issued until the applicant has certified that his proposed activity complies with the coastal zone management program and the appropriate State agency has concurred with the certification or has waived its right to do so (see paragraph (l)(2)(ii) of this section); however, a permit may be issued if the Secretary of Commerce, on his own initiative or upon appeal by the applicant, finds that the proposed activity is consistent with the objectives of the Coastal Zone Management Act of 1972 or is otherwise necessary in the interest of national security.

(ii) Applications for Department of the Army authorization for activities in a marine sanctuary established by the Secretary of Commerce under authority of section 302 of the Marine Protection, Research, and Sanctuaries Act of 1972 will be evaluated for impact on the marine sanctuary. No permit will be issued until the applicant provides a certification from the Secretary of Commerce that the proposed activity is consistent with the purposes of Title III of the Marine Protection, Research and Sanctuaries Act of 1972 and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary. Authorizations so issued will contain such special conditions as may be required by the Secretary of Commerce in connection with his certification.

(h) *Applications for authorizations.* (1) Any person proposing to undertake any activity requiring Department of the Army authorization as specified in paragraph (e) of this section, must apply for a permit to the District Engineer in charge of the District where the proposed activity is to be performed. Applications for permits must be prepared in accordance with instructions in the pamphlet entitled "Applications for Department of the Army Permits for Activities in Waterways" published by the Corps of Engineers, utilizing the prescribed application form (ENG Form 4345). The form and pamphlet may be obtained from the District Engineer having jurisdiction over the waterway in which the proposed activity will be located. Local variations of the application form for purposes of facilitating coordination with State and local agencies may be proposed by District or Division Engineers. These variations will be submitted for approval to DAEN–CWO–N and for clearance by the Office of Management and Budget.

(2) Generally, the application must include a complete description of the proposed activity, which includes necessary drawings, sketches or plans, the location, purpose and intended use of the proposed activity; scheduling of the activity; the names and addresses of adjoining property owners and the location and dimensions of adjacent structures; and the approvals required by other Federal, interstate, State or local agencies for the work, including all approvals or denials already made.

(i) If the activity involves dredging in navigable waters of the United States, the application must include a description of the type, composition and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the dredged material.

(ii) If the activity includes the discharge of dredged or fill material in the navigable waters or the transportation of dredged material for the purpose of dumping it in the ocean waters, the application must include the source of the material, a description of the type, composition and quantity of the material, the method of transportaton and disposal of the material, and the location of the disposal site. Certification under section 401 of the Federal Water Pollution Control Act is required for such discharges into navigable waters. In addition, applicants for permits for these activities are required to pay a fee of $100 per application if the quantity of the material to be discharged in navigable waters or to be dumped in ocean waters exceeds 2500 cubic yards; if the quantity of material is 2500 cubic yards or less, the fee is $10 per application. Agencies or instrumentalities of Federal, State, or local governments will not be required to pay any fee in connection with applications for permits. This fee structure will be reviewed from time to time.

(iii) If the activity includes the construction of a fill or pile or float-supported platform, the project description must include specific structures to be erected on the fill or platform.

(iv) If the activity includes the construction of a structure the normal use of which may result in a discharge of pollutants, other than dredged or fill material, into navigable waters or ocean waters, the application must include either the identification of the application for the discharge permit assigned by the appropriate water pollution control agency or a copy of that application. Certification under Section 401 of the Federal Water Pollution Control Act is required for such discharges into navigable waters.

(v) If the activity will be located within a marine sanctuary established by the Secretary of Commerce, the application must include a copy of the certification from the Secretary of Commerce that the proposed activity is consistent with the purposes of Title III of the Marine Protection, Research and Sanctuaries Act of 1972 and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary.

(vi) If the activity requires the preparation of an environmental impact statement (see paragraphs (l)(1)(iv) and (1) of this section), which necessitates the development of data and information which will result in substantial expense to the United States, the District Engineer may, after obtaining written approval from the Division Engineer, charge the applicant for those extraordinary expenses incurred in the development of this information pursuant to 31 U.S.C. 483(a). All money so collected shall be paid into the Treasury of the United States as miscellaneous receipts. In lieu of this assessment, the District Engineer may require reports, data, and other information for the environmental impact statement (see paragraph (h)(3) of this section), to be compiled by an independent third party under contract with the applicant and furnished directly to the District Engineer: *Provided*, In such cases, the District Engineer shall specify the type of information to be developed; *And provided further*, That the information furnished by this third party contractor may not be used by the District Engineer to assist in his preparation of the environmental impact statement unless he has approved the selection of this third party contractor after consulting with interested Federal, State, and local agencies, public interest groups, and members of the general public, as he deems appropriate, to assure objectivity in this selection. In either case, the District Engineer should advise the applicant in writing that there is no assurance that favorable action will ultimately be taken on his application.

(3) In addition to that information indicated in paragraph (h)(2) of this section, the applicant will be required to furnish such additional information as the District Engineer may deem necessary to assist him in his evaluation of the application. Such additional information may include an environmental assessment, including information on alter-

nate methods and sites, as may be necessary for the preparation of an environmental impact statement (see paragraph (l), below).

(4) The application must be signed by the person who desires to undertake the proposed activity; however, the application may be signed by a duly authorized agent if accompanied by a statement by that person designating the agent and agreeing to furnish, upon request, supplemental information in support of the application. In either case, the signature of the applicant will be understood to be an affirmation that he possesses the authority to undertake the activity proposed in his application, except where the lands are under the control of the Corps of Engineers, in which case the District Engineer will coordinate the transfer of the real estate and the permit action. When the application is submitted by an agent, the application may include the activity of more than one owner provided the character of the activity of each owner is similar and in the same general area.

(i) *Processing applications for permits*—(1) *standard procedures.* (i) When an application for a permit is received, the District Engineer shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it. He shall review the application for completeness and obtain from the applicant any additional information he deems necessary for further processing.

(ii) When all required information has been provided, the District Engineer will issue a public notice as described in paragraph (j) of this section unless specifically exempted by other provisions of this regulation. The notice will be distributed for posting in post offices or other appropriate public places in the vicinity of the site of the proposed work and will be sent to the applicant, to appropriate city and county officials, to adjoining property owners, to appropriate State agencies, to concerned Federal agencies, to local, regional and national shipping and other concerned business and conservation organizations, and to any other interested parties. If in the judgment of the District Engineer the proposal may result in substantial public interest, the public notice (without drawings) may be published for five consecutive days in the local newspaper, and the applicant shall reimburse the District Engineer for the costs of publication. Copies of public notices will be sent to all parties who have specifically requested copies of public notices, to the U.S. Senators and Representatives for the area where the work is to be performed, the Field Representative of the Secretary of the Interior, the Regional Director of the Bureau of Sport Fisheries and Wildlife, the Regional Director of the National Park Service, the Regional Administrator of the Environmental Protection Agency (EPA), the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA), the head of the State agency responsible for fish and wildlife resources, the District Commander, U.S. Coast Guard, and the Office of the Chief of Engineers, Attention: DAEN–CWO–N.

(iii) The District Engineer shall consider all comments received in response to the public notice in his subsequent actions on the permit application. Receipt of the comments will be acknowledged and they will be made a part of the official file on the application. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments relate to matters within the special expertise of another Federal agency, the District Engineer may seek the advice of that agency. The applicant must be given the opportunity to furnish the District Engineer his proposed resolution or rebuttal to all objections from Government agencies and other substantive adverse comments before final decision will be made on the application.

(iv) The District Engineer will consider whether or not an environmental impact statement is necessary (see paragraph (l) of this section) at the earliest time during the processing of an application involving an activity which is not already subject to an environmental impact statement. This will be done when he can make an assessment of the environmental impact of a proposed activity, which in some cases may be upon receipt of the application due to the magnitude of the proposed project or the nature of the area involved. This will be reconsidered as additional information is developed; however, at the earliest time that it appears an environmental impact statement may be required, the District Engineer will require the applicant to furnish additional information and an analysis of the environmental impacts of the proposed action. A preliminary determination as to whether an environmental impact statement will be prepared or a statement that an environmental impact statement has already been prepared on the overall activity by the Corps of Engineers or another Federal agency, will be announced in the Public Notice (see paragraph (j) of this section). If the District Engineer determines that an environmental impact statement will not be prepared for the proposed activity, a finding to that effect will immediately be placed in the permit file and, if the public notice has indicated an intent to prepare a statement, will be announced to the public. This finding shall be dated and signed and shall include a brief statement of the facts and reasons for the decision. If the District Engineer believes that granting the permit may be warranted but that the proposed activity would significantly affect the quality of the human environment, he will prepare an environmental impact statement in accordance with § 209.410. In such cases and if a public hearing is to be held (see subparagraph (v), below), the proposed final environmental impact statement must be completed prior to the hearing. If a public meeting is held, however, the draft environmental impact statement will be filed with the Council on Environmental Quality (CEQ) at least 15 days prior to the meeting.

(v) If the proposed activity includes the discharge of dredged or fill material into navigable waters or the transportation of dredged material for the purpose of dumping it in ocean waters and a person or persons having an interest which may be affected by the issuance of a permit requests a hearing, or if a second State objects to issuance of a permit on the basis of water quality and requests a hearing, or if otherwise required by law or directed by the Chief of Engineers, the District Engineer will arrange a public hearing in accordance with applicable Corps of Engineers regulations (§ 209.133). If no public hearing is to be held and the District Engineer determines that public interest warrants and additional information necessary to the proper evaluation of the application would probably be obtained thereby, the District Engineer will hold a public meeting (see paragraph (k) of this section).

(vi) After all above actions have been completed, the District Engineer will determine in accordance with the record and applicable regulations whether or not the permit should be issued. If a permit is warranted, he will determine the conditions and duration which should be incorporated into the permit (see paragraphs (m) and (n) of this section). In accordance with the authorities specified in paragraph (p) of this section the District Engineer will take final action or forward the application with all pertinent comments, records, and studies, including the final environmental impact statement if prepared, and a statement of findings to support his recommendation, through channels to the official authorized to make the final decision. The report forwarding the application for decision will be in the format prescribed in paragraph (s) of this section. Notice that the application has been forwarded to higher headquarters will be furnished the applicant. When the final decision is made, the statement of findings to support that decision will be placed in the permit file. If an environmental impact statement was filed with CEQ, a copy of the statement of findings will be submitted to DAEN–CWO–N for filing with CEQ. In those cases where an environmental impact statement has not been prepared but the application is forwarded for decision in the format prescribed in paragraph(s) of this section, the report will serve as the Statement of Findings.

(vii) If the final decision is to deny the permit, the applicant will be advised in writing of the reason for denial. If the final decision is to issue the permit, the issuing official will forward two copies of the draft permit to the applicant for signature accepting the conditions of the permit. The applicant will return both signed copies to the issuing officials who then signs and dates the permit. The permit is not valid until signed by the issuing official. Final action on the permit application is the signature on the letter

notifying the applicant of the denial of his application or signature of the issuing official on the authorizing document.

(viii) The District Engineer will publish monthly a list of permits issued or denied during the previous month. The list will identify each action by public notice number, name of applicant, and brief description of activity involved. This list will be distributed to all persons who received any of the public notices listed.

(ix) If the applicant fails to respond within six months to any request or inquiry of the District Engineer, the District Engineer may advise the applicant by registered letter that his application will be considered as having been withdrawn unless the applicant responds thereto within thirty days of the date of the letter.

(2) *Procedures for particular types of permit situations.* (i) Activities requiring water quality certification:

(a) If water quality certification for the proposed activity is necessary under the provisions of the Federal Water Pollution Control Act, the District Engineer shall so notify the applicant and obtain from him either the appropriate certification or a copy of his application for such certification. The District Engineer shall forward one copy of the permit application to the appropriate certifying agency and two copies to the Regional Administrator of the Environmental Protection Agency (EPA). The District Engineer may issue the public notice of the application jointly with the certifying agency if arrangements for such joint notices have been approved by the Division Engineer. When the cerification is received a copy of the certification will be forwarded to the Regional Administrator of EPA who shall determine if the proposed activity may affect the quality of the waters of any State or States other than the State in which the work is to be performed. If he needs supplemental information in order to make this determination, the Regional Administrator may request it from the District Engineer who shall obtain it from the applicant and forward it to the Regional Administrator. The Regional Administrator shall, within thirty days of receipt of the application, certification and supplemental information, notify the affected State, the District Engineer, and the applicant in the event such a second State may be affected. The second State then has sixty days to advise the District Engineer that it objects to the issuance of the permit on the basis of the effect on the quality of its waters and to request a hearing.

(b) No authorization will be granted until required certification has been obtained or has been waived. Waiver is deemed to occur if the certifying agency fails or refuses to act on a request for certification within a reasonable period of time after receipt of such request. The request for certification must be made in accordance with the regulations of the certifying agency. In determining whether or not a waiver period has commenced, the District Engineer will verify that the certifying agency has received a valid request for certification. Three months shall generally be considered to be a reasonable period of time. If, however, special circumstances identified by the District Engineer require that action on an application be taken within a more limited period of time, the District Engineer shall determine a reasonable lesser period of time, advise the certifying agency of the need for action by a particular date and that, if certification is not received by that date, it will be considered that the requirement for certification has been waived. Similarly if it appears that circumstances may reasonably require a period of time longer than three months, the District Engineer may afford the certifying agency up to one year to provide the required certification before determining that a waiver has occurred. District Engineers shall check with the cetifying agency at the end of the allotted period of time before determining that a waiver has occurred.

(ii) If the proposed activity will be located in the coastal zone of a State, the District Engineer shall obtain from the applicant a certification that the activity conforms to the coastal zone management program of the State. Upon receipt of the certification, the District Engineer will forward a copy of the permit application and certification to the State agency responsible for implementing the coastal zone management program and request its concurrence or objection. The District Engineer can issue the public notice of the application jointly with the State agency if arrangements for such joint notices have been approved by the Division Engineer. A copy of the certification will also be sent, along with the public notice of the application to the Director, Office of Coastal Zone Management, NOAA, Department of Commerce, Rockville, Maryland 20852. If the State agency fails to concur or object to the certification within six months of receipt of the request, it will be presumed to waive its right to so act and the certification will be presumed to be valid. Before determining that a waiver has occurred, the District Engineer will check with the State agency to verify that it has failed to act. If the State agency objects to the proposed activity, the District Engineer will so advise the Director, Office of Coastal Zone Management, NOAA, and request advice within thirty days whether or not the Secretary of Commerce will review the objection. If the objection will not be reviewed, the permit will be denied. If, however, the Secretary of Commerce indicates he will review the objection, further action on the application will be held in abeyance pending notification of the results of the review. If the objection is sustained, the permit will be denied. If the objection is overruled by the Secretary's finding, however, the processing will be continued.

(iii) If the proposed activity involves any property listed in the National Register of Historic Places (which is published in its entirety in the FEDERAL REGISTER annually in February with addenda published each month), the District Engineer will determine if any aspect of the activity causes or may cause any change in the quality of the historical, architectural, archeological, or cultural character that qualified the property for listing in the National Register. Generally adverse effects occur under conditions which include but are not limited to destruction or alteration of all or part of the property; isolation from or alteration of its surrounding environment; and introduction of visual, audible, or atmospheric elements that are out of character with the property and its setting. If the District Engineer determines that the activity will have no effect on the property, he will proceed with the standard procedures for processing the application. If, however, the District Engineer determines that the activity will have an effect on the property, he will proceed in accordance with the procedures specified in the FEDERAL REGISTER, Volume 37, Number 220, November 14, 1972, pages 24146 to 24148.

(iv) If the proposed activity consists of the dredging of an access channel and/or berthing facility associated with an authorized Federal navigation project, the activity will be included in the planning and coordination of the construction or maintenance of the Federal project to the maximum extent feasible. Separate notice, meeting or hearing, and environmental impact statement will not be required for activities so included and coordinated; and the public notice issued by the District Engineer for these Federal and associated non-Federal activities will be the notice of intent to issue permits for those included non-Federal dredging activities required by paragraph (g)(17)(iv) of this section. The decision whether to issue or deny such a permit will be consistent with the decision on the Federal project unless special considerations applicable to the proposed activity are identified.

(v) In addition to the general distribution of public notices cited in paragraph (l)(1)(iv) of this section, notices will be sent to other addressees in appropriate cases as follows:

(a) If the activity involves structures or dredging along the shores of the sea or Great Lakes, to the Coastal Engineering Research Center, Washington, D.C. 20016.

(b) If the activity involves construction of fixed structures or artificial islands on the outer continental shelf or in the territorial seas, to the Deputy Assistant Secretary of Defense (Installations and Housing) Washington, D.C. 20310, the Director, Defense Mapping Agency, Hydrographic Center, Washington, D.C. 20390, Attention, Code N512, and the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852.

(c) If the activity involves the construction of structures to enhance fish propagation along the Atlantic and Gulf coasts, to the Atlantic Estuarine Fisheries Center, National Marine Fisheries Service, NOAA, Department of Commerce, Beaufort, North Carolina 28416.

(d) If the activity involves the construction of structures which may affect

aircraft operations or for purposes associated with seaplane operations, to the Regional Director of the Federal Aviation Administration.

(e) If the activity is in connection with a foreign-trade zone, to the Executive Secretary, Foreign-Trade Zones Board, Department of Commerce, Washington, D.C. 20230, and to the appropriate District Director of Customs as Resident Representative, Foreign-Trade Zones Board.

(vi) Copies of permits will be furnished to other agencies in appropriate cases as follows:

(a) If the activity involves the construction of structures or artificial islands on the outer continental shelf, to the Director, Defense Mapping Agency, Hydrographic Center, Washington, D.C. 20390. Attention, Code N512 and to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852.

(b) If the activity involves the construction of structures to enhance fish propagation (fish havens) along the coasts of the United States, to Defense Mapping Agency, Hydrographic Center and National Ocean Survey as in paragraph (f)(2)(vi)(a) of this section and to the Atlantic Estuarine Fisheries Center, National Marine Fisheries Service, NOAA, Department of Commerce, Beaufort, North Carolina 28416.

(c) If the activity involves the erection of an aerial transmission line across a navigable water of the United States, to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852, reference C322.

(d) If the activity is listed in paragraph (f)(2)(vi) (a), (b), or (c) of this section or involves the transportation of dredged material for the purpose of dumping it in ocean waters, to the appropriate District Commander, U.S. Coast Guard.

(vii) If the District Engineer determines that a letter or permission (see paragraph (m) of this section) is the appropriate form of authorization to be issued, he may omit the publishing of a public notice; however, he will coordinate the proposal with all concerned fish and wildlife agencies, Federal and State, as required by the Fish and Wildlife Coordination Act. A copy of the letter of permission will be sent to the Regional Director, Bureau of Sport Fisheries and Wildlife.

(viii) If the circumstances surrounding a permit application require emergency action and the District Engineer considers that the public interest requires that the standard procedures must be abbreviated in the particular case, he will explain the circumstances and recommend special procedures to the Chief of Engineers, ATTN: DAEN–CWO–N by teletype. The Chief of Engineers, upon consultation with the Secretary of the Army or his authorized representative and other affected agencies, will instruct the District Engineer as to further processing of the application.

(ix) *General Permits.* The District Engineer may, after compliance with the other procedures of this regulation, issue general permits for certain clearly described categories of structures or work, including discharges of dredged or fill material, requiring Department of the Army permits. After a general permit has been issued, individual activities falling within those categories that are authorized by such general permits do not have to be further authorized by the procedures of this regulation unless the District Engineer determines, on a case-by-case basis, that the public interest requires.

(a) District Engineers will include only those activities that are substantially similar in nature, that cause only minimal adverse environmental impact when performed separately, and that will have only a minimal adverse cumulative effect on the environment as categories which are candidates for general permits.

(b) In addition to the conditions prescribed in Appendix C of this Regulation, any general permit issued by the District Engineer shall prescribe the following conditions:

(1) The maximum quantity of material that is authorized for discharge by the general permit in a single or incidental operation (if applicable);

(2) A description of the category or categories of activites included in the general permit; and

(3) The type of water(s) into which the activity may occur.

(c) The District Engineer shall require reporting procedures where the general permit fails to designate a specific water body or water bodies. He may require such procedures in other situations.

(d) A general permit may be revoked if it is determined that the cumulative effects of the activities by it will have an adverse impact on the public interest provided the procedures of paragraph (o) of this regulation are followed. Following revocation, any future activities in areas covered by the general permit shall be processed as individual permits under this regulation.

(3) *Timing of processing of applications.* In view of the extensive coordination with other agencies and the public and the study of all aspects of proposed activities required by the above procedures, applicants must allow adequate time for the processing of their applications. The District Engineer will be guided by the following time limits for the indicated steps in processing permit applications:

(i) Public notice should be issued within fifteen days of receipt of all required information from the applicant, unless joint notice with State agencies is to be used.

(ii) The receipt of comments as a result of the public notice should not extend beyond seventy-five days from the date of the notice.

(iii) The record of a public meeting should be closed not later than fifteen days after the meeting.

(iv) The District Engineer should either send notice of denial to the applicant, or issue the draft permit to the applicant for acceptance and signature, or forward the application to higher headquarters within thirty days of one of the following whichever is latest: receipt of notice of withdrawal of objections; completion of coordination following receipt of applicant's rebuttal of objections; receipt of the record of a public hearing; closing of the record of a public meeting; or expiration of the waiting period following the filing of the final environmental impact statement with CEQ.

(j) *Public notice and coordination with interested parties.* (1) The Public Notice is the primary method of advising all interested parties of the proposed activity for which a permit is sought and of soliciting comments and information necessary to evaluate the probable impact on the public interest. The notice must, therefore, include sufficient information to give a clear understanding of the nature of the activity to generate meaningful comments. The notice should include the following items of information:

(i) The name and address of the applicant;

(ii) The location of the proposed activity;

(iii) A brief description of the proposed activity, its purpose and intended use, including a description of the type of structures, if any, to be erected on fills, or pile or float-supported platforms, and a description of the type, composition and quantity of materials to be discharged or dumped and means of conveyance;

(iv) A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area;

(v) A list of other government authorizations obtained or requested, including required certifications relative to water quality, coastal zone management, or marine sanctuaries;

(vi) A statement concerning a preliminary determination of the need for and/or availability of an environmental impact statement;

(vii) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any, on factors affecting the public interest, including environmental values;

(viii) A reasonable period of time, normally thirty days but not less than fifteen days from date of mailing, within which interested parties may express their views concerning the permit application; and

(ix) A paragraph describing the various factors on which decisions are based during evaluation of a permit application.

(a) Except as provided in paragraph (j)(1)(ix)(b) of this section the following will be included:

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the

public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are conservation, economics, aesthetic, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use classification, navigation, recreation, water supply, water quality and, in general, the needs and welfare of the people. No permit will be granted unless its issuance is found to be in the public interest.

(f) If a Federal agency other than the Corps of Engineers has primary responsibility for licensing an activity and for environmental review as contemplated by the provisions of the National Environmental Policy Act, (see paragraph (e)(3) of this section), the public notice shall, in lieu of the general paragraph above, describe the actions and reviews pending before those agencies, recite the fact that District Engineers will consult with, and give due consideration to the findings of, those agencies and provide the following paragraph: "The decision whether to issue a permit will based on a consideration of the effect which the proposed activity will have on the navigable capacity of the waterway." (See particularly paragraphs (g)(13), (g)(15), and (g)(16) of this section.)

(2) If the activity involves the discharge of dredged or fill material into the navigable waters or the transportation of dredged material for the purpose of dumping it in ocean waters, the public notice shall also indicate that the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, EPA, under authority of section 404(b) of the Federal Water Pollution Control Act or of the criteria established under authority of section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972 as appropriate.

(b) In cases involving construction of fixed structures or artificial islands on outer continental shelf lands which are under mineral lease from the Department of the Interior, the notice will contain the following statement: "The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed work on navigation and national security."

(x) If the activity includes the discharge of dredged or fill material in the navigable waters or the transportation of dredged material for the purpose of dumping it in ocean waters, the following statement will also be included in the public notice:

Any person who has an interest which may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer within thirty days of the date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

(2) It is presumed that all interested parties and agencies will wish to respond to public notices; therefore, a lack of response will be interpreted as meaning that there is no objection to the application. A copy of the public notice with the list of the addresses to whom the notice was sent will be included in the record. If a question develops with respect to an activity for which another agency has responsibility and that other agency has not responded to the public notice, the District Engineer may request their comments. Whenever a response to a public notice has been received from a member of Congress, either in behalf of a constituent or himself, the District Engineer will inform the member of Congress of the final decision.

(3) Notices sent to several agencies within the same State may result in conflicting comments from those agencies. While many States have designated a single State agency or individual to provide a single and coordinated State position regarding pending permit applications, where a State has not so designated a single source, District Engineers will elicit from the Governor an expression of his views and desires concerning the application. Where coordination is required by the Fish and Wildlife Coordination Act (see paragraph (c)(5) of this section), District Engineers will address a letter to the designated single Sate agency or Governor, as appropriate, inviting attention to the coordination requirements of the Fish and Wildlife Coordination Act and requesting that a report from the head of the State agency responsible for fish and wildlife resources be appended to the coordinated State report.

(k) *Public meetings.* (1) It is the policy of the Corps of Engineers to conduct the civil works program in an atmosphere of public understanding, trust, mutual cooperation, and in a manner responsive to the public interest. The views of all concerned persons are initially sought by means of public notices in connection with applications for permits. Where response to a notice indicates further opportunity for public expressions of interest may be warranted, and a public hearing is not required by law or directed by the Chief of Engineers, the District Engineer may hold a public meeting.

(2) A public meeting is a forum at which all concerned persons are given an opportunity to present additional information relevant to a proper evaluation of an application for a permit for an activity. If a public meeting is held, notice announcing the meeting will be published at least thirty days in advance of the meeting. A summary of environmental considerations will be included in the notice. The applicant will be given an opportunity to present his proposal and explain why he thinks it is in the public interest. Officials of other Federal agencies or of State and local governments will be given opportunity to express their views, as well all other persons. The conduct of the meeting will be in accordance with § 209.405 and a transcript of the meeting will be part of the record.

(l) *Environmental impact statement.* (1) Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) requires all Federal agencies, with respect to major Federal actions significantly affecting the quality of the human environment, to submit to CEQ a detailed statement on:

(i) The environmental impact of the proposed action;

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) Alternatives to the proposed action;

(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

(2) As indicated in paragraph (l)(1)(iv) of this section the District Engineer must determine whether an environmental impact statement is required in connection with a permit application. If the District Engineer believes that granting the permit may be warranted but that the proposed activity would have a significant environmental impact, an environmental impact statement will be prepared, coordinated and filed in accordance with provisions of § 209.410 prior to final action on the application. If another agency is the lead agency as defined by section 5b of the CEQ guidelines contained in § 209.410, the District Engineer will coordinate with that agency to insure that the resulting environmental impact statement adequately describes the impact of the activity which is subject to Corps permit authority.

(3) The scope of the considerations to be discussed in an environmental impact statement depends heavily on continuing court interpretation of NEPA and on the nature of the activity for which authorization is requested.

(i) All the direct effects of the activity must be evaluated, as must any indirect effects which have a clear or proximate relationship to the activity. Other effects, however, may be too speculative or remote to merit detailed consideration. Thus an environmental impact statement which examines the probable environmental impact of an activity should evaluate all known effects which have a direct or proximate but indirect relationship to the proposal and should cite other remote or speculative effects.

(ii) The scope of the environmental impact statement is often somewhat different from that of the laws under which the activity may be authorized. Thus, an authorization may be only for a part of a much larger and more complex operation or development over which few regulatory controls exist. In such cases, the range of factors to be discussed in the environmental impact statement may

of necessity be expanded to include factors which are beyond the normal scope of the law on which the authorization depends.

(m) *Forms of authorization.* (1) The basic form for authorizing activities in navigable waters or ocean waters is ENG Form 1721, Department of the Army Permit (Appendix C). This form will be used to authorize activities under provisions of:

(i) Section 10 of the River and Harbor Act of March 3, 1899, in all cases where a letter of permission is not appropriate (see paragraph m(3) of this section.)

(ii) Section 404 of the Federal Water Pollution Control Act.

(iii) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1973.

(2) While the general conditions included in ENG Form 1721 are normally applicable to all permits, some may not apply to certain authorizations (e.g. after-the-fact situations where work is completed, or situations in which the permittee is a Federal agency) and may be deleted by the issuing officer. Special conditions applicable to the specific activity will be included in the permit as necessary to protect the public interest in the navigable waters or ocean waters.

(3) In those cases subject to section 10 of the River and Harbor Act of March 3, 1899, in which, in the opinion of the District Engineer, the proposed work is minor, will not have significant impact on environmental values, and should encounter no opposition, the District Engineer may use the abbreviated processing procedures of paragraph (j)(2)(vii) of this section and authorize the work by a letter of permission. The letter of permission will not be used to authorize the discharge of dredged or fill material into navigable waters or the transportation of dredged material for purpose of dumping it in ocean waters. The letter of permission will be in letter form and will identify the permittee, the authorized work and location of the work, the statutory authority (i.e., 33 U.S.C. 403), any limitations on the work, a construction time limit and a requirement for a report of completed work. A copy of the general conditions from ENG form 1721 will be attached and will be incorporated by reference into the letter of permission.

(4) Permits for structures under section 9 of the Act of March 3, 1899, will be drafted during review procedures at Department of the Army level.

(n) *Duration of authorizations.* (1) Authorizations for activities in or affecting navigable waters or ocean waters may authorize both the work and the resulting structure. Authorizations continue in effect until they automatically expire, or are modified, suspended, or revoked.

(2) Authorization for the existence of a structure or other form of alteration of the waterway is usually for an indefinite duration with no expiration date cited. However, where a temporary structure is authorized, or where restoration of a waterway is contemplated, the authorzation will be of limited duration with a definite expiration date. Except as provided in paragraph (r)(5) of this section permits for the discharge of dredged material in the navigable waters or for the transportation of dredged material for the purpose of dumping it in ocean waters will be of limited duration with a definite expiration date.

(3) Authorizations for construction work or other activity will specify time limits for accomplishing the work or activity. The time limits will specify a date by which the work must be started, normally one year from the date of issuance, and a date by which the work must be completed. The dates will be established by the issuing official and will provide reasonable times based on the scope and nature of the work involved. An authorization for work or other activity will automatically expire if the permittee fails to request an extension or revalidation.

(4) Extensions of time may be granted by the District Engineer for authorizations of limited duration, or for the time limitations imposed for starting or completing the work or activity. The permittee must request the extension and explain the basis of the request, which will be granted only if the District Engineer determines that an extension is in the general public interest. Requests for extensions will be processed in acordance with the regular procedures of paragraph (j) of this section including issuance of a public notice, except that such processing is not required where the District Engineer determines that there have been no significant changes in the attendant circumstances since the authorization was issued and that the work is proceeding essentially in accordance with the approved plans and conditions.

(5) If the authorized work includes periodic maintenance dredging (see paragraph (g)(2) of this section), an expiration date for the authorization of that maintenance dredging will be included in the permit. The expiration date, which in no event is to exceed ten years from the date of issuance of the permit, will be established by the issuing official after his evaluation of the proposed method of dredging and disposal of the dredged material. If the permittee desires to continue maintenance dredging beyond the expiration date, he must request a revalidation of that portion of his permit which authorized the maintenance dredging. The request must be made to the District Engineer six months prior to the expiration date, and include full description of the proposed methods of dredging and disposal of dredged materials. The District Engineer will process the request for revalidation in accordance with the standard procedures in paragraph (h) of this section including the issuance of a public notice describing the authorized work to be maintained and the proposed methods of maintenance.

(o) *Modification, suspension or revocation of authorizations.* (1) The District Engineer may evaluate the circumstance and conditions of a permit either on his own motion or as the result of periodic progress inspections, and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the general public interest. Among the factors to be considered are the extent of the permittee's compliance with the terms and conditions of the permit; whether or not circumstances relating to the activity authorized have changed since the permit was issued, extended or revalidated, and the continuing adequacy of the permit conditions; any significant objections to the activity authorized by the permit which were not earlier considered; and the extent to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit. Significant increases in scope of a permitted activity will be processed as new applications for permits in accordance with paragraph (j) of this section, and not as modifications under this paragraph.

(2) The District Engineer, as a result of revaluation of the circumstances and conditions of a permit, may determine that protection of the general public interest requires a modification of the terms or conditions of the permit. In such cases, the District Engineer will hold informal consultations with the permittee to ascertain whether the terms and conditions can be modified by mutual agreement. If a mutual agreement is reached on modification of the terms and conditions of the permit, the District Engineer will give the permittee written notice of the modification, which will then become effective on such date as the District Engineer may establish, which in no event shall be less than ten days from its date of issuance. In the event a mutual agreement cannot be reached by the District Engineer and the permittee, the District Engineer will proceed in accordance with paragraph (o)(3) of this section if immediate suspension is warranted. In cases where immediate suspension is not warranted but the District Engineer determines that the permit should be modified, he will notify the permittee of the proposed modification and reasons therefor, and that he may request a hearing. The modification will become effective on the date set by the District Engineer which shall be at least ten days after receipt of the notice unless a hearing is requested within that period in accordance with § 209.133. If the permittee fails or refuses to comply with the modification the District Engineer will immediately refer the case for enforcement to DAEN–GCK.

(3) The District Engineer may, after telephonic consultation with the Division Engineer, suspend a permit after preparing a written determination and finding that immediate suspension would be in the general public interest. The District Engineer will notify the permittee in writing by the most expeditious means available that the permit has been suspended with the reasons therefor, and order the permittee to stop all previously authorized activities. The permittee will also be advised that following this suspension a decision will be made to either reinstate, modify, or revoke the permit,

and that he may request a hearing within 10 days of receipt of notice of the suspension to present information in this matter. If a hearing is requested the procedures prescribed in § 209.133 will be followed. After the completion of the hearing (or within a reasonable period of time after issuance of the notice to the permittee that the permit has been suspended if no hearing is requested) the District Engineer will take action to reinstate the permit, modify the permit, or recommend revocation of the permit in accordance with paragraph (o)(4) of this section.

(4) Following completion of the suspension procedures in paragraph (o)(3) of this section, if revocation of the permit is recommended, the District Engineer will prepare a report of the circumstances and forward it together with the record of the suspension proceedings to DAEN-CWO-N. The Chief of Engineers may, prior to deciding whether or not to revoke the permit, afford the permittee the opportunity to present any additional information not made available to the District Engineer at the time he made the recommendation to revoke the permit including, where appropriate, the means by which he intends to comply with the terms and conditions of the permit. The permittee will be advised in writing of the final decision.

(p) *Authority to issue or deny authorizations.* Except as otherwise provided in this regulation, the Secretary of the Army subject to such conditions as he or his authorized representative may from time to time impose, has authorized the Chief of Engineers and his authorized representatives to issue or deny authorizations for construction or other work in or affecting navigable waters of the United States pursuant to sections 10 and 14 of the Act of March 3, 1899, and section 1 of the Act of June 13, 1902. He also has authorized the Chief of Engineers and his authorized representatives to issue or deny authorizations for the discharge of dredged or fill material in the navigable waters pursuant to section 404 of the Federal Water Pollution Control Act or for the transportation of dredged material for the purpose of dumping it into ocean waters pursuant to section 103 of Marine Protection, Research and Sanctuaries Act of 1972. The authority to issue or deny permits pursuant to section 9 of the River and Harbor Act of March 3, 1899 has not been delegated to the Chief of Engineers or his authorized representatives.

(1) District Engineers are authorized to issue in accordance with this regulation permits and letters of permission which are subject to such special conditions as are necessary to protect the public interest in the navigable waters or ocean waters pursuant to sections 10 and 14 of the River and Harbor Act of March 3, 1899, section 1 of the River and Harbor Act of June 13, 1902, section 404 of the Federal Water Pollution Control Act, and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, in all cases in which there are no known substantive objections to the proposed work or activity or in which objections have been resolved to the satisfaction of the District Engineer. It is essential to the legality of a permit that it contain the name of the District Engineer as the issuing officer. However, the permit need not be signed by the District Engineer, in person; but may be signed for and in behalf of him by whomever he designates. District Engineers are authorized to deny permits when required State or local authorization and/or certification has been denied (see paragraph (f)(3)(i) of this section), when a State has objected to a required certification of compliance with its coastal zone management program and the Secretary of Commerce has not reviewed the action and reached a contrary finding (see paragraph (g)(18) and (i)(2)(ii) of this section) or when the proposed work will unduly interfere with navigation. All other permit applications including those cases in paragraph (p)(2)(i) through (vii) of this section will be referred to Division Engineers. District Engineers are also authorized to add, modify, or delete special conditions in permits, except for those conditions which have been imposed by higher authority, and to suspend permits according to the procedures of paragraph (o)(3) of this section.

(2) Division Engineers will review, attempt to resolve outstanding matters, and evaluate all permit applications referred by District Engineers. Division Engineers may authorize the issuance of denial of permits pursuant to sections 10 and 14 of the River and Harbor Act of March 3, 1899, section 1 of the River and Harbor Act of June 13, 1902, section 404 of the Federal Water Pollution Control Act, and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 and the inclusion of conditions to those permits as may be necessary to protect the public interest in the navigable waters or ocean waters in accordance with the policies cited in this regulation.

(i) Except as provided in paragraph (p)(2)(ii) of this section if the Division Engineer determines that issuance of a permit with or without conditions is in the public interest, but there is continuing objection to the issuance of the permit by another Federal agency, he shall advise the regional representative of that Federal agency of his intent to issue the permit. The Division Engineer shall not proceed with the issuance of a permit if, within 15 days after the date of this notice of intent to issue a permit, an authorized representative of that Federal Agency indicates to the Division Engineer in writing that he wishes to bring his concerns to Departmental level. In such cases, the proposed permit may be issued at the expiration of 30 days from the date of receipt of the letter from such representative unless, prior to that time, as a result of consultations at Departmental level, it is directed that the matter be forwarded to higher authority for resolution. Thereafter, a permit will be issued only pursuant to and in accordance with instructions from such higher authority. Every effort should be made to resolve differences at the Division Engineer level before referring the matter to higher authority.

(ii) Division Engineers will refer to the Chief of Engineers the following cases:

(*a*) When it is proposed to issue a permit and there are unresolved objections from another Federal agency which must be handled under special procedures specified in statutes or Memoranda of Understanding which thereby preclude final resolution by the Division Engineer (see paragraphs (g)(4), (5) and (17) of this section);

(*b*) When the recommended decision is contrary to the stated position of the Governor of the affected State or of a member of Congress;

(*c*) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(*d*) When higher authority requests the case be forwarded for decision;

(*e*) Where the case is recognized to be highly controversial, or litigation is anticipated;

(*f*) When the proposed activity would affect the baseline used for determination of the limits of the territorial sea.

Division Engineers may also authorize the modification or suspension of permits in accordance with the procedures of this regulation, and may recommend revocation of permits to the Chief of Engineers.

(q) *Supervision and enforcement.* (1) District Engineers will supervise all authorized activities and will require that the activity be conducted and executed in conformance with the approved plans and other conditions of the permit. Inspections must be made on timely occasions during performance of the activity and appropriate notices and instructions will be given permittees to insure that they do not depart from the approved plans. Revaluation of permits to assure complaince with its purposes and conditions will be carried out as provided in paragraph (o) of this section. If there are approved material departures from the authorized plans, the District Engineer will require the permittee to furnish corrected plans showing the activity as actually performed.

(2) Where the District Engineer determines that there has been noncompliance with the terms or conditions of a permit, he should first contact the permittee and attempt to resolve the problem. If a mutually agreeable resolution cannot be reached, a written demand for compliance will be made. If the permittee has not agreed to comply within 5 days of receipt of the demand, the District Engineer will issue an immediately effective notice of suspension in accordance with paragraph (o)(3) of this section above, and consider initiation of appropriate legal action.

(3) For purposes of supervision of permitted activities and for surveillance of the navigable waters for enforcement of the permit authorities cited in paragraph (b) of this section, the District Engineer will use all means at his disposal. One method of surveillance for unauthorized activities which should be used where

appropriate is aerial photographic reconnaissance. In addition, all Corps of Engineers employees will be instructed to observe and report all activities in navigable waters which would require permits. The assistance of members of the public and personnel of other interested Federal, State and local agencies to observe and report such activities will be encouraged. To facilitate this surveillance, the District Engineer will require a copy of ENG Form 4336 to be posted conspicuously at the site of all authorized activities and will make available to all interested persons information on the scope of authorized activities and the conditions prescribed in the authorizations. Furthermore, significant actions taken under paragraph (o), above, will be brought to the attention of those Federal, State and local agencies and other persons who express particular interest in the affected activity. Surveillance in ocean waters will be accomplished primarily by the Coast Guard pursuant to section 107(c) of the Marine Protection, Research and Sanctuaries Act of 1973. Enforcement actions relative to the permit authorities cited in paragraph (b) of this section, including enforcement actions resulting from noncompliance with permit conditions, will be in accordance with regulations published at § 209.170 (ER 1145-2-301).

(4) The expenses incurred in connection with the inspection of permitted activity in navigable waters normally will be paid by the Federal Government in accordance with the provisions of Section 6 of the River and Harbor Act of 3 March 1905 (33 U.S.C. 417) unless daily supervision or other unusual expenses are involved. In such unusual cases, and after approval by the Division Engineer, the permittee will be required to bear the expense of inspections in accordance with the conditions of his permit; however, the permittee will not be required or permitted to pay the United States inspector either directly or through the District Engineer. The inspector will be paid on regular payrolls or service vouchers. The District Engineer will collect the cost from the permittee in accordance with the following:

(i) At the end of each month the amount chargeable for the cost of inspection pertaining to the permit will be collected from the permittee and will be taken up on the statement of accountability and deposited in a designated depository to the credit of the Treasurer of the United States, on account of reimbursement of the appropriation from which the expenses of the inspection were paid.

(ii) If the District Engineer considers such a procedure necessary to insure the United States against loss through possible failure of the permittee to supply the necessary funds in accordance with paragraph (q)(4)(i) of this section, he may require the permittee to keep on deposit with the District Engineer at all times an amount equal to the estimated cost of inspection and supervision for the ensuing month, such deposit preferably being in the form of a certified check, payable to the order of Treasurer of the United States. Certified checks so deposited will be carried in a special deposit account (guaranty for inspection expenses) and upon completion of the work under the permit the funds will be returned to the permittee provided he has paid the actual cost of inspection.

(iii) On completion of work under a permit, and the payment of expenses by the permittee without protest, the account will be closed, and outstanding deposits returned to the permittee. If the account is protested by the permittee, it will be referred to the Division Engineer for approval before it is closed and before any deposits are returned to the permittee.

(5) If the permitted activity includes restoration of the waterway to its original condition, or if the issuing official has reason to consider that the permittee might be prevented from completing work which is necessary to protect the public interest in the waterway, he may require the permittee to post a bond of sufficient amount to indemnify the government against any loss as a result of corrective action it might take.

(r) *Publicity.* District Engineer will establish and maintain a program to assure that potential applicants for permits are informed of the requirements of this regulation and of the steps required to obtain permits for activities in navigable waters or ocean waters. Whenever the District Engineer becomes aware of plans being developed by either private or public entities who might require permits in order to implement the plans, he will advise the potential applicant in writing of the statutory requirements and the provisions of this regulation. Similarly when the District Engineer is aware of changes in Corps of Engineers regulatory jurisdiction he will issue appropriate public notices.

(s) *Reports.* The report of a District Engineer on an application for a permit requiring action by the Division Engineer or by the Chief of Engineers will be in a letter form with the application and all pertinent comments, records and studies including the final environmental impact statement if prepared, as inclosures. The following items will be included or discussed in the report:

(1) Name of applicant.

(2) Location, Character and purpose of proposed activity.

(3) Applicable statutory authorities and administrative determinations conferring Corps of Engineers regulatory jurisdiction.

(4) Other Federal, State, and local authorizations obtained or required and pending.

(5) Date of public notice and public meeting or public hearings, if held, and summary of objections offered with comments of the District Engineer thereon. The comments should explain the objections and not merely refer to inclosed letters.

(6) Views of State and local authorities.

(7) Views of District Engineer concerning probable effect of the proposed work on:

(i) Navigation, present and prospective.

(ii) Harbor lines, if established.

(iii) Flood heights, drift and flood damage protection.

(iv) Beach erosion or accretion.

(v) Conservation.

(vi) Fish and Wildlife.

(vii) Water Quality.

(viii) Aesthetics.

(ix) Ecology (General Environmental Concerns).

(x) Historic values.

(xi) Recreation.

(xii) Economy.

(xiii) Water supply.

(xiv) Land use classification and coastal zone management plans.

(xv) Public Interest (Needs and Welfare of the People).

(8) Other pertinent remarks, including:

(i) Extent of public and private need;

(ii) Desirability of using appropriate alternatives;

(iii) Extent and permanence of beneficial and/or detrimental effects; and

(iv) Probable impact in relation to cumulative effects created by other activities.

(9) A copy of the environmental assessment and summary of the environmental impact statement if prepared.

(10) A Statement of Findings as an inclosure.

(11) Conclusions.

(12) Recommendations including any proposed special conditions.

APPENDIX A—U.S. COAST GUARD/CHIEF OF ENGINEERS MEMORANDUM OF AGREEMENT

1. *Purpose and Authority:* A. The Department of Transportation Act, the Act of October 15, 1966, P.L. 89-670, transferred to and vested in the Secretary of Transportation certain functions, powers and duties previously vested in the Secretary of the Army and the Chief of Engineers. By delegation of authority from the Secretary of Transportation (49 CFR 1.46(c)) the Commandant, U.S. Coast Guard, has been authorized to exercise certain of these functions, powers and duties relating to bridges and causeways conferred by:

(1) the following provision of law relating generally to drawbridge operating regulations: Section 5 of the Act of August 18, 1894, as amended (28 Stat. 362; 33 U.S.C. 499);

(2) the following law relating generally to obstructive bridges: The Act of June 21, 1940, as amended (The Truman-Hobbs Act) (54 Stat. 497; 33 U.S.C. 511 et seq.);

(3) the following laws and provisions of law to the extent that they relate generally to the location and clearances of bridges and causeways in the navigable waters of the United States:

(a) Section 9 of the Act of March 3, 1899, as amended (30 Stat. 1151; 33 U.S.C. 401);

(b) The Act of March 23, 1906, as amended (34 Stat. 84; 33 U.S.C. 491 et seq.); and

(c) The General Bridge Act of 1946, as amended (60 Stat. 847; 33 U.S.C. 525 et seq.) except Sections 502(c) and 503.

B. The Secretary of the Army and The Chief of Engineers continue to be vested with broad and important authorities and responsibilities with respect to navigable waters of the United States, including, but not limited to, jurisdiction over excavation and filling, design flood flows and construction of certain structures in such waters, and the prosecution of waterway improvement projects.

C. The purposes of this agreement are: (1) To recognize the common and mutual interest of the Chief of Engineers and the Commandant, U.S. Coast Guard, in the orderly and efficient administration of their respective responsibilities under certain Federal statutes to regulate certain activities in navigable waters of the United States;

(2) To clarify the areas of jurisdiction and the responsibilities of the Corps of Engineers and the Coast Guard with respect to:

(a) the alteration of bridges

(1) in connection with Corps of Engineers waterway improvement projects, and

(2) under the Truman-Hobbs Act;

(b) the construction, operation and maintenance of bridges and causeways as distinguished from other types of structures over or in navigable waters of the United States;

(c) the closure of waterways and the restriction of passage through or under bridges in connection with their construction, operation, maintenance and removal; and

(d) the selection of an appropriate design flood flow for flood hazard analysis of any proposed water opening.

(3) To provide for coordination and consultation on projects and activities in or affecting the navigable waters of the United States.

In furtherance of the above purposes the undersigned do agree upon the definitions, policies and procedures set forth below.

2. *Alteration of bridges in or across navigable waters within Corps of Engineers projects:* A. The Chief of Engineers agrees to advise and consult with the Commandant on navigation projects contemplated by the Corps of Engineers which require the alteration of bridges across the waterways involved in such projects. The Chief of Engineers also agrees to include in such project proposals the costs of alterations, exclusive of betterments, of all bridges within the limits of the designated project which after consultation with the Commandant he determines to require alteration to meet the needs of existing and prospective navigation. Under this concept the federal costs would be furnished under the project.

B. The Commandant of the Coast Guard agrees to undertake all actions and assumes all responsibilities essential to the determination of navigational requirements for horizontal and vertical clearances of bridges across navigable waters necessary in connection with any navigation project by the Chief of Engineers. Further, the Commandant agrees to conduct all public proceedings necessary thereto and establish guide clearance criteria where needed for the project objectives.

3. *Alteration of bridges under the Truman-Hobbs Act:* The Commandant of the Coast Guard acknowledges and affirms the responsibility of the Coast Guard, under the Truman-Hobbs Act, to program and fund for the alteration of bridges which, as distinct from project related alterations described in paragraph 2 herein, become unreasonable obstructions to navigation as a result of factors or changes in the character of navigation and this agreement shall in no way affect, impair or modify the powers or duties conferred by that Act.

4. *Approval alteration and removal of other bridges and causeways:* A. *General definitions.* For purposes of this Agreement and the administration of the statutes cited in 1.A.(3) above, a "bridge" is any structure over, on or in the navigable waters of the United States which (1) is used for the passage or conveyance of persons, vehicles, commodities and other physical matter and (2) is constructed in such a manner that either the horizontal or vertical clearance, or both, may affect the passage of vessels or boats through or under the structure. This definition includes, but is not limited to, highway bridges, railroad bridges, foot bridges, aqueducts, aerial tramways and conveyors, overhead pipelines and similar structures of like function together with their approaches, fenders, pier protection systems, appurtenances and foundations. This definition does not include aerial power transmission lines, tunnels, submerged pipelines and cables, dams, dikes, dredging and filling in, wharves, piers, breakwaters, bulkheads, jetties and similar structures and works (except as they may be integral features of a bridge and used in its construction, maintenance, operation or removal; or except when they are affixed to the bridge and will have an effect on the clearances provided by the bridge) over which jurisdiction remains with the Department of the Army and the Corps of Engineers under Sections 9 and 10 of the Act of March 3, 1899, as amended (33 U.S.C. 401 and 403). A "causeway" is a raised road across water or marshy land, with the water or marshy land on both sides of the road, and which is constructed in or affects navigation, navigable waters and design flood flows.

B. *Combined structures and appurtenances.* For purposes of the Act cited in 1.A.(3) above, a structure serving more than one purpose and having characteristics of either a bridge or causeway, as defined in 4.A., and some other structure, shall be considered as a bridge or causeway when the structure in its entirety, including its appurtenances and incidental features, has or retains the predominant characteristics and purpose of a bridge or causeway. A structure shall not be considered a bridge or causeway when its primary and predominant characteristics and purpose are other than those set forth above and it meets the general definitions above only in a narrow technical sense as a result of incidental features. This interpretation is intended to minimize the number of instances which will require an applicant for a single project to secure a permit or series of permits from both the Department of Transportation and the Department of the Army for each separate feature or detail of the project when it serves, incidentally to its primary purpose, more than one purpose and has features of either a bridge or causeway and features of some other structure. However, if parts of the project are separable and can be fairly and reasonably characterized or classified in an engineering sense as separate structures, each such structure will be so treated and considered for approval by the agency having jurisdiction thereover.

C. *Alteration of the character of bridges and causeways.* The jurisdiction of the Secretary of Transportation and the Coast Guard over bridges and causeways includes authority to approve the removal of such structures when the owners thereof desire to discontinue their use. If the owner of a bridge or causeway discontinues its use and wishes to remove or alter any part thereof in such a manner that it will lose its character as a bridge or causeway, the Coast Guard will normally require removal of the structure from the waterway in its entirety. However, if the owner of a bridge or a causeway wishes to retain it in whole or in part for use other than for operation and maintenance as a bridge or causeway, the proposed structure will be considered as coming within the jurisdiction of the Corps of Engineers. The Coast Guard will refer requests for such uses to the Corps of Engineers for consideration. The Corps of Engineers agrees to advise the Commandant of the receipt of an application for approval of the conversion of a bridge or causeway to another structure and to provide opportunity for comment thereon. If the Corps of Engineers approves the conversion of a bridge or causeway to another structure, no residual jurisdiction over the structure will remain with the Coast Guard. However, if the Corps of Engineers does not approve the proposed conversion, then the structure remains a bridge subject to the jurisdiction of the Coast Guard.

5. *Closure of waterways and restriction of passage through or under bridges:* Under the statutes cited in Section 1 of this Memorandum of Agreement, the Commandant must approve the clearances to be made available for navigation through or under bridges. It is understood that this duty and authority extends to and may be exercised in connection with the construction, alteration, operation, maintenance and removal of bridges, and includes the power to authorize the temporary restriction of passage through or under a bridge by use of falsework, piling, floating equipment, closure of draws, or any works or activities which temporarily reduce the navigation clearances and design flood flows, including closure of any or all spans of the bridge. Moreover, under the Ports and Waterways Safety Act of 1972, Public Law 92-340, 86 Stat. 424, the Commandant exercises broad powers in waterways to control vessel traffic in areas he determines to be especially hazardous and to establish safety zones or other measures for limited controls or conditional access and activity when necessary to prevent damage to or the destruction or loss of, any vessel, bridge, or other structure on or in the navigable waters of the United States. Accordingly, in the event that work in connection with the construction, alteration or repair of a bridge or causeway is of such a nature that for the protection of life and property navigation through or in the vicinity of the bridge or causeway must be temporarily prohibited, the Coast Guard may close that part of the affected waterway while such work is being performed. However, it is also clear that the Secretary of the Army and the Chief of Engineers have the authority, under Section 4 of the Act of August 18, 1894, as amended, (33 U.S.C. 1) to prescribe rules for the use, administration and navigation of the navigable waters of the United States. In recognition of that authority, and pursuant to Section 102 (c) of the Ports and Waterways Safety Act, the Coast Guard will consult with the Corps of Engineers when any significant restriction of passage through or under a bridge is contemplated to be authorized or a waterway is to be temporarily closed.

6. *Coordination and cooperation procedures.* A. District Commanders, Coast Guard Districts, shall send notices of applications for permits for bridge or causeway construction, modification, or removal to the Corps of Engineers Divisions and Districts in which the bridge or causeway is located.

B. District Engineers, Corps of Engineers, shall send notices of applications for permits for other structures or dredge and fill work to local Coast Guard District Commanders.

C. In cases where proposed structures or modifications of structures do not clearly fall within one of the classifications set forth in paragraph 4.A. above, the application will be forwarded with recommendations of the reviewing officers through channels to the Chief of Engineers and the Commandant of the Coast Guard who shall, after mutual consultation, attempt to resolve the question.

D. If the above procedures fail to produce agreement, the application will be forwarded to the Secretary of the Army and Secretary of Transportation for their determination.

E. The Chief of Engineers and the Commandant, Coast Guard, pledge themselves to mutual cooperation and consultation in making available timely information and data, seeking uniformity and consistency among field offices, and providing timely and

adequate review of all matters arising in connection with the administration of their responsibilities governed by the Acts cited herein.

Dated: March 21, 1973.

C. R. BENDER.

Dated: April 18, 1973.

F. J. CLARKE.

APPENDIX B—MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF THE INTERIOR AND THE SECRETARY OF THE ARMY

In recognition of the responsibilities of the Secretary of the Army under sections 10 and 13 of the Act of March 3, 1899 (33 U.S.C. 403 and 407), relating to the control of dredging, filling, and excavation in the navigable waters of the United States, and the control of refuse in such waters, and the interrelationship of those responsibilities with the responsibilities of the Secretary of the Interior under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661–666c), and the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a et seq.), relating to the control and prevention of water pollution in such waters and the conservation of the Nation's natural resources and related environment, including fish and wildlife and recreational values therein; in recognition of our joint responsibilities under Executive Order No. 11288 to improve water quality through the prevention, control, and abatement of water pollution from Federal and federally licensed activities; and in recognition of other provisions of law and policy, we, the two Secretaries, adopt the following policies and procedures:

POLICIES

1. It is the policy of the two Secretaries that there shall be full coordination and cooperation between their respective Departments on the above responsibilities at all organizational levels, and it is their view that maximum efforts in the discharge of those responsibilities, including the resolution of differing views, must be undertaken at the earliest practicable time and at the field organizational unit most directly concerned. Accordingly, District Engineers of the U.S. Army Corps of Engineers shall coordinate with the Regional Directors of the Secretary of the Interior on fish and wildlife, recreation, and pollution problems associated with dredging, filling, and excavation operations to be conducted under permits issued under the 1899 Act in the navigable waters of the United States, and they shall avail themselves of the technical advice and assistance which such Directors may provide.

2. The Secretary of the Army will seek the advice and counsel of the Secretary of the Interior on difficult cases. If the Secretary of the Interior advises that proposed operations will unreasonably impair natural resources or the related environment, including the fish and wildlife and recreational values thereof, or will reduce the quality of such waters in violation of applicable water quality standards, the Secretary of the Army in acting on the request for a permit will carefully evaluate the advantages and benefits of the operations in relation to the resultant loss or damage, including all data presented by the Secretary of the Interior, and will either deny the permit or include such conditions in the permit as he determines to be in the public interest, including provisions that will assure compliance with water quality standards established in accordance with law.

PROCEDURES FOR CARRYING OUT THESE POLICIES

1. Upon receipt of an application for a permit for dredging, filling, excavation, or other related work in navigable waters of the United States, the District Engineers shall send notices to all interested parties, including the appropriate Regional Directors of the Federal Water Pollution Control Administration, the United States Fish and Wildlife Service, and the National Park Service of the Department of the Interior, and the appropriate State conservation, resources, and water pollution agencies.

2. Such Regional Directors of the Secretary of the Interior shall immediately make such studies and investigations as they deem necessary or desirable, consult with the appropriate State agencies, and advise the District Engineers whether the work proposed by the permit applicant, including the deposit of any material in or near the navigable waters of the United States, will reduce the quality of such waters in violation of applicable water quality standards or unreasonably impair natural resources or the related environment.

3. The District Engineer will hold public hearings on permit applications whenever response to a public notice indicates that hearings are desirable to afford all interested parties full opportunity to be heard on objections raised.

4. The District Engineer, in deciding whether a permit should be issued, shall weigh all relevant factors in reaching his decision. In any case where Directors of the Secretary of the Interior advise the District Engineers that proposed work will impair the water quality in violation of applicable water quality standards or unreasonably impair the natural resources or the related environment, he shall, within the limits of his responsibility, encourage the applicant to take steps that will resolve the objections to the work. Failing in this respect, the District Engineer shall forward the case for the consideration of the Chief of Engineers and the appropriate Regional Director of the Secretary of the Interior shall submit his views and recommendations to his agency's Washington Headquarters.

5. The Chief of Engineers shall refer to the Under Secretary of the Interior all those cases referred to him containing unresolved substantive differences of views and he shall include his analysis thereof, for the purpose of obtaining the Department of Interior's comments prior to final determination of the issues.

6. In those cases where the Chief of Engineers and the Under Secretary are unable to resolve the remaining issues, the cases will be referred to the Secretary of the Army for decision in consultation with the Secretary of the Interior.

7. If in the course of operations within this understanding, either Secretary finds its terms in need of modification, he may notify the other of the nature of the desired changes. In that event the Secretaries shall within 90 days negotiate such amendment as is considered desirable or may agree upon termination of this understanding at the end of the period.

Dated: July 13, 1967.

STEWART L. UDALL,
Secretary of the Interior.

Dated: July 13, 1967.

STANLEY RESOR,
Secretary of the Army.

APPENDIX C

Application No._____
Name of Applicant_____
Effective Date_____
Expiration Date (If applicable)_____

DEPARTMENT OF THE ARMY

PERMIT

Referring to written request dated _____ for a permit to:

( ) Perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403);

( ) Discharge dredged or fill material into navigable waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 404 of the Federal Water Pollution Control Act (86 Stat. 816, P.L. 92–500);

( ) Transport dredged material for the purpose of dumping it into ocean waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1052; P.L. 92–532);

_____

(Here insert the full name and address of the permittee)

is hereby authorized by the Secretary of the Army: to_____

_____

_____

_____

(Here describe the proposed structure or activity, and its intended use. In the case of an application for a fill permit, describe the structures, if any, proposed to be erected on the fill. In the case of an application for the discharge of dredged or fill material into navigable waters or the transportation for discharge in ocean waters of dredged material, describe the type and quantity of material to be discharged.)

in _____

_____

_____

_____

(Here to be named the ocean, river, harbor, or waterway concerned.)

at _____

_____

_____

_____

(Here to be named the nearest well-known locality—preferably a town or city—and the distance in miles and tenths from some definite point in the same, stating whether above or below or giving direction by points of compass.)

in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (on drawings: give file number or other definite identification marks.) Subject to the following conditions:

I. *General conditions*: a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

b. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to Sections 301, 302, 306 and 307 of the Federal Water Pollution Control Act of 1972 (P.L. 92–500; 86 Stat. 816), or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge or deposit of dredged or fill material into navigable waters, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or

modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the permittee agrees to make every reasonable effort to prosecute the construction or work authorized herein in a manner so as to minimize any adverse impact of the construction or work on fish, wildlife and natural environmental values.

e. That the permittee agrees that it will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

f. That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

g. That the permittee shall maintain the structure or work authorized herein in good condition and in accordance with the plans and drawings attached hereto.

h. That this permit does not convey any property rights, either in real estate or material or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations, nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

i. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

j. That this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of this notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevant to a decision as to whether his permit should be reinstated, modified or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the permit will either be reinstated, modified or revoked.

k. That this permit may be either modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after receipt by the permittee of written notice of such action which shall specify the facts or conduct warranting same unless (1) within the 30-day period the permittee is able to satisfactorily demonstrate that (a) the alleged violation of the terms and the conditions of this permit did not, in fact, occur or (b) the alleged violation was accidental, and the permittee has been operating in compliance with the terms and conditions of the permit and is able to provide satisfactory assurances that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within the aforesaid 30-day period, the permittee requests that a public hearing be held to present oral and written evidence concerning the proposed modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

l. That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

n. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

o. That if the activity authorized herein is not started on or before _____ day of _____, 19__, (one year from the date of issuance of this permit unless otherwise specified) and is not completed on or before _____ day of _____, 19__, (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

q. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

r. That this permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.

s. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition v hereof, he must restore the area to a condition satisfactory to the District Engineer.

t. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

u. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

v. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

II. *Special Conditions:* Here list conditions relating specifically to the proposed structure or work authorized by this permit. The following Special Conditions will be applicable when appropriate:

STRUCTURES FOR SMALL BOATS: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

DISCHARGE OF DREDGED MATERIAL INTO OCEAN WATERS: That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or dumping of the dredged material as authorized herein.

ERECTION OF STRUCTURE IN OR OVER NAVIGABLE WATERS: That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

MAINTENANCE DREDGING: (1) That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for ____ years from the date of issuance of this permit (ten years unless otherwise indicated); and (2) That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

This permit shall become effective on the date of the District Engineer's signature.

Permittee hereby accepts and agrees to comply with the terms and conditions of this permit.

_____
Permittee

_____
Date

By authority of the Secretary of the Army:

_____
District Engineer

_____
Date

Transferee hereby agrees to comply with the terms and conditions of this permit.

_____
Transferee

_____
Date

APPENDIX D—DELEGATION OF AUTHORITY TO ISSUE OR DENY PERMITS FOR CONSTRUCTION OR OTHER WORK AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

MAY 24, 1971.

Pursuant to the authority vested in me by the Act of March 3, 1899, c. 425, Sections 10 and 14, 30 Stat. 1151, 1152, 33 U.S.C. Sections 403 and 408, and the Act of June 13, 1902, c. 1079, Section 1, 32 Stat. 371, 33 U.S.C. Section 565, I hereby authorize the Chief of Engineers and his authorized representatives to issue or deny permits for construction or other work affecting navigable waters of the United States. Except in cases involving applications for permits for artificial islands or fixed structures on Outer Continental Shelf lands under mineral lease from the Department of the Interior, the Chief of Engineers shall, in exercising such authority, evaluate the impact of the proposed work on the public interest. In cases involving applications for permits for artificial islands or fixed structures on Outer Continental Shelf lands under mineral lease from the Department of the Interior, the Chief of Engineers shall, in exercising such authority, evaluate the impact of the proposed work on navigation and national security. The permits so granted may be made subject to such special conditions as the Chief of Engineers or his authorized representatives may consider necessary in order to effect the purposes of the above Acts.

The Chief of Engineers and his authorized representatives shall exercise the authority hereby delegated subject to such conditions as I or my authorized representative may from time to time impose.

STANLEY R. RESOR,
Secretary of the Army.

APPENDIX E—DELEGATION OF AUTHORITY TO ISSUE OR DENY PERMITS FOR THE DISCHARGE OF DREDGED OR FILL MATERIAL INTO NAVIGABLE WATERS

MARCH 12, 1973.

Pursuant to the authority vested in me by Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 816, P.L. 92-500, I hereby authorize the Chief of Engineers and his authorized representatives to issue or deny permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into navigable waters at specified disposal sites. The Chief of Engineers shall, in exercising such authority, evaluate the impact of the proposed discharge on the public interest. All permits issued shall specify a disposal site for the discharge of the dredged or fill material through the application of guidelines developed by the Administrator of the Environmental Protection Agency and myself. In those cases where these guidelines would prohibit the specification of a disposal site, the Chief of Engineers, in his evaluation of whether the proposed discharge is in the public interest, is authorized also to consider the economic impact on navigation and anchorage which would occur by failing to authorize the use of a proposed disposal site. The permits so granted may be made subject to such special conditions as the Chief of Engineers or his authorized representatives may consider necessary in order to effect the purposes of the above Act, other pertinent laws and any applicable memoranda of understanding between the Secretary of the Army and heads of other governmental agencies.

The Chief of Engineers and his authorized representative shall exercise the authority hereby delegated subject to such conditions as I or my authorized representative may from time to time impose.

KENNETH E. BELIEU,
Acting Secretary of the Army.

MARCH 12, 1973.

APPENDIX F—DELEGATION OF AUTHORITY TO ISSUE OR DENY PERMITS FOR THE TRANSPORTATION OF DREDGED MATERIAL FOR THE PURPOSE OF DUMPING IT INTO OCEAN WATERS

Pursuant to the authority vested in me by Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, 86 Stat. 1052, PL 92-532, I hereby authorize the Chief of Engineers and his authorized representatives to issue or deny permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it in ocean waters. The Chief of Engineers and his authorized representatives shall, in exercising such authority, evaluate the impact of the proposed dumping on the public interest. No permit shall be issued unless a determination is made that the proposed dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. In making this determination, those criteria for ocean dumping established by the Administrator of the Environmental Protection Agency pursuant to Section 102(a) of the above Act which relate to the effects of the proposed dumping shall be applied. In addition, based upon an evaluation of the potential effect which a permit denial will have on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Chief of Engineers or his authorized representative, in evaluating the permit application, shall make an independent determination as to the need for the dumping, other possible methods of disposal, and appropriate locations for the dumping. In considering appropriate disposal sites, recommended sites designated by the Administrator of the Environmental Protection Agency pursuant to Section 102(c) of the above Act will be utilized to the extent feasible. Prior to issuing any permit, the Chief of Engineers or his authorized representative shall first notify the Administrator of the Environmental Protection Agency or his authorized representative of his intention to do so. In any case in which the Administrator or his authorized representative disagrees with the determination of the Chief of Engineers or his authorized representative as to compliance with the criteria established pursuant to Section 102(a) of the above Act relating to the effects of the dumping or with the restrictions established pursuant to Section 102(c) of the above Act relating to critical areas, the determination of the Administrator or his authorized representative shall prevail. If, in any such case, the Chief of Engineers or his Director of Civil Works finds that, in the disposition of dredged material, there is no economically feasible method or site available other than a dumping site the utilization of which would result in noncompliance with such criteria or restrictions, he shall so certify and request that I seek a waiver from the Administrator of the Environmental Protection Agency of the specific requirements involved. Unless the Administrator of the Environmental Protection Agency grants a waiver, the Chief of Engineers or his authorized representative shall not issue a permit which does not comply with such criteria and restrictions. The permits so granted may be made subject to such special conditions as the Chief of Engineers or his authorized representatives may consider necessary in order to effect the purposes of the above Act, other pertinent laws, and any applicable memoranda of understanding between the Secretary of the Army and the heads of other governmental agencies.

The Chief of Engineers and his authorized representative shall exercise the authority hereby delegated subject to such conditions as I or my authorized representative may from time to time impose.

KENNETH E. BELIEU,
Acting Secretary of the Army.

APPENDIX G—TABLE OF CONTENTS AND LIST OF APPENDICES TO § 209.120

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