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BY THE COMPTROLLER GENERAL
Report To The Chairman, Committee
On Merchant Marine And Fisheries
House Of Representatives
OF THE UNITED STATES

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Managerial Changes Needed To Speed Up Processing Permits For Dredging Projects

The current process for issuing Army Corps of Engineers dredging permits is complex and lengthy. The Chairman, House Committee on Merchant Marine and Fisheries, asked GAO to find out where delays and problems arise and how they could be alleviated.

Since many steps are involved in the process and the applications are reviewed by several agencies with differing goals and responsibilities, delays may occur at many points. The Corps, the environmental agencies, and the applicants share responsibility for lengthy permit processing.

Dredging permits can be processed faster. Although processing time depends to a large extent on the complexity of the environmental issues, the Corps and other Federal agencies can reduce processing time by

- establishing specific criteria for approving time extensions,
- highlighting the Corps' and the Federal agencies' performance in meeting time frames through periodic reports, and
- more clearly delineating specific areas of review for each agency.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-197852

✓ The Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives

H5E02700

Dear Mr. Chairman:

~~As requested~~ in your June 19, 1979, letter, this report identifies common delays and problems which arise in the Corps of Engineers' dredging permit program. It also recommends ways to improve the process and help eliminate needless delays.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 5 days from the date of the report. At that time we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Comptroller General
of the United States

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COMPTROLLER GENERAL'S REPORT
TO THE CHAIRMAN,
COMMITTEE ON MERCHANT
MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

MANAGERIAL CHANGES NEEDED
TO SPEED UP PROCESSING
PERMITS FOR DREDGING
PROJECTS

D I G E S T

Over the past decade, increased public interest in protecting the Nation's waters has resulted in additional Federal regulation. Laws have been passed to protect the environment, wildlife, and other valuable resources as well as to provide for navigational needs. Striking a balance among these competing objectives has complicated the process for issuing dredging permits, involving several Federal agencies and increasing the time required to process applications.

Lengthy processing is costly to applicants, makes planning difficult, and can hinder construction and water transportation. For example, a New York marine terminal which had planned to dredge 19,000 cubic yards of accumulated silt (enough to fill about 115 50-foot boxcars) from its berthing area found that obtaining a dredge and disposal permit required almost 15 months--over a year longer than anticipated. During this period, the undredged silt caused several ships to run aground when docking, inconveniencing both the applicant and customers.

During fiscal year 1979, the average times to process dredging permits at the Baltimore, New Orleans, and Philadelphia districts of the Corps of Engineers ranged from 4 to 10 months. Some were in process more than 2 years. Corps regulations indicate that total processing time generally should not exceed 3-1/2 months.

Short delays during each step of the permit process culminate in significant delays, even for routine, noncontroversial projects.

Limited staff, coordination requirements, and involvement of various interest groups all contribute to the problem. (See pp. 15 to 21.)

The Corps, the Federal environmental agencies, and the applicants can cause lengthy permit processing.

--The three Corps districts GAO visited were not issuing notices for public comment within the 15-day limit specified by law and Corps regulations.

--In many instances, after notices had been issued, the public comment period was extended beyond the 30-day limit recommended by Corps regulations.

--The Environmental Protection Agency, the Fish and Wildlife Service, and the National Marine Fisheries Service routinely asked for and received time extensions from the Corps without providing proper justification.

--At times the comment period was extended in lengthy negotiations between the Federal agencies and the applicant. These negotiations were conducted either to obtain additional information from the applicant or to discuss agency suggestions for modifying the project.

Corps regulations require district engineers to prepare a Findings of Fact and either deny applications or issue permits within 30 days after final public comment and resolution of all issues and objections. This 30-day limit is not being adhered to. GAO statistics showed that the three Corps districts averaged 168 days or more to complete this process for selected permits. (See p. 15.)

In response to the 1977 Clean Water Act amendments to the Federal Water Pollution Control Act, Federal agencies have had little success in reducing duplication, paperwork, and delays in the permit process. These

amendments stated that the agencies involved would enter into coordination agreements with the Secretary of the Army by July 1978. These agreements were not completed until March 1980. The agreements should improve the program, but it is too early to tell whether they will significantly reduce processing time. (See pp. 21 and 22.)

RECOMMENDATIONS

The Secretary of the Army should direct the Chief, Corps of Engineers, to shorten permit processing time by

- directing Corps district management to report periodically on the time required to issue public notices and require adherence to the 15-day time frame established by law;
- establishing criteria for approving time extensions based on the complexity of the issues involved in the applications; and
- directing district management to (1) report periodically on the time required to issue permits once all public comments are received and (2) adhere to the 30-day limit required by Corps regulations or else indicate why the 30-day time frame should be lengthened.

The Fish and Wildlife Service and the National Marine Fisheries Service should be directed to more clearly delineate areas of review to avoid duplication and enable them to review a larger percentage of total dredging applications.

The Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency should be directed to justify, on the basis of the complexity of the issues involved in the applications, all requests for additional time (exceeding 30 days) to comment on applications.

AGENCY COMMENTS AND GAO'S EVALUATION

The Departments of the Army, the Interior, and Commerce, and the Environmental Protection Agency agreed that faster processing was desirable and said that they were taking steps to achieve this goal. In particular, they believed that the new memorandums of agreement between the agencies will help satisfy the concerns expressed in the recommendations of this report. (See pp. 28 and 29.)

Although these agreements may help shorten processing time, they are no panacea; their success will depend on the degree to which each agency is able to improve its record for timeliness and efficiency in processing permits. Time extensions are still possible and the referral process, while subject to better controls, still will entail a series of sequential reviews which may consume over a year without violating the agreements. In short, while the agreements are a step in the right direction, unless agencies follow GAO's recommendations, reducing processing time will remain a challenge which will be difficult to meet.

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ABBREVIATIONS

EPA	Environmental Protection Agency
FWS	Fish and Wildlife Service
GAO	General Accounting Office
NMFS	National Marine Fisheries Service

CHAPTER 1

INTRODUCTION

The Army Corps of Engineers has regulated dredging in navigable U.S. waters for over 80 years. Recently, the Congress and the public have been increasingly concerned over the time required to process and issue Corps dredging permits. Permit applicants complain of lengthy processing procedures which delay projects several months to years. Specifically, many applicants are concerned about the cost and inconvenience caused by these delays. For example, according to a private survey, applicants in the New Orleans district placed costs resulting from lengthy processing at \$19,752,730 from September 1, 1978, to April 30, 1979. While figures such as this may reflect the applicants' unrealistic expectations for rapid processing, project delays caused by lengthy permit processing have caused concern over unforeseen expense and inconvenience.

Initially, the Corps was concerned primarily with protecting navigation and the navigable capacity of waterways. During the past decade, however, the Corps' responsibilities have changed. Congressional and public interest in protecting all facets of the Nation's waters has increased, resulting in new Federal laws and regulation. While these changes have brought valuable protection to our water resources, they have also complicated and lengthened the permit process.

In addition to granting individual dredging permits, the Corps grants general and nationwide permits. General permits are limited to specified regions and authorize activities which will cause only minimal adverse environmental impact. Nationwide permits are similar to general permits, but cover specified activities, such as minor dredging, in certain smaller bodies of water. Because the environmental impact of activities authorized under general and nationwide permits is minimal, these activities may be performed with little or no paperwork or delays. Since dredging projects covered under general and nationwide permits are seldom delayed, we focused our review instead on the process for granting individual permits.

At the request of the Chairman, House Committee on Merchant Marine and Fisheries, we reviewed the delays and expenses associated with the individual dredging permit process. He requested that we enumerate the Federal agencies and statutes involved (see app. II) and review procedures, bureaucratic delays, and case histories (see app. I) to determine where delays and problems arise.

SCOPE AND METHODOLOGY

We reviewed records, instructions, guidelines, regulations, and laws governing the dredging permit application process. We examined both the Corps' procedures and those of the environmental agencies which review and comment on applications, including the Environmental Protection Agency (EPA); the Fish and Wildlife Service (FWS), Department of the Interior; and the National Marine Fisheries Service (NMFS), Department of Commerce. We worked at Corps, EPA, FWS, and NMFS headquarters in Washington, D.C.; the Corps' Philadelphia, Baltimore, and New Orleans district offices; related Corps division offices; and other Federal regional offices which comment on proposed dredging projects handled by the Corps districts.

We reviewed the total permits the Baltimore and Philadelphia districts issued during fiscal year 1979; identified those projects involving dredging; and computed the total, average, and stratified ranges of time taken to process the applications. We compiled similar statistics for the New Orleans district from a sample of total dredging permits issued. We randomly selected 275 of the district's 979 dredging permits issued during fiscal year 1979. The estimates obtained from this sample are stated at the 95-percent confidence level.

To better understand where delays were occurring, we arbitrarily selected 48 permits and determined how long the three districts took to (1) issue public notices, (2) obtain final Federal comments, and (3) issue the permits after final comments had been received. Each of the 48 permits took 90 days or longer to process; shorter processing times were not selected since we wished to determine where the problems in longer ones were occurring. From these we also compiled actual case histories for selected applications at each Corps district we visited plus one project from the New York district office.

We also interviewed State officials and applicants to obtain their views on the permit process.

Although delays may also be occurring at the State level, we did not review State permit certification activities. Since each State has its own procedures, it is difficult to generalize on them. In addition, the requestor specifically asked us to review the impact of Federal agencies and laws on the permit process.

CHAPTER 2

NEW AND INCREASINGLY COMPLEX LEGISLATION

HAS LENGTHENED PERMIT-PROCESSING TIME

The number of laws and Federal agencies involved with the dredging permit process has increased over the years, creating a more complex process. While the laws are designed to protect important natural resources, in providing this protection they require additional processing steps for dredging permits. The underlying cause of lengthy processing in most cases is the fact that although current laws understandably emphasize the need to protect valuable resources, they do not emphasize the need to expedite permit processing.

DREDGING LAWS HAVE BECOME NUMEROUS AND TIME CONSUMING

The Corps of Engineers first received permitting authority over dredging through the 1899 Rivers and Harbors Appropriation Act (Ch. 425, 30 Stat. 1121, 1151). Under section 10 of this act the Corps issues permits for dredging activities being carried out in the navigable waters in the United States. The main objective of this law is to protect navigation and maintain the navigable capacity of the Nation's waterways.

During recent years, legislation and judicial interpretations have broadened the Corps' responsibilities. In 1972 two major statutes, the Federal Water Pollution Control Act Amendments of 1972 and the Marine Protection, Research, and Sanctuaries Act of 1972 (known as the Ocean Dumping Act) each authorized a new category of permit. In administering both categories, the Corps is required to consider environmental protection in addition to navigational concerns.

In addition to these two environmentally oriented laws, a series of related Federal statutes addressing other concerns has helped create a situation in which the Corps now undertakes full public interest reviews. Instead of limiting its reviews to navigational concerns, the Corps now considers such issues as conservation, esthetics, historic preservation, fish and wildlife, water quality, and energy needs. These additional responsibilities involve several agencies, notably the FWS, NMFS, and EPA. (For a list of applicable legislation, see app. II. While many laws may affect the permit process, the laws listed in app. II are the most applicable.)

The original mandate: section 10
authorized the permit process

The 1899 Rivers and Harbors Appropriation Act was enacted principally to maintain safe navigation in U.S. waters. Section 10 reflects this purpose by requiring a Corps permit for dredging, filling, and various other activities taking place in "any navigable water of the United States." Under this authority, the Corps for many years administered a regulatory program designed to protect the navigable capacity of U.S. waters. Since concerns such as water quality and historic preservation were not part of the 1899 legislative mandate, the Corps initially did not consider these areas in reviewing applications. Also, other agencies were not involved in the permit process.

The mandate was broadened:
new laws brought complexity

Nonnavigational concerns began to affect the Corps' dredging permit program in the 1950s when environmental laws, such as the Fish and Wildlife Act of 1956, the Fish and Wildlife Coordination Act of 1958, and the Migratory Marine Game Fish Act, became effective. For example, under The Fish and Wildlife Coordination Act the Corps was required to "consult" with FWS and other appropriate Federal or State agencies before authorizing any work involving the Nation's waters.

The coordination between the Corps and FWS was reinforced in 1967 by a Memorandum of Understanding. Under this memorandum both agencies agreed that permit applications which FWS objected to would be referred for decision, at FWS' discretion, to the Secretary of the Army. Although the major purpose of this agreement was to protect fish and wildlife resources, it added another review level. This created the possibility for considerably longer permit-processing time.

In response to growing national concern over environmental values, in 1968 the Corps officially expanded the criteria it was using in its permit reviews to include areas other than navigation. These new areas of concern included fish and wildlife, conservation, pollution, esthetics, ecology, and the general public interest. Two years later the legality of this broadened authority was questioned and subsequently confirmed in Zabel v Tabb, 430 F. 2d 199, (5th Cir. 1970), cert. den. 401 U.S. 910 (1971) when the Corps' decision

to deny a permit on fish and wildlife grounds rather than on navigational issues was upheld. This precedent clarified the Corps' dredging permit responsibility. No longer was the Corps' authority limited to maintaining the navigational capacity of waterways.

The importance of environmental concerns was further reinforced by the National Environmental Policy Act of 1969. This law directed that all Federal agencies consider environmental values in making decisions. In addition, this act also required an environmental impact statement for any major Federal action significantly affecting the quality of the human environment. Since some dredging activities fall into this category, dredging permit processing time occasionally must be lengthened to include an environmental impact statement.

National Marine Fisheries Service
became part of the process

Still another Federal agency was added to the dredging permit process in 1970. Previously, the Fish and Wildlife Service was the principal Federal agency responsible for fish and wildlife resources. Under Reorganization Plan Number 4 of 1970, however, certain fish and wildlife responsibilities, including all functions of the Fish and Wildlife Service's Bureau of Commercial Fisheries, were transferred to the Department of Commerce. They are currently administered by Commerce's National Marine Fisheries Service. Although this plan transferred certain responsibilities, it did not clearly define the new roles of the two agencies regarding dredging activities. Now, in many instances, additional time is required for both agencies to review and comment on applications, whereas before only one agency was involved. The agencies' reviews are concurrent, but either or both agencies can request additional commenting time.

Both FWS and NMFS receive for comment all public notices of Corps dredging permit applications. Under this authority it is possible for either FWS or NMFS to offer "no objection" to an application, only to find that the other agency has major objections. Although NMFS may not require referral beyond the level of the Chief of Engineers, even resolving objections at the lower level (Corps districts) can take several months.

Increasing the number of agencies commenting on applications also increases the possibility that one of the agencies may not be able to respond within the 30-day

time limit prescribed by Corps regulations. When this happens, agencies then may ask for extensions of 15 days, 30 days, or even longer. See pages 18 to 20 for a more detailed discussion of this problem.

1972: new permitting
authority for the Corps

In 1972 the Congress passed two major laws extending the Corps' dredging permit authority. The Federal Water Pollution Control Act Amendments of 1972 and the Marine Protection, Research, and Sanctuaries Act of 1972 created new categories of Corps permits and further complicated the permit process.

Section 404 of the Federal Water
Pollution Control Act Amendments of 1972

Section 404 of the Federal Water Pollution Control Act designated the Secretary of the Army, acting through the Corps, as permitting authority over the discharge of dredged or fill material in the waters of the United States. However, in exercising this authority the Corps was required to work with EPA. Specifically, in designating disposal sites, the Corps was required to apply guidelines developed by EPA with the Secretary of the Army. Furthermore, EPA was authorized to prohibit the specification of a disposal site (or restrict its use) if EPA determined that the proposed discharge would have "an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas * * * wildlife, or recreational areas." Thus, the Corps' original concern with the navigable capacity of waterways was broadened further to include EPA guidelines and "veto" power.

The broadened scope of the Corps' responsibility over the Nation's waters was the subject of litigation arising from the Corps' interpretation of section 404. In the April 3, 1974, revisions to its regulations, the Corps limited the 404 permit program to waters regulated under the Rivers and Harbors Appropriation Act of 1899. However the decision was successfully contested in NRDC v Callaway, 392 F. Supp. 685 (D.D.C. 1975) the following year and resulted in confirmation of the Corps' authority over discharges of fill material into "all waters of the United States."

This court decision created concern in the Congress that the Federal Government might be either usurping or duplicating State responsibilities. These concerns led to the 1977 Clean Water Act amendments to the Federal

Water Pollution Control Act. These amendments clarified State and Federal responsibilities for section 404 programs, provided time frames for the permit review process, and called for agreements between the Corps and other Federal agencies, including EPA, FWS, and NMFS. However, time frames are not being met and the Memorandums of Agreement were not finalized until March 1980.

Section 103 of the Marine Protection,
Research, and Sanctuaries Act of 1972

Shortly after passage of the Federal Water Pollution Control Act Amendments of 1972, the Congress enacted the Marine Protection, Research, and Sanctuaries Act of 1972. Under section 103 the Corps was designated as permitting authority for the transportation of dredged material for the purpose of dumping it into ocean waters. However, under this act, before the Corps may issue such a permit it must 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 this determination, the Corps must apply criteria EPA has developed relating to the effects of the dumping and, in addition, independently determine the need for the proposed dumping based on an evaluation of the potential effects which a permit denial would have on "navigation, economic and industrial development, and foreign and domestic commerce of the United States." Also, the Corps must "make an independent determination as to other possible methods of disposal and as to appropriate locations for the dumping," and, where feasible, use the site recommended by EPA.

Section 103 also allows EPA a limited veto over the Corps' ocean dumping permits. Although the Corps may request a "waiver" from specific requirements, EPA need not grant the waiver if EPA finds that the proposed dumping will result in "an unacceptably adverse impact on municipal water supplies, shell-fish beds, wildlife, fisheries . . . or recreational areas." Thus, section 103, like section 404 of the Federal Water Pollution Control Act, modified the Corps' original navigational concern under the 1899 Rivers and Harbors Appropriation Act to include non-navigational issues.

Related legislation can increase processing time of selected permit applications

The permit process is further complicated and lengthened by related legislation which stresses concerns such as esthetics, conservation, water quality, energy needs, and historic preservation. For example, the Endangered Species Act may increase processing time by requiring Federal agencies to avoid authorizing any actions which might jeopardize the continued existence of threatened or endangered species. When dredging threatens one of these species, the project must be re-evaluated and a suitable means of protecting the species devised.

The National Historic Preservation Act of 1966 is another example of related legislation which can increase processing time. Under this act, which created the Advisory Council on Historic Preservation, the Council reviews activities licensed by the Federal Government which might affect properties listed (or eligible for listing) in the National Register of Historic Places. Should a dredging activity affect such properties, the historical value would have to be balanced against the navigational or economic value of the dredging. The process of weighing these two competing values can be very time consuming.

These are only two of the current laws which could lengthen the processing time for selected dredging permits. Appendix II mentions several more.

CONCLUSIONS

Over the years, dredging-related laws have become more numerous and have created a more complex permit process. The laws have increased the number of agencies directly involved in the permit process, broadened Corps responsibility to include protection of nonnavigational resources, and established an elaborate system of checks and balances. These factors contribute to a complex and often lengthy dredging permit process.

CHAPTER 3

DREDGING PERMITS COULD BE PROCESSED FASTER

The process for issuing dredging permits is complex, long, and frustrating for applicants. While the Corps is responsible for issuing permits, various environmental protection laws require that other Federal and State agencies become involved in the application review process. In addition, the Corps must consider various diverse factors, such as navigation, economics, and environmental values, in deciding whether to grant permits.

During fiscal year 1979 the Baltimore, New Orleans, and Philadelphia Corps districts averaged 6, 4, and 10 months, respectively, to issue dredging permits, with some applications taking more than 2 years to process. Some delays were caused by the Corps, others by various Federal and State agencies, and some by the applicants. Often, a combination of factors increased the processing time. Furthermore, overlapping review responsibilities among some Federal agencies confuse and frustrate applicants and raise questions on duplication of effort among agencies.

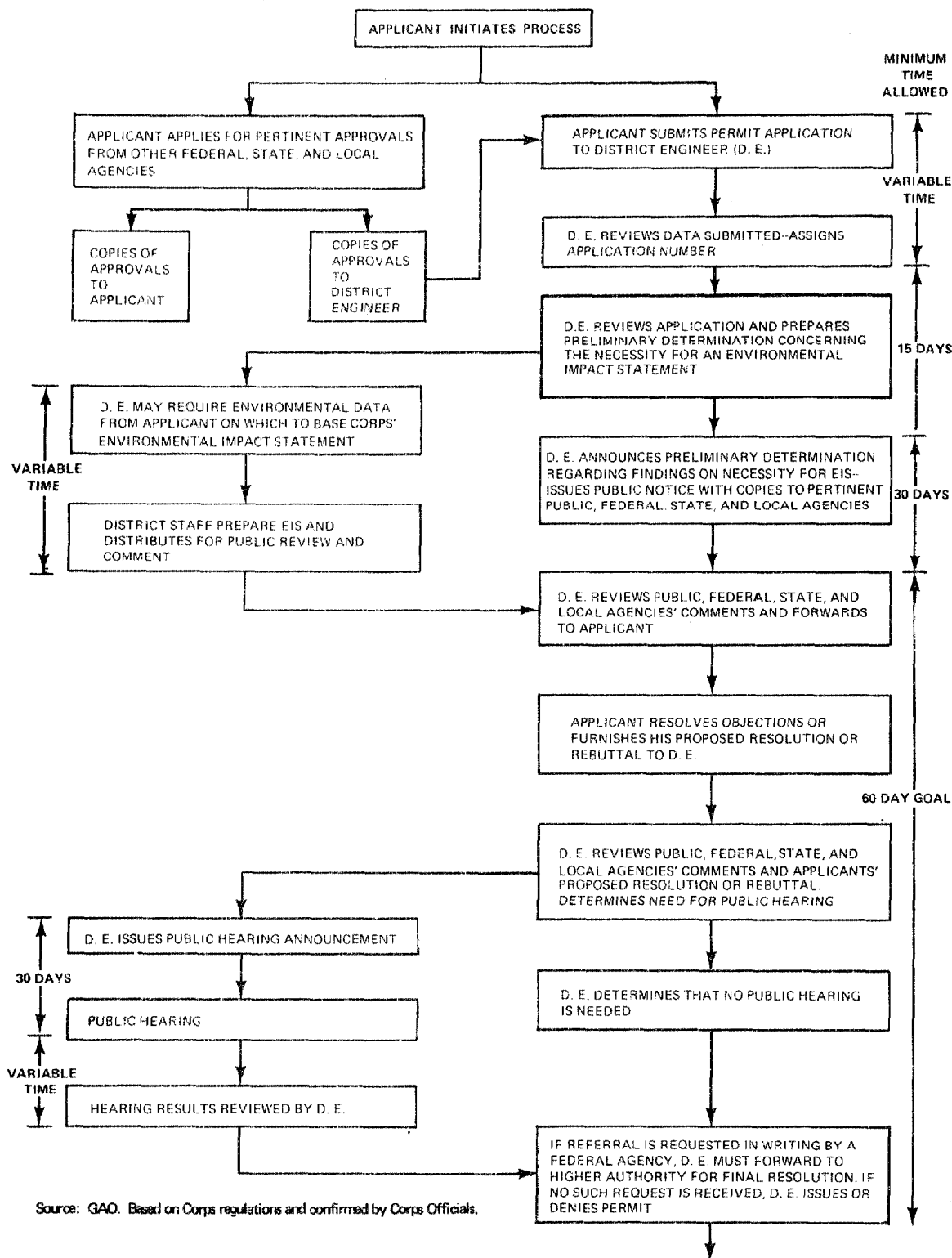
PROCESS FOR INDIVIDUAL PERMITS IS COMPLEX

Typically, at least four Federal and several State agencies are involved in processing permits. Because both the agencies and the applicant have their own special concerns and considerations, the application process is often long and complex.

Corps district offices perform most processing steps for individual permit applications. Corps regulations require that each application be considered based on a public interest review. This review requires that all relevant factors be weighed--including navigation, conservation, economics, fish and wildlife values, and water quality. The Corps must also provide opportunity for comment by Federal agencies. Some perspective on the numerous steps in the permit process may be gained by examining the flow chart on page 10. The chart shows that under the time frames allowed by Corps regulations, excluding any time extensions, an applicant will probably have to wait at least 3 months to receive a routinely processed permit.

Under existing regulations and procedures, an applicant submits a detailed application describing the proposed work and location; plans and drawings; a description of the

TYPICAL CORPS PROCESSING PROCEDURES FOR DREDGING PERMIT APPLICATIONS



Source: GAO. Based on Corps regulations and confirmed by Corps Officials.

type, composition, and quantity of dredge material; and the names and addresses of adjoining property owners. Any required local, State, or Federal approvals also must be submitted. After review of the application and, if necessary, submission of additional information, the Corps decides if an environmental impact statement is needed and prepares and issues a public notice. In most instances, the Corps views the proposed project as having no appreciable impact on the environment. In such cases, environmental impact statements are not required.

Public notices are the primary method of advising interested parties of proposed dredging projects and soliciting comments and information needed for evaluating the proposal's impact. The 1977 Clean Water Act amendments to the Federal Water Pollution Control Act state that a public notice should be issued within 15 days after the applicant submits all required information. Generally, the Corps allows interested parties 30 days to respond to the public notice and, under unusual circumstances, the district engineer may extend the comment period up to a maximum of 75 days. Agencies which normally receive public notices include FWS, NMFS, EPA, and several State agencies.

Commenting agencies review proposed dredging projects for the anticipated effect on that part of the environment which, by law, they are mandated to protect. For example, FWS reviews projects for their effects on fish and wildlife habitat, while EPA primarily considers water quality impacts.

Public notice comments are sent to the applicant for resolution. When no objection is raised or when the applicant is able to resolve the objections, the Corps district usually issues the permit. Permits are not issued immediately, however, if EPA, FWS, or NMFS recommends either denial or referral to higher authority. Such referrals are sent for review and determination to the division engineer and, if necessary, to the Office, Chief of Engineers. FWS may also insist that unresolved applications be forwarded to the Secretary of the Army for final determination after consultation with the Secretary of the Interior.

After receiving all comments, the district prepares a final environmental assessment and determines whether a public hearing is warranted. When these steps have been completed, the district then prepares a Findings of Fact. According to Corps regulations, the Findings of Fact supports the decision whether to issue or deny the permit. Corps regulations also require that the district

should either reach a final decision or forward the case to higher headquarters within 30 days of the following, whichever is latest: closing of the public notice period when no objection is raised, completing coordination following the applicant's rebuttal, closing of the public hearing record, or closing of the waiting period after filing the final environmental impact statement.

Other forms of authorization
cause fewer delays

In addition to granting individual dredging permits, the Corps grants general and nationwide permits which cover some dredging activities. Projects authorized by general and nationwide permits are usually not subject to the inconvenience of lengthy processing time. General permits are used to authorize minor work in particular regions, such as placing dredge and fill material associated with bridge construction. Nationwide permits also authorize minor activities, including depositing less than 500 cubic yards of dredge and fill material for bank stabilization in specified waterways. However, nationwide permit authorization covers the entire Nation rather than a single region. Since activities covered by general and nationwide permits are generally minor, non-controversial, and have no significant environmental impacts, processing procedures are less complex. Consequently, such proposed activities are approved much faster than those requiring individual permits. Ordinarily, general and nationwide permits authorize specific categories of activities in advance. Thus, if an applicant's dredging needs fall within these previously specified categories, little or no paperwork or delay is required.

Approval for the Corps' self-initiated dredging projects takes longer than general or nationwide permit approval but, historically, has not delayed projects. For Corps-initiated projects, the Corps follows evaluating and approving procedures similar to those used for individual permits. Unlike dredging permit applicants, however, the Corps has more control over its own projects since it initiates many of the processing steps. Corps officials stated that historically Corps dredging projects have not been delayed because the Corps, knowing the time required for processing, begins action early enough to start dredging on schedule. However, officials cautioned that recently approved ocean-dumping regulations may severely reduce ocean-dumping activity and consequently may halt or cause long delays in future Corps dredging projects until alternative dredging disposal sites can be approved.

PROCESSING TIME FOR MOST
PERMITS IS LENGTHY

The average time taken to process dredging permits at the Corps districts reviewed ranged from 4 to 10 months. Corps officials and regulations indicate that the total processing time generally should not exceed 3-1/2 months. The regulations allow (1) 15 days to issue the public notice after the Corps receives all required information from the applicant, (2) 30 days from the date of the public notice to receipt of comments, and (3) about 60 days from the date comments are received--or 30 days after all issues and objections have been resolved--to permit issuance.

We reviewed all dredging permits the Baltimore and Philadelphia Corps districts issued during fiscal year 1979 and randomly selected and reviewed 275 of the 979 dredging permits the New Orleans Corps district issued during this same fiscal year. The average time required to process these permits ranged from 120 to 301 days, as shown in the following table.

Stratified Processing Time (Fiscal Year 1979) (note a)

	<u>Baltimore district</u>		<u>New Orleans district</u>		<u>Philadelphia district</u>	
Average processing time (days)	190		b/ 120		301	
<u>Interval</u>	<u>Number of Permits</u>	<u>Percent</u>	<u>Number of Permits</u>	<u>Percent</u>	<u>Number of Permits</u>	
					<u>Percent</u>	
0-30	0	0.0	18	6.5	2	4.3
31-60	3	3.7	13	4.7	0	0.0
61-90	6	7.4	93	33.8	3	6.6
91-120	16	19.8	59	21.5	2	4.3
121-150	11	13.6	36	13.1	9	19.6
151-180	10	12.3	20	7.3	2	4.3
181-210	7	8.7	12	4.4	3	6.6
211-240	10	12.3	8	2.9	4	8.7
241-270	4	4.9	5	1.8	3	6.6
271-300	4	4.9	2	0.7	2	4.3
301-330	5	6.2	1	0.4	1	2.2
331-360	2	2.5	1	0.4	5	10.9
361- +	<u>3</u>	<u>3.7</u>	<u>7</u>	<u>2.5</u>	<u>10</u>	<u>21.6</u>
Total	<u>81</u>	<u>100.0</u>	<u>275</u>	<u>100.0</u>	<u>46</u>	<u>100.0</u>

a/For permits processed in 3-1/2 months, Baltimore had 14 for 17.3 percent, New Orleans had 158 for 57.5 percent, and Philadelphia had 6 for 13 percent. New Orleans' statistics were more favorable in part because 23 of its permits were "time extensions" to existing permits and consequently required little processing time.

b/This is accurate within ± 10 days at the 95-percent confidence level.

As shown in the table, most permits took longer than 2 months to process. However, a high percentage exceeded the 3-1/2-month time frame which, according to Corps regulations, should generally be sufficient.

We reviewed 48 arbitrarily selected applications which took longer than 90 days to process to determine where delays are occurring. The following table indicates that permits are not being processed within the time frames specified by Corps regulations. (See chart on p. 10.)

Processing Time for Selected Permits

Processing time	Baltimore district (16 permits)		New Orleans district (22 permits)		Philadelphia district (10 permits)	
	Average days	Percent	Average days	Percent	Average days	Percent
Receipt date to public notice date (note a)	32	8.4	67	19.9	76	20.3
Public notice to final Federal comment	180	47.4	83	24.6	96	25.6
Final Federal comment to permit issuance	<u>168</u>	<u>44.2</u>	<u>187</u>	<u>55.5</u>	<u>203</u>	b/ <u>54.1</u>
Total	<u>380</u>	<u>100.0</u>	<u>337</u>	<u>100.0</u>	<u>375</u>	<u>100.0</u>

a/Receipt date is not necessarily date when applicant submits all necessary information. The districts did not maintain statistics showing when applications were considered complete.

b/Two of the permit applications selected for Philadelphia district were not issued; consequently, final Federal comment to permit issuance is calculated for only eight applications.

The above table indicates that Federal agency comments accounted for 25 to 47 percent of the processing time. The remaining time occurred outside the comment period--time over which the Corps has more, but not complete, control. Both the Corps and other Federal agencies could do more to expedite permit processing, as discussed below.

SEVERAL FACTORS CAUSE LENGTHY PROCESSING

Delays are caused by different factors. Short delays during each step of the permit process culminate in significant delays, especially for routine, noncontroversial projects. Limited staff, coordination requirements, and involvement of numerous agencies all contribute to the problem.

Several delays, both short and long, are attributable to the Corps, Federal environmental agencies, and

applicants. Delays attributable to the Corps include untimely issuance of public notices, routine extension of Federal comment periods, and slow processing after final comments have been received. Delays caused by other Federal agencies include untimely response to public notices and prolonged negotiation periods. Applicants cause delays by failing to provide necessary initial information and slowly responding to requests for information. Specific examples of all these causes of delays may be found in appendix I.

Delayed public notices

The three Corps districts reviewed have not, on the average, issued public notices within the 15-day period specified by law and Corps regulations. Statistics shown on page 15 indicate the three districts averaged from 32 to 76 days to issue public notices after applications had been received. The districts did not summarize statistics showing the time required to issue public notices and, before our visits, did not know how much time this activity was taking. Officials cited internal processing procedures as one factor which consumes processing time.

Corps districts use two methods to prepare initial environmental analyses for inclusion in public notices. For example, in Baltimore the Regulatory Functions Branch receives the applications, prepares initial environmental analyses, and issues the public notices. In Philadelphia, however, the Regulatory Functions Branch sends applications to the Environmental Resources Branch for the environmental analyses. Public notices are issued only after the Environmental Resources Branch has completed and returned its initial analysis to the Regulatory Functions Branch. Our analysis of 26 selected cases in Philadelphia and Baltimore showed that the Baltimore district averaged 32 days to issue public notices while the Philadelphia district averaged 76 days. In 1976 about 25 percent of the districts sent applications to their Planning and Engineering Divisions for preparing the initial environmental analyses. A 1976 internal Corps study showed that the average processing time for most of these districts was 15 days or more. Conversely, most of the districts which prepared the initial environmental analyses in the Regulatory Functions Branches averaged 5 days or less.

According to Corps officials, personnel in the districts' Environmental Resources Branches are more qualified to prepare environmental analyses than Regulatory Functions Branch personnel. As a result, at districts where the Environmental Resources Branches perform the analyses,

officials believe the additional time required for coordination between branches is necessary. However, officials using Regulatory Functions Branch personnel believe their people are sufficiently qualified to perform the initial analyses.

District officials stated that limited staffing and the complex nature of dredging projects also lengthened the time required to issue public notices. They explained that dredging projects generally have greater potential for harming the environment than permits for such things as simple construction projects. Consequently, dredging projects require more evaluation time.

Negotiations and requests for additional information

Negotiations and requests for additional information can add days or months to the permit process, depending upon the issue involved and the responsiveness of the applicants. Such requests are made for various reasons. Some requests are routine, such as in the case of applications for gas and oil dredging permits. According to Corps officials, other requests stem from the fact that although the agency officials believe the permits should be denied, they ask for additional information which they believe may change their perception of the projects, rather than recommend outright denials. The subsequent negotiations are one of the most time-consuming steps in the permit process.

One or more Federal agencies requested additional information for all four applications we analyzed as case studies. (See app. I.) Applicants took as much as 3 months to respond to these requests. FWS statistics provided at a recent public congressional hearing ^{1/} also illustrate the extent of such delays. FWS' Lafayette, Louisiana, field office requested additional information on 16 applications during a recent 8-month period. As of the hearing date, 10 of the 16 requests had been answered by the applicants. Response time averaged 33 days and ranged from 5 to 68 days.

^{1/}New Orleans field hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, House Committee on Merchant Marine and Fisheries, Oct. 5, 1979.

A New Orleans Corps district official noted that the additional requests to gas and oil companies usually involved information concerning the feasibility of directional drilling and alternate methods not requiring dredging. Consequently, about December 1978 the district began sending additional application guideline sheets to gas and oil company applicants requesting that they routinely provide this additional information. As of January 1980, less than 50 percent of the companies involved were initially supplying this additional information. However, according to a district official, those that do supply this information drastically reduce FWS' review time.

Negotiations concerning what will be included in the final dredging project use a major part of the total processing time for most controversial projects. For example, negotiation time averaged over 4 months for the 26 selected applications reviewed in Baltimore and Philadelphia. One negotiation period exceeded 20 months.

Rather than deny an application outright, Corps districts and other Federal agencies try to negotiate changes to the project to make it acceptable to all parties. This process requires coordination and takes time. When Federal agencies object to a project or recommend changes, the Corps reviews these comments and transfers them directly to the applicant or indirectly through the applicant's agent, usually an engineering consulting firm. These objections or proposed changes are usually evaluated by the applicant, and plans and specifications may be changed accordingly. If applicants choose, they may reject the agencies' recommendations and defer to the district engineer's judgment. However, to do so is to risk denial or a lengthy referral process. If the applicant chooses to change the plans and specifications, these changes, or counterproposals, are resubmitted to the Corps and other Federal agencies for review and comment. Proposals and counterproposals continue until the application is approved, referred, denied, or withdrawn. Since no time limit has been established for negotiations, this process can continue for over a year. The Cecil County, Maryland, Department of Public Works application described in appendix I illustrates the negotiation process.

Extended public comment periods

District procedures for granting time extensions do not follow criteria in Corps regulations. The regulations state that public comments should be received within 30 days

of the public notice date. Further, the regulations allow the district engineer to extend the comment period up to a maximum of 75 days if "unusual circumstances warrant." The Clean Water Act of 1977 amended the Federal Water Pollution Control Act to specify that FWS shall submit its comments not later than 90 days after the Corps notifies FWS, which is the date the Corps issues the public notice. The districts visited, however, routinely granted single and multiple 15-day extensions at the request of Federal agencies. Seldom were the agencies asked to show that their requests resulted from unusual circumstances. Some requests were oral; others stated that additional time was needed to complete the necessary reviews, field investigations, and coordination; and still others mentioned that additional time was needed because of limited staffing. According to Corps officials, extensions are often granted because the alternative is to risk agency objection to the permit. This could result in a time-consuming referral to higher authorities.

Our statistics for 48 selected applications which required 90 days or more to approve showed that, on the average, agencies took about 3 to 6 months to supply final comments on projects. (See chart on p. 15.) Average commenting time of EPA, FWS, and NMFS for the 26 applications reviewed at the Baltimore and Philadelphia districts ranged from 50 to 72 days. At the New Orleans field hearings, FWS and NMFS testified that they requested small extensions on only a small percentage of gas and oil related public notices. However, when extensions were requested, the two agencies averaged 44 and 55.5 days, respectively, to comment on the applications.

Since agencies are seldom pressured to comment within the 30-day period, it is easy for them to postpone reviews and request time extensions. However, another factor, late receipt of public notices, also contributes to this problem. Individuals at various FWS, NMFS, and State agencies indicated that they are not receiving notices on time. According to Louisiana NMFS statistics, NMFS offices receive public notices an average of 10.5 days after the notice's issue date. State and FWS officials stated that often long periods lapse during which no public notices are received, and then several variously dated notices arrive on the same day.

We reviewed 43 public notices which a State office had received in 1 day and found that 20 notices--almost 50 percent--were already a month old. The Corps district's mailroom had been holding the public notices and mailing

them in batches rather than individually as they were received. The Corps district's Regulatory Function Branch chief said he had not been aware of this problem and promised to correct it. Another district official cited limited reproduction capability coupled with a high volume of permit applications as reasons for delays. Other delays were attributed to the Postal Service. For example, some public notices, mailed on the same day, arrived at FWS in 2 to 3 days while taking 10 days to arrive at NMFS.

Referral to higher authority

Only a small percentage of total permit applications, usually for the more complex and controversial projects, are referred to higher authority. However, according to Corps officials, the threat of referral, with the additional time involved and justification required, encourages applicants to continue negotiations with local Federal agencies.

For the entire Nation, only two applications involving significant dredging were forwarded to Corps headquarters because of agency objections during fiscal year 1979. The Chief of Engineers recommended permit approval for one and sent the other to the Department of the Interior for review before making an official decision. Similarly, Corps divisions receive only a few referrals from the districts each year. For example, although the New Orleans district issued 979 dredging permits during fiscal year 1979, only 10 applications were referred to the division for higher level decisions.

Corps officials stated that, at times, applicants continue to negotiate rather than risk the additional time involved in referrals. However, the frequency and extent of such negotiation delays are difficult to quantify. Officials said many negotiations are conducted informally over the telephone and are not documented.

Final Corps processing

Corps regulations require the district engineer to either officially deny an application or issue the permit for acceptance within 30 days after all issues and objections have been resolved. During this period, the Corps also prepares a Findings of Fact summarizing all issues involved and the basis on which the permit is either issued or denied. The 30-day limit is not being adhered to. As shown in the table on page 15, the three Corps districts

we visited averaged 168 days or more from the date of final Federal comments--when the final agency position is expressed--to permit issuance for the selected applications we reviewed. More than half of the selected applications reviewed at the three Corps districts had exceeded the 30-day limit.

Corps regulations require that before a final permit may be issued, the applicant must first sign and return a draft permit. This can cause delays up to several months, depending on how quickly the applicant returns the draft permit. Yet this period is completely outside the Corps' control. Unlike New Orleans and Philadelphia, Baltimore signs the draft permit before sending it to the applicant, thus shortening the statistical time frame. Under both methods, however, the 30-day period was exceeded.

AGENCY EFFORTS TO REDUCE PROCESSING
TIME HAVE BEEN UNSUCCESSFUL

Applicable Federal agencies, in response to recent legislation, have tried, with little success, to reduce duplication, paperwork, and delays in the permit issuance process.

The Clean Water Act of 1977 amended the Federal Water Pollution Control Act to direct the applicable agencies--including EPA, FWS, and NMFS--to enter into agreements with the Secretary of the Army (Corps) which would "minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section." The amendments also stated that,

"* * * such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit * * * will be made not later than the ninetieth day after the date the notice for such application is published * * *."

Although the amendment stated that these agreements should have been completed within 180 days (by July 1978), the memorandums of agreement were not finalized until March 1980.

The agreements, finalized during our review, may improve the permit process. Since the agreements require increased documentation for extensions of the public comment period, these extensions may become less frequent. Referrals to higher authority may also be reduced by the requirement

that the initial request and justification come from a higher agency official. In addition, specific time frames are established for all steps of the permit process.

Hopefully, these measures will help shorten processing time. However, time extensions and referrals are still possible. Also, the time frames set for routine permits--not requiring referral--are no shorter than those currently in force. Finally, the referral process, while somewhat more difficult to initiate, will still entail a series of sequential reviews which may take a year or more without violating the agreements. In short, the success of the agreements will depend on the degree to which each agency is able to improve its record for timeliness and efficiency in processing permits.

JOINT FEDERAL PROCESSING COULD BE MORE EFFECTIVE

Joint Federal processing is an informal procedure used by some Corps districts and other agencies in an effort to reduce permit processing time, eliminate correspondence, and coordinate Federal review efforts. However, in the joint processing procedures we examined, success in reducing processing time has been minimal and total processing time may even have been increased.

Under joint processing, agency representatives, usually involving the Corps, EPA, FWS, NMFS, and interested State agencies, meet periodically to review permit applications. Each of the three districts visited used some type of joint processing procedures. The New Orleans district used the joint processing meeting to review controversial applications. Noncontroversial applications were handled routinely through the mail. The Baltimore district, on the other hand, used a monthly joint processing meeting to review all applications with public notices dated the previous month. Since the agencies usually did not meet to comment on the public notices until 30 days after their publication, this procedure prohibited final agency comment on most applications until after the 30-day comment period specified by Corps regulations. However, during our visit in January 1980, the applicable agencies agreed to change their procedures to (1) handle noncontroversial applications immediately through the mail, thus limiting joint reviews to the more controversial projects and (2) include in their reviews public notices issued during the same month the joint processing meeting is held.

The limited decisionmaking authority of the agency representatives can also delay the permit process. Under some joint processing arrangements, participants are not authorized to provide final agency comments on applications. As a result, controversial decisions are deferred until higher level approval can be obtained, thus limiting the potential of the meetings as a viable means for reaching timely decisions. For example, in Baltimore FWS participants are authorized to provide favorable comments on projects but cannot officially disapprove projects. Official agency denials must be approved by the Regional Director--two levels above the joint processing meeting participants. Other agencies have fewer levels of review, but official objections must be sent from their regional offices. A Corps official said official agency objections usually do not reach the Corps district offices until 3 weeks after the joint processing meetings have been held.

OVERLAPPING FEDERAL RESPONSIBILITIES

As previously indicated, several Federal agencies have major roles in reviewing proposed dredging activities. The responsibilities and roles of these agencies are not always clear regarding specific areas of review. As a result, agencies and applicants complain of overlapping roles and duplication of efforts. In some instances, these problems have contributed to permit processing delays.

Several agencies address environmental concerns

Under current regulatory procedures, environmental impacts of proposed dredging activities are evaluated by the Corps, EPA, FWS, and NMFS. The roles of these agencies are discussed below. The authorizing legislative authority is addressed in chapter 2.

Corps decisions on permit applications are based on public interest reviews which consider several factors, including conservation, general environmental concerns, fish and wildlife values, and water quality. For the most part, Corps districts rely on the advice of Federal environmental agencies regarding the potential impacts of proposed activities. However, the districts employ environmental specialists who also assess environmental impacts. Some of the specific impacts assessed by Corps environmental specialists include aquatic and terrestrial habitat, biological productivity, and water quality.

EPA's authority for reviewing dredging applications is based on the Federal Water Pollution Control Act Amendments of 1972 and the Marine Protection, Research, and Sanctuaries Act of 1972. Corps permits for discharges of dredged material in inland and ocean waters are subject to EPA guidelines and can be vetoed by EPA. In reviewing dredging proposals, EPA's role is to ensure adherence to its guidelines. The major objectives of the guidelines are to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Specific areas of concern include physical and chemical components of the aquatic ecosystem, communities and populations of organisms dependent on water quality, and human use characteristics.

FWS' responsibilities for reviewing permit applications stem from various provisions of the Fish and Wildlife Coordination Act, the Estuarine Protection Act, and the Endangered Species Act. Basically, FWS' role is to protect and preserve noncommercial fish and wildlife species and their habitats. Agency guidelines provide that FWS ensure that works, structures, and activities in navigable waters are the least ecologically damaging alternative and safeguard the environment from degradation. Specific factors assessed by FWS in reviewing dredging applications include plant species in the area, type of wetland involved, fish and wildlife resources within the area, and the biological significance of the area.

NMFS' authority for reviewing dredging permits stems from laws such as the Fish and Wildlife Coordination Act and the Fishery Conservation and Management Act. Also, in 1970 the President signed Reorganization Plan Number 4, transferring certain fishery responsibilities from the Department of the Interior to the Department of Commerce. NMFS' basic responsibility in reviewing dredging applications is to determine the probable impacts on marine, estuarine, anadromous, and commercial fishery resources and their habitats. Although NMFS does not have national guidelines pertaining to its reviews, regional guidelines and criteria have been developed for proposed wetland alterations in the Southeast region. According to these guidelines, some of the general considerations NMFS applies to dredging proposals are the extent to which the activities would directly affect production of fishery resources and the extent of adverse impacts that could be avoided through project modification or other safeguards. Specific considerations applied include impacts on fish and shellfish resources, the presence of endangered fishery resources, and the biological significance of affected areas.

Overlap between FWS and NMFS

Federal officials and applicants we interviewed indicated overlap and duplication in roles of FWS and NMFS. Although FWS is concerned primarily with freshwater sport fisheries and NMFS with marine commercial fisheries, both agencies receive all public notices regarding dredging applications and often perform the same tests on the same environment. In some instances, when one of the two agencies does not provide comments on a proposed activity, it endorses the other agency's views as representative of both.

FWS and NMFS officials indicated that processing delays may occur when one agency offers no objection to a proposal, while the other agency objects. In such instances, the Federal position appears conflicting since two agencies which review similar factors disagree on potential adverse impacts related to those factors. This problem was discussed during public hearings on problems related to obtaining oil and gas permits and confirmed during our analysis of dredging permits. An example of this situation is shown in the Weaver Oil and Gas Corporation application, appendix I.

Since both FWS and NMFS receive all the public notices issued by the Corps, a large workload is placed on both agencies. Nationwide NMFS statistics show that NMFS is not adequately handling this workload. For example, during fiscal year 1979 NMFS did not review 1,531 section 10 or section 404 permits (12.8 percent of total received) because of staff and funding limitations. In these instances the Corps made final determinations without NMFS comments. An additional 6,957 (58 percent) received only minimal handling-- they were given cursory reviews, screened out as not requiring responses, or no actions were taken.

FWS also has difficulty handling its workload. In its fiscal year 1980 budget justification, FWS states that

"* * *at present the Service takes no action on approximately 56 percent of the permit actions which it receives for review due to funding and manpower constraints."

According to NMFS and FWS officials, problems such as these are partly to blame for the agencies' records in adhering to the 30-day commenting time frame for public notices on dredging applications.

CONCLUSIONS

The procedure for issuing dredging permits has evolved over the years into a complex process which involves multiple agency review requiring several months. Because decisions are based on the public interest, the Corps and other agencies try to weigh concerns which, while important, are difficult to address in a timely and routine manner. The Corps, in an effort to properly address all the issues involved, has developed regulations that express concern for both the public interest and for timely decisions on dredging applications.

The Corps and other Federal agencies have tried to shorten processing time. The Federal agencies' continuing efforts to develop memorandums of agreement and the Corps' effort to obtain more complete initial information from the oil and gas companies may provide some benefits, but further efforts are needed if processing time is to be significantly shortened.

Dredging permits are not being processed within the time frames specified by law and Corps regulations. The responsibility for lengthy processing time is shared by the Corps, other Federal agencies, and the applicants.

The Corps district offices do not summarize permit processing data and consequently do not know how much time it is taking to send out public notices and issue final dredging permits. In both instances they exceed the time frames specified by Corps regulations. Summarizing periodically the time it takes to complete these two processing steps should highlight problem areas and thus encourage the Corps to better manage these two aspects of the permit process.

Other Federal agencies often have not commented within the Corps' recommended 30-day period and routinely request and receive time extensions. Applicants have also been slow in responding to additionally requested information. Seldom are agency time extension requests justified by "unusual circumstances" as required by Corps regulations. Agencies usually state that they need more time to visit the project site or that, because of limited staff, they have not had time to review the applications. If time extensions were approved only in actual unusual circumstances, the frequency of approved extensions would be reduced.

Because of similar roles, FWS and NMFS efforts appear to be and sometimes are conflicting or duplicative. There

are opportunities for reducing these duplicating and conflicting efforts, while providing better application review coverage and reducing permit-processing time. One approach would be to more clearly define the responsibilities of each agency to the extent that both agencies would not review the same applications.

While many of the delay problems could be alleviated through internal measures directed toward closing the gap between time frames cited in Corps regulations and actual processing time frames, other problems are more difficult to solve. The involvement of numerous agencies with differing goals and responsibilities makes the process too complex to realistically expect a significant decrease in permit processing time without a major change in the way permits are issued. Changing the system would shorten the time frames but could also reduce the amount of consideration given to important environmental issues.

Therefore, any major change in the process should be carefully weighed for its potential effects on areas such as the environment, fish and wildlife, and historic values.

RECOMMENDATIONS

We recommend that the Secretary of the Army direct the Chief, Corps of Engineers, to shorten permit processing by

- directing Corps district management to periodically summarize the time required to issue public notices and require adherence to the 15-day time frame established by law,
- establishing criteria for approving time extensions which are based on the complexity of the issues involved in the applications, and
- directing district management to (1) periodically summarize the time required to issue permits once all public comments are received and (2) adhere to the 30-day limit required by Corps regulations or indicate why the 30-day time frame should be lengthened.

We recommend also that the Secretary of the Interior and the Secretary of Commerce direct the Fish and Wildlife Service and National Marine Fisheries Service, respectively, to more clearly delineate areas of review to help avoid duplication of effort and enable them to review a larger percentage of total dredging applications.

We recommend further that the Secretary of the Interior, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, direct the Fish and Wildlife Service, the National Marine Fisheries Service, and the Environmental Protection Agency, respectively, to justify, on the basis of the complexity of the issues involved in the applications, all requests for additional time (exceeding 30 days) to comment on applications.

AGENCY COMMENTS AND OUR EVALUATION

The Departments of the Army, the Interior, Commerce, and the Environmental Protection Agency commented on this report. All four Federal agencies agreed that faster processing was desirable and that they were taking steps to achieve this goal. In particular, the agencies believed that the memorandums of agreement between the agencies, finalized during our review, will help satisfy the concerns expressed in the recommendations of this report. (See pp. 27-28.)

In our opinion, the success of the memorandums of agreement will depend on the spirit of cooperation among the agencies and the ease with which time extensions and referrals to higher authority are obtained. Hopefully, the new agreements' requirement for increased documentation will discourage routine extensions of the public comment period. The referral process may also be improved by the introduction of clear time limits and the requirement that the initial request and justification come from a highly placed agency official.

While the agreements establish specific time frames for all phases of the process, the time frames for routine applications--not requiring referral--are no shorter than those in force during our review. Any major savings in time, therefore, will occur only if the agencies achieve a better record of meeting the time frames than they have in the past. Since the agreements provide for exceptions to the time frames for both the public comment period and the period for final Corps processing, the degree to which the agencies' records will improve is uncertain.

The agreements set clear time frames for the process of referral to high authority, but this process will still be quite lengthy. For a permit which is referred through all levels to the Secretary of the Army, the time frames allow over a year. The threat of this lengthy procedure may be sufficient to induce applicants to prolong negotiations at the local level. While negotiations may produce valuable results, it is not certain that they will be completed more rapidly through the new agreements.

The new agreements are a step in the right direction, but much remains to be done. The involvement of several agencies with differing goals and responsibilities makes a significant decrease in processing time a challenge which will be difficult to meet, unless our recommendations are followed.

In addition to their remarks on the new memorandums of agreement, the agencies provided the following comments.

The Corps

While the Corps generally believed the report to be "well-researched" and "overall a fair portrayal" of the permit process, they also emphasized that the possibilities for rapid processing are limited by (1) the increasing number and complexity of laws affecting dredging and (2) the role of the States in contributing to lengthy permit processing times. Concerning the first point, we believe that chapter 2 of this report adequately emphasizes the impact of legal developments on the process. Concerning the second point, we did not review State permit procedures for two reasons. First, it is difficult to generalize about State permit certification activities, since each State has its own procedures. Second, the requestor specifically asked us to review the impact of Federal agencies and laws on the permit process.

The Department of the Interior

Among other things, Interior emphasized the limitations which lack of staffing and funding placed on the Fish and Wildlife Service's ability to provide timely comments on public notices. This point is addressed on page 25 of this report. While the Department believed that the memorandums of agreement will help solve many of the problems of the permit program, it also felt that the program would be improved if the Corps took a more active role in negotiating with the applicants and the Federal agencies. In the Department's opinion, negotiation is "* * *the most effective means of developing proposals that meet the objectives of both the applicants and the various laws."

The Department further stated that,

"* * *any procedures that prevent negotiation with applicants (such as completely inflexible time limits) could and probably would result

in a large number of recommendations for denial and an increase in adverse impacts from permitted activities."

While agreeing that requests for time extensions should be justified, the Department noted that extensions should be justifiable on the basis of the need for additional information, the complexity of the analysis required, delays in receiving public notices, or staffing needs.

We agree that useful negotiations with applicants should not be prevented by "inflexible" time limits. However, the agencies should avoid unnecessary time lapses in the negotiating process and improve their record for meeting the time limits for public comments. While this report does not support inflexible time limits, it does suggest that the agencies should remedy the present situation. Currently, time extensions are common and require little or no written justification. As our recommendation states, time extensions should be justifiable on the basis of the complexity of the issues involved in the applications. This would cover unforeseen but necessary tests and requests for additional information. However, if staffing needs are routinely used for justification, the average time for public comment may not improve significantly.

According to the Department, overlapping jurisdiction and responsibility between FWS and NMFS can only be eliminated through a change in the law.

We believe that more complete and timely coverage of applications could be achieved through better coordination between FWS and NMFS. NMFS stated in their comments on this report that increased coordination would be beneficial. We agree and believe this coordination could be achieved even without a change in the law.

The Environmental Protection Agency

EPA's comments mainly dealt with the ways in which the memorandums of agreement would help the agencies meet the recommendations of this report and improve the permit process. Our response to this issue is presented above.

EPA also emphasized that a private survey mentioned on page 1 of this report was "unverified" and "poorly controlled." As stated on page 1 of this report, the survey "* * *may reflect the applicants' unrealistic expectations for rapid processing." While we are not vouching for the quality of this private survey, we do feel

it is an appropriate example of some applicants' concern about the cost of delays in the dredging process.

National Marine Fisheries Service

NMFS generally agreed with the basic conclusion of the report and believed that the memorandums of agreement would reduce processing time and improve the decisionmaking process. In addition, NMFS agreed that establishing specific criteria for approving time extensions was a good idea, but felt that the significance of the environmental impacts of the proposal should be considered along with the complexity of the issues involved.

In our view, the significance of a proposal's environmental impact should be considered in evaluating the complexity of the issues involved in the proposal. If a proposal has major environmental impacts, the decisionmaking process will probably face complex issues. As our recommendation suggests, such cases should at least be considered for time extensions.

NMFS agreed with our recommendation concerning the avoidance of overlap between FWS and NMFS but emphasized that in many instances this overlap is apparent rather than real. We agree that not all apparent overlap does actually involve duplication of efforts. However, as NMFS notes, "increased coordination" between the services would be beneficial.

In NMFS' opinion, the greatest cause of delay is the difficulty in obtaining the information necessary for decisionmaking. NMFS cites two helpful techniques: (1) hold pre-application meetings with applicants and (2) accurately define the point at which applications are considered complete and the time limits for permit decisions begin.

We agree that pre-application meetings would be helpful in obtaining information from applicants. However, accurately defining the point at which applications are considered complete, while helpful in clarifying the responsibilities of both the applicants and the agencies, probably would do little to shorten the overall process.

NMFS also emphasized that negotiations are often valuable and generally worth the time spent on them. However, NMFS did note that "delays in negotiation result from a lack of structure and management of the negotiation process." To avoid this, NMFS suggested that better cooperation among the involved parties was necessary and that a clear negotiation plan should be written by the parties and implemented by a representative of the Corps. We agree that negotiations

need to be better managed (see pp. 17 and 18 of this report) and feel that cooperation and a clearer plan in negotiating would be helpful.

Comments raised by NMFS and the other agencies on specific points in the report are included in appendix IV, V, VI, VII, and VIII and, where appropriate, have been addressed in the report. The applicants in the selected case studies were also given the opportunity to comment. Only one applicant wished to do so.

FOUR CASE STUDIES OF
INDIVIDUAL PERMIT APPLICATIONS

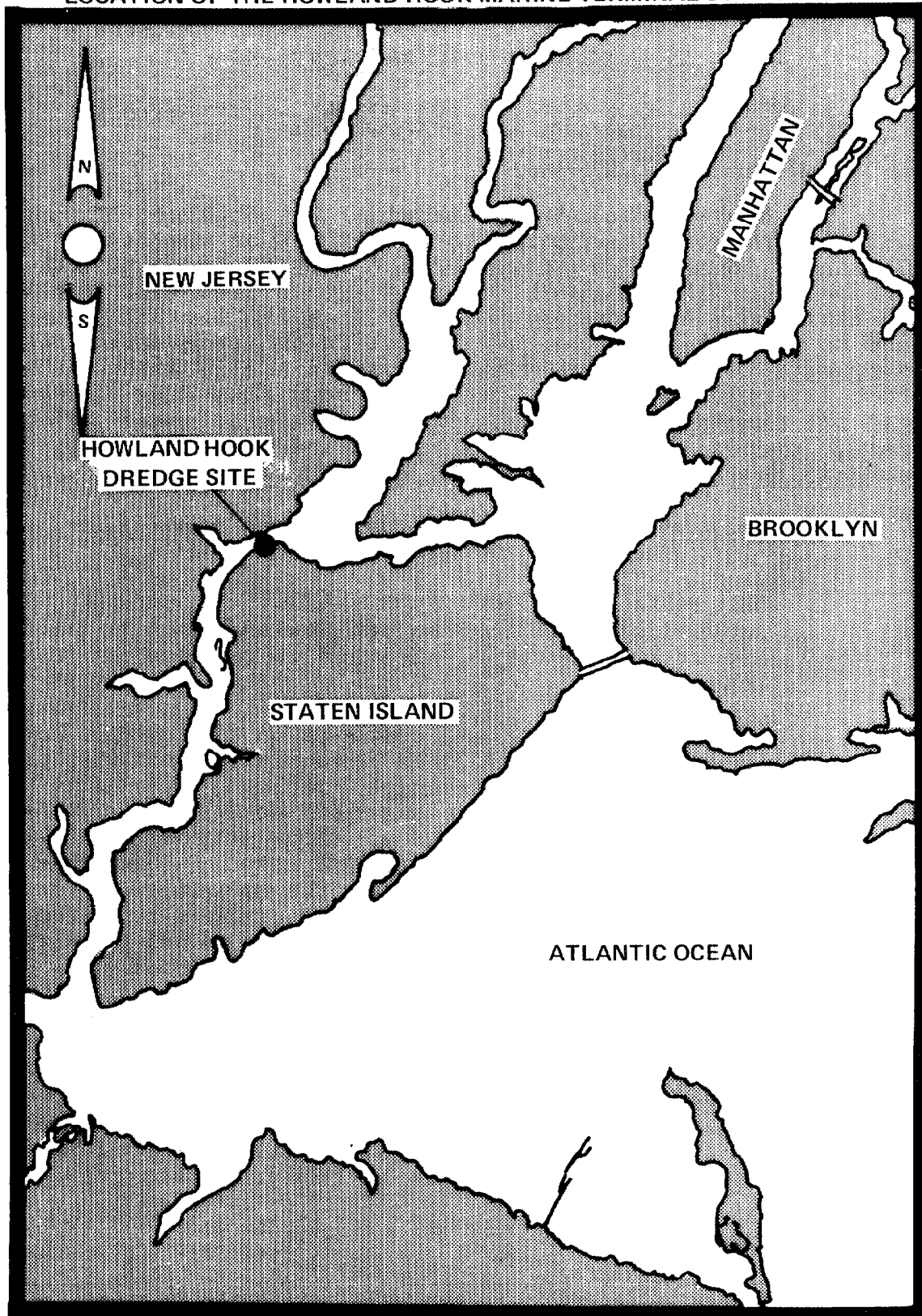
CASE A--HOWLAND HOOK APPLICATION FOR A
MAINTENANCE DREDGING AND OCEAN DUMPING
PERMIT APPLICATION #78-231

The Howland Hook Marine Terminal Corporation, Staten Island, New York, has berthing facilities on the Arthur Kill Channel. In May 1978, Howland Hook applied for a permit to dredge about 19,000 cubic yards of accumulated silt (enough to fill about 115 50-foot boxcars) from its berthing area and to deposit the dredged material in an approved ocean-dumping site. Although Howland Hook initially anticipated that it would be able to obtain the permit by June 1978, it was not issued until August 1979, over a year later. The permit process took almost 15 months and resulted in no changes to the initial dredging and disposal plan.

The reasons for the lengthy processing time fall primarily into these four categories:

1. Obtaining a complete application. It took 3 months for the Corps to ask Howland Hook to rerun one of the bioassay tests and to receive new test results.
2. Issuing and receiving comments on the public notice. After the tests had been resubmitted and the Corps considered the application complete, the Corps took 17 days to issue a public notice. A further delay occurred when FWS was slow in responding to the notice. Although the FWS asked for and received additional time over the specified 30-day comment period, no recommended changes resulted from its review. FWS took an additional 55 days before notifying the Corps by letter that they would not oppose the permit.
3. Obtaining additional information not requested when the application was initially considered complete. After all comments had been received, the Corps discovered that Howland Hook had not contrasted the ocean-dumping site with alternatives. Howland Hook took over 3 months to reply to this request.

LOCATION OF THE HOWLAND HOOK MARINE TERMINAL DREDGE SITE



4. Granting final approval and issuing the permit. Finally, after all information had been received, the Corps took 2 more months to recommend approval, obtain an authorized signature from Howland Hook, and sign and issue the permit.

The following chronology details the steps taken in processing this application.

- March 14, 1978. The Corps notified Howland Hook of the necessary documents and information needed, explained that bioassay tests of the material to be dredged were necessary, and included an EPA/Corps manual providing guidance for performing such tests.
- May 18, 1978. Howland Hook sent the application to the Corps district.
- June 6, 1978. The Corps received the application.
- July 13, 1978. A private test laboratory notified the Corps Chief, Construction Permits Section, that the bioassay analysis of three test samples showed no sublethal effects on subjects tested.
- August 2, 1978. The Chief, Construction Permits Section, asked the Chief, Water Quality Section (Regulatory Branch), to review the test results.
- August 23, 1978. The Chief, Regulatory Branch, asked the laboratory to rerun one test. He stated that the test did not meet the EPA/Corps Bioassay Implementation Manual's regulations for a proper evaluation.
- October 5, 1978. The laboratory submitted retest results.
- October 17, 1978. The Chief, Water Quality Section, notified the Chief, Construction Permits Section, that analysis of the complete laboratory reports indicated that the material was acceptable for ocean dumping.
- October 24, 1978. An internal Corps memorandum stated that the application was now complete.
- October 25, 1978. An environmental assessment was completed. The Environmental Branch stated that no environmental impact statement was required.

- November 10, 1978. The Corps issued public notice #9621.
- November 30, 1978. The EPA Regional Administrator stated that EPA had no objection to the project.
- December 7, 1978. FWS asked to extend the response date on this and several other notices to December 26, 1978. It stated that it needed more time to complete the necessary reviews, field investigations, and coordination before submitting a report on this subject.
- December 12, 1978. NMFS stated it had no objection to the project, but expressed concern that continued dumping would degrade the marine resources of the area.
- December 13, 1978. The Corps asked FWS when it would respond to this application.
- December 13, 1978. The Corps notified Howland Hook that its permit was being delayed pending receipt of (1) comments from FWS, (2) official comments from the NMFS, and (3) a State work permit.
- January 5, 1979. The Corps notified Howland Hook of further delay pending (1) a meeting between FWS and the Corps and (2) receipt of the State work permit.
- January 22, 1979. The Corps and FWS met to discuss this application and other New York ocean dumping applications.
- February 1, 1979. FWS notified the Corps (by letter) that it would not oppose the permit.
- February 8, 1979. Howland Hook sent the Corps proof of the State work permit.
- February 21, 1979. The Chief, Construction Permits Section, notified Howland Hook that a final review indicated that alternatives for ocean dumping and reasons for rejection had not been included in the application. He asked Howland Hook for a response to this issue.
- May 14, 1979. The Chief, Construction Permits Section, notified Howland Hook that the Corps had not received

its response and stated that the application would be considered withdrawn if Howland Hook did not respond within 30 days of the date of the letter.

- June 12, 1979. Howland Hook responded to the Corps' request.
- July 11, 1979. The Chief, Environmental and Economics Branch, ruled that no revisions were warranted to the November 6, 1978, environmental assessment.
- July 24, 1979. The Corps sent the permit authorization document to Howland Hook for signature.
- August 6, 1979. Howland Hook signed the authorizing document and returned it for final Corps approval signature.
- August 15, 1979. The Corps issued the permit.

The time required to issue the permit in this case created some frustration for the applicant. The applicant believed the request to contrast the disposal site with alternatives was particularly unnecessary because, in the applicant's opinion, other applicants had already adequately explored all alternatives. Since company management had expected the entire permit process to take only a few months, they were "chagrined" to find that it took almost 15 months. Because the area had not been dredged since 1976, considerable silting had occurred before the permit was issued. This silting was sufficient to cause several ships to run aground when docking.

The reasons for the lengthy processing time were varied and cannot be attributed to a single source. Both the applicant and various Federal agencies contributed to the lengthy permit processing time.

CASE B--WEAVER OIL AND GAS CORPORATION
APPLICATION #78-A-448

The Weaver Oil and Gas Corporation's February 1, 1978, application for a dredging permit required 321 days to be approved. Much of this time was spent in negotiating with Federal agencies and waiting for final Federal agency comments. While FWS eventually offered no objection to the application, NMFS' objections were not resolved.

The Corporation proposed dredging 133,540 cubic yards in connection with preparing a location for an oil and/or gas well. About 5 months after the application date, FWS officially objected, with NMFS concurrence, on grounds that severe environmental damage would unnecessarily result since a less damaging alternative was available. The alternative was to have the applicant drill directionally from a slip, thereby greatly reducing the amount of wetlands to be dredged. The applicant rejected this approach as infeasible and negotiated with FWS. As a result of the negotiations, the applicant revised its plans. On October 3, 1978, FWS offered no objection to the revised plans.

NMFS did not concur with the agreement between FWS and the applicant and recommended denial unless the project could be further modified. NMFS recommended that the applicant dredge a drilling slip to an existing canal or slip and drill the well directionally.

Although the applicant requested that NMFS remove its objections because the matter had already been resolved with FWS, NMFS refused, stating that it had no biological basis for removing its objection. However, NMFS also stated that the Corps had responsibility to consider all factors in determining final action on an application. On December 19, 1978, the Corps issued the permit.

The 321-day processing time was used in four main areas:

1. Issuing the public notice. The Corps did not send the public notice until 43 days after the date of the application.
2. Receiving final Federal agency comments on the initial application 120 days after the public notice was issued.

3. Submitting additional applications to revise the project. The applicant took 38 days to do this.
4. Receiving final Federal agency comments on the revisions. NMFS did not respond until 66 days after the public notice for the revisions had been issued.

The following chronology shows the steps taken in processing this application.

- February 1, 1978. The Corps received the application dated January 30, 1978.
- February 17, 1978. The Louisiana Wildlife and Fisheries Commission offered no objections to the application. This was the last State or local response received and all offered no objections.
- February 21, 1978. The Corps approved a preliminary assessment of environmental, social, and other factors.
- March 16, 1978. The Corps mailed the public notice and Findings of Fact, both dated March 10, 1978. The Findings of Fact indicated that an environmental impact statement was not required.
- March 30, 1978. FWS responded to the public notice. FWS requested that it be provided the basis for the applicant's selection of (1) the proposed route and (2) vertical drilling over directional drilling.
- April 17, 1978. The applicant responded to FWS, stating that alternate routes were unavailable because the lands needed for those routes were not under lease. The applicant also stated that directional drilling would substantially increase the cost of the well to the extent that it would not be economically feasible.
- May 11, 1978. The applicant again responded to FWS recommendations and supported its initial plan; however, the applicant agreed to take additional steps to reduce potential environmental damage.

- July 3, 1978. FWS provided the Corps a rebuttal of the applicant's position and recommended denial of the permit.
 - July 14, 1978. NMFS notified the Corps that FWS's recommendations represented those of NMFS.
 - August 15, 1978. The applicant submitted another application to dredge in areas adjacent to the proposed well site.
 - August 21, 1978. The applicant submitted a third application to dredge in an area adjacent to the proposed well site.
- Note: The second and third applications were submitted as revisions to the initial application. The revisions were the result of meetings between the applicant and FWS and represented a less damaging alternative.
- September 1, 1978. The Corps mailed the public notice and Findings of Fact, both dated August 8, 1978. The Findings of Fact indicated an environmental impact statement was not required.
 - October 3, 1978. FWS offered no objection on the basis that it lacked sufficient staff to review and comment on the additional application.
 - November 6, 1978. NMFS recommended that the permit be denied.
 - November 10, 1978. In a letter to NMFS, the applicant expressed its confusion that NMFS had recommended denial after the applicant had satisfied FWS's objections by revising the plan. The applicant requested that NMFS withdraw its objections.
 - November 21, 1978. In response to the applicant's November 10, 1978, letter, NMFS stated that it had no biological basis for withdrawing its objections.
 - November 30, 1978. The Corps issued a Findings of Fact before issuing the permit.

--December 6, 1978. The Corps mailed a draft permit to the applicant.

--December 19, 1978. The Corps mailed the final permit to the applicant.

Although several factors contributed to the lengthy processing time, the most time-consuming factor was the controversy over the environmental sensitivity of the dredging site. Partially because of this sensitivity, the Corps, NMFS, and FWS all required a significant amount of processing time.

CASE C--TOWN OF LEIPSIC
APPLICATION #77-0076

The dredging permit application of Leipsic, Delaware, is a case when processing was slowed by negotiations between Federal agencies and the applicant. It took 173 days to negotiate an agreement between the applicant and the Federal agencies.

The application, which was submitted on December 27, 1976, requested a permit to dredge about 375 cubic yards of silt and sand from an existing drainage ditch. However, the drainage ditch was located in an environmentally sensitive tidal salt marsh, and the Corps concluded that the dredging would remove about 5,000 square feet of this salt marsh habitat. In addition, disposal of the dredged material on the remaining marsh would further adversely impact the habitat.

Consequently, the commenting Federal agencies--EPA, FWS, and NMFS--all raised objections to the project and proposed several modifications and conditions. A 5-month negotiation period followed, with the applicant answering Federal objections and modifying the project. The modified application was eventually approved, but the process required more than a year to complete.

The 1-year processing time was used in four main areas:

1. Completing the environmental assessment. The Corps took 49 days to provide this.
2. Issuing the public notice. This required 72 days from the completed application date.
3. Receiving agency comments. Final EPA comments were not received until 77 days after the public notice had been issued.
4. Negotiating with Federal agencies. The negotiations were not completed until 173 days after the last agency comment had been received.

The following chronology shows the steps taken in processing this application.

--December 27, 1976. The Corps received the application.

- January 18, 1977. The Corps considered the application complete.
 - March 8, 1977. The Corps completed the environmental assessment.
 - March 31, 1977. The Corps issued the public notice.
 - April 8, 1977. The Delaware geological survey was performed.
 - April 27, 1977. The Fish and Wildlife Service requested additional time for comments.
 - April 30, 1977. The public notice commenting period closed.
 - May 19, 1977. NMFS recommended permit conditions.
 - June 3, 1977. FWS recommended several permit conditions.
 - June 16, 1977. EPA recommended several permit conditions.
- (Negotiation period between applicant and objecting agencies.)
- December 6, 1977. All issues were considered resolved.
 - December 19, 1977. The Corps prepared a Findings of Fact.
 - January 16, 1978. The Corps issued the permit.

The lengthy negotiation period resulted, in part, from the environmental sensitivity of the dredge and disposal site. While the Federal agencies' objections were resolved, the negotiation process proved time consuming. In addition, the Corps took considerable time to complete the environmental assessment and issue the public notice.

CASE D--CECIL COUNTY
DEPARTMENT OF PUBLIC WORKS APPLICATION #76-699

The June 11, 1976, application of the Cecil County (Maryland) Department of Public Works was issued only after time-consuming project modifications failed to satisfy objecting agencies. Although the modifications were considered insufficient by the agencies, the Corps issued the permit on the basis that the expected benefits were greater than the expected detriments.

The project was designed by the Soil Conservation Service, Department of Agriculture, in an effort to reduce flooding conditions in the area. The proposal involved dredging a channel 1,200 feet by 18 feet to a depth of 3 to 4 feet below mean low water. The approximately 4,500 cubic yards of silt and sand to be dredged would be deposited on adjacent wetlands.

FWS and EPA objected that the project would destroy wetlands and thereby reduce the area as a wildlife habitat. After trying to answer many of the agencies' objections, the applicant agreed to modify the project. About 8 months passed before the applicant submitted a modified application. Although EPA and FWS maintained their objections because the project involved the destruction of wetlands, both agencies indicated that they would not ask that the application be referred to a higher level for resolution. The Corps issued the permit 721 days after the application had been submitted.

The lengthy processing time was used primarily in these areas:

1. Receiving Federal comments. EPA did not respond until 48 days after the public notice had been issued, while FWS did not officially request project modifications until 81 days after the public notice had been issued.
2. Revising the project plans. The applicant submitted revisions 229 days after FWS had requested project modification.
3. Receiving Federal comments on revised plans. FWS took 68 days to officially notify the Corps that

it would maintain its objection, while EPA did not officially respond for 92 days.

4. Preparing an environmental assessment. The Corps released its assessment 191 days after EPA had responded to the revised plan.
5. Receiving final response from the FWS. FWS required 33 days to register its continued objection to the project.

The following chronology shows the steps taken in processing this application.

- June 11, 1976. The Corps received the application.
- July 9, 1976. The applicant provided additional data to complete the application.
- July 29, 1976. The Corps issued the public notice.
- August 3, 1976. FWS requested an extension of commenting time.
- August 30, 1976. The public notice commenting period closed.
- September 15, 1976. EPA recommended that the project be redesigned.
- October 4, 1976. The applicant explained the project, tried rebuttal, and requested the agencies' approval.
- October 7, 1976. FWS requested an additional 2-week extension for comments.
- October 18, 1976. FWS requested project modification.
- June 15, 1977. The applicant submitted revised plans.
- July 12, 1977. The Federal agencies visited the site.
- August 22, 1977. FWS maintained its objection to the project.
- September 15, 1977. EPA maintained its position that the project was unacceptable.

- September 28, 1977. The applicant responded to the renewed Federal objections.
- November 30, 1977. The Maryland Department of Natural Resources recommended that the project be approved.
- March 24, 1978. The Corps approved the environmental assessment.
- March 24, 1978. The Corps notified FWS that it intended to issue the permit.
- April 26, 1978. FWS maintained its objections and recommended permit conditions.
- May 31, 1978. The Corps issued the permit.

Although the longest single delay (229 days) occurred when the applicant was revising the proposal, several other delays contributed to the 721-day processing time. The Corps spent a lot of time preparing the environmental assessment, while the Federal agencies took much longer than the 30-day period Corps regulations suggest for officially responding to public notices. Despite the considerable time spent, some agency objections were never resolved.

SELECTED LIST OF FEDERAL
STATUTES AND AGENCIES GOVERNING THE
DREDGING PERMIT PROCESS

The following three acts are the principal Federal statutes which give the Corps of Engineers authority over the dredging permit process. The most significant section--in terms of specifically mandating the Corps' authority--is noted in each case.

<u>Major acts</u>	<u>Major sections</u>
The Rivers and Harbors Appropriation Act of 1899 (Ch. 425, 30 Stat. 1121, 1151).	Section 10 requires approval from the Corps of Engineers for several activities--including dredging--in or affecting the Nation's navigable waterways.
The Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500, 86 Stat. 816, 884). Note: Amended by the Clean Water Act of 1977 (Public Law 95-217, 91 Stat. 1566, 1600).	Section 404 designates the Secretary of the Army acting through the Corps as permitting authority--subject to certain specified requirements--over the discharge of dredge or fill materials in the waters of the United States.
The Marine Protection, Research, and Sanctuaries Act of 1972 (Public Law 92-532, 86 Stat. 1052, 1055).	Section 103 provides that, subject to certain specified requirements, the Corps may issue permits for the transportation of dredged material for the purpose of dumping it into ocean waters.

Selected List of Additional Federal Statutes
(as amended) Related to the Dredging Permit Process

The Fish and Wildlife Act of 1956
(Ch. 1036, 70 Stat. 1119)

The Fish and Wildlife Coordination Act of 1958
(Public Law 85-624, 72 Stat. 563)

- The Migratory Marine Game Fish Act
(Public Law 86-359, 73 Stat. 642)
- The Land and Water Conservation Fund Act of 1965
(Public Law 88-578, 78 Stat. 897)
- The National Historic Preservation Act of 1966
(Public Law 89-665, 80 Stat. 915)
- The Estuarine Protection Act of 1968
(Public Law 90-454, 82 Stat. 625)
- The Wild and Scenic Rivers Act of 1968
(Public Law 90-542, 82 Stat. 906)
- The National Environmental Policy Act of 1969
(Public Law 91-190, 83 Stat. 852)
- The River and Harbor Act of 1970
(Public Law 91-611, 84 Stat. 1818)
- The Coastal Zone Management Act of 1972
(Public Law 92-583, 86 Stat. 1280)
- The Marine Mammal Protection Act of 1972
(Public Law 92-522, 86 Stat. 1027)
- The Endangered Species Act of 1973
(Public Law 93-205, 87 Stat. 884)
- The Deepwater Port Act of 1974
(Public Law 93-627, 88 Stat. 2126)
- The Fishery Conservation and Management Act of 1976
(Public Law 94-265, 90 Stat. 331)

Major Federal Agencies Involved in the
Dredging Permit Process

- The Corps of Engineers, Department of the Army
- The Fish and Wildlife Service, Department of the
Interior
- The National Marine Fisheries Service, Department
of Commerce
- The Environmental Protection Agency

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U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
 Room 1334, Longworth House Office Building
 Washington, D.C. 20515

June 19, 1979

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Honorable Elmer B. Staats
 Comptroller General of the U.S.
 General Accounting Office
 441 G Street
 Washington, D.C. 20548

Dear Mr. Comptroller:

As part of a joint effort with the House Committee on Public Works, the staff of the House Merchant Marine and Fisheries Committee is undertaking a comprehensive review of all regulatory procedures pertaining to the acquisition of dredging permits in American Ports and Waterways. I am writing to request the assistance of your staff in this important effort.

As it now stands, multiple Federal agencies and conflicting Federal statutes govern the dredging permit process. As an initial step, it is requested that your staff survey the agencies and statutes involved and enumerate them. In addition, it would be appreciated if your staff would also review the entire application process, attendant bureaucratic delays, and actual case histories to determine where delays and problems arise. Your findings will be of value to the Committee staff in completing this project, and will help save valuable time. Any recommendations which you can proffer as to means by which the regulatory process can be short-circuited will also be useful.

Our objective is to develop appropriate legislation which will eliminate delay and obviate the expensive regulation which now seems to haunt those who seek expeditious approval of dredging permits, and your prompt attention to this request will be helpful. Please feel free to contact

Mr. Lawrence J. O'Brien, Jr., Chief Counsel of the
House Merchant Marine and Fisheries Committee, on
this matter at 225-8183.

With kindest regards,

Sincerely,


JOHN M. MURPHY
Chairman



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310

REPLY TO
ATTENTION OF

21 MAR 1980

Mr. Henry Eschwege
Director, Community and Economic
Development Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

This is in reply to your letter of 14 February 1980 to the Secretary of Defense regarding your draft report on "Permits Authorizing Dredging Projects Could Be Processed Faster Through Managerial Changes," OSD Case #5384, GAO Code 080510.

We believe your report should be revised to place in better perspective two factors that contribute to lengthy processing time -- fundamental changes in national objectives as reflected in new laws that have impacted the permit process and the role of the states. Your report does enumerate the many laws that impact on the permit process, but we believe that the report could expand on how their required procedures and judicial interpretations contribute to lengthy processing time precluding reaching decisions within three and one-half months of a permit application date, in many cases. The report also fails to recognize the role of the states as a significant factor contributing to lengthy permit processing times. Section 401 of the Clean Water Act and Section 307 of the Coastal Zone Management Act require state certification procedures as prerequisites to the Corps granting certain permits. These certifications are not always made in a timely manner.

Your report recommends that Corps district management be directed to periodically summarize the time required to issue public notices and require adherence to the 15-day time frame established by law.

Some of the delays you observed in issuance of the public notice may not have been measured from "the date an applicant submits all the information required to complete an application" (emphasis added, Section 404(a) of the Clean Water Act). Furthermore, a typical application could require the following action before a public notice can be issued:

- a. Review for completeness (there are 37 items on the standard checklist which the Corps, review agencies, and the public have found to be necessary for evaluation of the proposal).
- b. Perform a preliminary environmental assessment on the need for an EIS pursuant to the National Environmental Policy Act.
- c. Check the National Register of Historic Places for any listed properties in the vicinity of the work pursuant to the National Historic Preservation Act.
- d. Identify any endangered species or wild and scenic rivers that might be affected pursuant to the Endangered Species Act and Wild and Scenic Rivers Act.
- e. Make a preliminary decision on whether or not a public hearing will be announced in the public notice pursuant to Section 404(a) of the Clean Water Act.
- f. Check to see if any or all of the proposed work is covered by a general permit.
- g. Check for any unauthorized work already accomplished.
- h. Decide if state certification is required under the Clean Water Act or Coastal Zone Management Act.
- i. Develop a meaningful description of the work and its purpose.
- j. Identify floodplain and wetland impacts.
- k. Discuss application of EPA guidelines and criteria required by law.
- l. Type, staff, sign, reproduce, and distribute notice.

To perform the above in eleven working days is a challenge the Corps is striving to meet. Efforts are already underway to standardize much of the notice contents. Continuing efforts to develop general permits will allow more time to be directed at expediting notices for individual permits. The interagency agreements required by Section 404(q) of the Clean Water Act and the new Corps regulations will emphasize the 15-day requirement.

The second of your recommendations to the Secretary of the Army involves establishing criteria for approval of time extensions which are based on the complexity of the application.

The interagency agreements to streamline the permitting process as required by Section 404(q) have been finalized and are now in the process of being signed. These agreements will substantially reduce the current problems with extensions of public notice comment periods. The agreements require agencies to make written requests for extensions, supported with adequate justification. In no case will the comment period be extended to more than a total of 75 days. Although Section 404(m) of the Clean Water Act indicates the U.S. Fish and Wildlife Service is entitled to a 90-day comment period, there is no indication at this time they will claim the full 90 days.

The third recommendation in your report concerns directing management to (1) periodically summarize the time required to issue permits once all public comments are received and (2) meet the 30-day period required by Corps regulations or else provide support showing that the 30-day requirement should be lengthened.

New Corps regulations, soon to be published, will meet the objective of this recommendation. The regulations will eliminate the 30-day period to act on permits after receipt of all comments and substitute a 90-day overall requirement from issuance of public notice to decision. The change is based on Section 404(q) and the required interagency agreements. Exceptions to the 90-day limit (e.g. where an EIS is required) will be specified in both the regulations and the Section 404(q) agreements. The Corps will monitor district compliance with the 90-day notice to decision period.

Finally, we offer one specific comment. Page 7 (top paragraph) and page 21 discusses the Section 404(q) interagency agreements (MOAs). On the bottom of page 21 the report states: "Should the various review levels exceed the specified review times -- currently a frequent occurrence -- the total processing time could be significantly longer." The 404(q) MOAs stipulate time frames that the parties to the MOAs agree are maximum times upon the expiration of which either an action has been taken or will not be taken. The parties envision that these times may be extended only in those instances where permit cases involve a record of such length and/or issues of such complexity that agency review decisions could not reasonably be anticipated within the time constraints imposed. This is especially true if additional studies or research, possibly requiring public comment, are essential to the decision at hand. In this event, the agencies will consult and impose new deadlines for review consistent with the objectives of Section 404(q). These instances will be infrequent but certainly deserving of longer deliberation. Also, we anticipate that the agency agreements will be signed by the time the final GAO report is published.

In conclusion, we find the report was well researched and is overall a fair portrayal of the complex nature of the Army dredge and fill material permit program. The heart of the matter has been accurately addressed by GAO in the second to last paragraph of the Conclusion section. We wish to assure GAO that this dynamically changing program will continue to receive high visibility oversight of Corps and Army officials. Thank you for the opportunity to comment.

Sincerely,



Edward Lee Rogers
Deputy Assistant Secretary of the Army
(Civil Works)



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 27 1980

Mr. Henry Eschwege
Director, Community and
Economic Development Division
General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

Thank you for the opportunity to review a draft of your report to the Chairman, House Committee on Merchant Marine and Fisheries, entitled, "Permits Authorizing Dredging Projects Could Be Processed Faster Through Managerial Changes."

We are aware of and concerned about the delays in permit processing and are very interested in ways to reduce any unnecessary delays. Reducing permit processing time without sacrificing other objectives of the national policy such as the restoration and maintenance of water quality, fish and wildlife habitat, and other environmental values has proved difficult. It is important for everyone involved--the Department of the Army, the various reviewing agencies, and the applicant--to strive for expeditious processing of applications while recognizing that the Clean Water Act, the Fish and Wildlife Coordination Act, the National Environmental Policy Act, and related laws have more objectives than merely issuing permits as quickly as possible. We believe this report will increase the understanding of the problem.

The major flaw in the report is its lack of appreciation for the significance of the recently negotiated Memorandum of Agreement between this Department and the Department of Army pursuant to Section 404q of the Clean Water Act Amendments of 1977. We urge you to analyze this Agreement much more completely and discuss it with officials of this Department. More detailed comments are provided under "page 21" below.

Our specific comments on the report by page and paragraph follow:

Page 5, Second Complete Paragraph

The report states that certain fish and wildlife responsibilities were transferred to the Department of Commerce's National Marine Fisheries Service by Reorganization Plan 4 of 1970. The report fails to point out that the Bureau of Commercial Fisheries, a major part of the Fish and Wildlife Service, was transferred along with the responsibilities.

Page 7, First Paragraph

The report states that the 1977 Amendments to the Clean Water Act call for agreements on the permit review process between the Corps and three agencies: the Environmental Protection Agency, the Fish and Wildlife Service and the National Marine Fisheries Service. The Amendments call for agreements between the Secretary of the Army and five agencies: the Environmental Protection Agency and the Departments of Agriculture, Commerce, the Interior, and Transportation.

The paragraph also notes that the agreements have not been finalized. The agreement between Army and the Interior will probably be final before this report is released, however. Secretary Andrus signed the Memorandum of Agreement on February 28, 1980.

Page 9, Second Paragraph and Page 11, Third Complete Paragraph

The last sentence of the second paragraph on page 9 points out the confusion and frustration of applicants over the review process. We believe that the procedures described on page 11, second complete paragraph, result in much of this confusion and frustration. Reports and comments on applications are commonly sent by the Corps to the applicants who are left to resolve any objections. We believe the resolution of objections would be faster and more effective if the Corps took a more active role in negotiating solutions that are acceptable to both the reviewing agencies and the applicants.

Page 19, First Paragraph

The last sentence indicates that objections by reviewing agencies can result in very time consuming referrals to higher authorities. For accuracy this paragraph should point out that such referrals result only when the Corps rejects the recommendations of the reviewing agency.

Page 19, Second Paragraph

Although it was stated on page 14 that the 48 selected projects were selected to include only applications which took longer than 90 days to complete, it should be restated here. Someone reading this paragraph out of context could be misled into thinking that the 48 applications analyzed were representative of the total rather than having been specifically selected because of their long processing times.

Page 21, Third Paragraph

As stated in an earlier comment relative to page 7, first paragraph, the Memorandum of Agreement between Army and the Interior will be finalized before this report is released.

Page 21, Last Paragraph

The new Agreement has two features specifically developed to shorten processing time and improve the management of the program. First, specific time limits are imposed on both reviewer and the Corps in processing permits.

Second, only major permits (those where an EIS is involved) may be automatically referred to Washington. For others to reach the Washington review level the Director of the Fish and Wildlife Service must document to the satisfaction of the Chief of Engineers that a) a violation of policy has occurred, or b) issuance of the permit and subsequent similar permits would cause significant cumulative impact, or c) there is significant impact for the individual permit. This is a significant departure from the past when an FWS Regional Director could request that any permit be elevated to Washington for review by the Chief of Engineers and the Under Secretary of Interior if not denied or certain conditions met. The old procedure did not cause an excessive number of permits to come to Washington, but, coupled with the lack of time limits, it caused difficult permits to languish during lengthy negotiations before the Corps would find an acceptable compromise, deny the permits, or elevate to Washington. Our new Agreement should help immensely.

To keep the discussion of reviews by higher authorities in perspective, it should be pointed out that well below 1% of the applications are subjected to such reviews. Out of tens of thousands of permit applications each year, only 10-12 are normally referred to Washington (only three in 1979).

Page 25, First Complete Paragraph

We believe that the extreme workload relative to the available manpower and funding is an extremely important factor in the problem of timely action. Some time extensions are requested because no personnel were available for earlier investigation of the application. This aspect should be more thoroughly analyzed and given greater emphasis in the report.

Page 27, Recommendations

We agree that requests for additional time to report on permit applications should be justified; however, the complexity of the application should not be the only basis for justification. In some cases the application may be simple while the analysis needed to determine the impacts is quite complex, additional information from the applicant may be needed to understand the proposal or its effects, or personnel to conduct the investigation may be unavailable during the initial 30-day period because of heavy work load. As the draft report points out, there may even be delays in receiving the public notice.

When the Fish and Wildlife Service objects to a permit application, alternatives are frequently suggested. Developing such alternatives can be a rather complex process requiring additional time. Overly strict adherence to the 30-day requirement could prevent the investigation and reporting of even more applications than the present situation, prevent efforts to find mutually acceptable alternatives, and could result in a greater number of recommendations for denial.

The draft report recommends that the Secretaries of the Interior and Commerce take actions to delineate areas of interest in order to avoid duplication of responsibilities by the Fish and Wildlife Service and the National Marine Fisheries Service. The responsibilities of the agencies are specified by law (see Reorganization Plan 4 of 1970). The jurisdictions and responsibilities are divided primarily on the basis of resources such as sport fisheries versus commercial fisheries which frequently occur in the same area. Only changes in law can eliminate the overlapping jurisdiction and responsibilities.

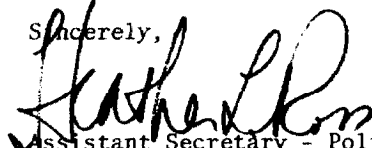
In conclusion, we would like to emphasize that any procedures that prevent negotiations with applicants (such as completely inflexible time limits) could and probably would result in a larger number of recommendations for denial and an increase in adverse impacts from permitted activities.

Negotiation with applicants is the most effective means of developing proposals that meet the objectives of both the applicants and the various laws. The end result is the protection of the Nation's resources, while allowing needed developments. We encourage the Department of the Army, as the program manager, to take a direct and active role in negotiations to resolve objections of reviewing agencies in a timely manner.

We would like to repeat our suggestion that you take another look at the new Agreement and discuss it with the policy officials of the agencies involved in the negotiations. We are very hopeful that it will solve most of the problems identified in your draft report.

We appreciate the opportunity to provide these comments and hope they will prove useful.

Sincerely,


Assistant Secretary - Policy,
Budget and Administration

Acting



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

APR 2 1980

OFFICE OF
PLANNING AND MANAGEMENT

Mr. Henry Eschwege
Director, Community & Economic Development Division
Washington, D.C. 20548

Dear Mr. Eschwege:

The Environmental Protection Agency (EPA) has reviewed the General Accounting Office (GAO) draft report entitled "Permits Authorizing Dredging Projects Could Be Processed Faster Through Managerial Changes," and as requested have the following comments on its content.

On page iii of the DIGEST and on pages 21, 22, and 27 of the main report text, reference is made to the agreements required by section 404(q) of the 1977 Amendments to the Federal Water Pollution Control Act. The report's basic observation concerning these agreements is that (1) "...the draft agreements, if unchanged, probably will do little to reduce processing time." We disagree. The section 404(q) agreements, for the first time, place specific deadlines upon actions required of the agencies in the process of referring unresolved cases to higher authority. In the absence of such deadlines, there have been major and probably unnecessary lapses of time, between various steps of the process. We believe that the deadlines in the recently executed Corps/EPA agreement will prevent such lapses.

The GAO report, especially on page 27, appears to view the effectiveness of the section 404(q) agreement almost solely in terms of its effectiveness (or lack thereof) in expediting reviews of unresolved cases by higher authority. While we agree that these "up-the-chain" reviews should be processed as expeditiously as practicable, we believe that it is also

important to note that such cases constitute only a minuscule fraction of the 18-20,000 Department of the Army permits that are processed annually. For example, in 1979, EPA requested interagency headquarters review of only two unresolved permit cases. We suggest that the report look more carefully at the section 404(q) agreements in terms of their effectiveness in improving the processing of the vast majority of cases which do not require escalation to higher authority.

We point out also that the recently executed section 404(q) agreement between EPA and the Department of the Army contains a requirement for justification of agency requests to the Corps of Engineers for extensions of time to comment on permit applications. This feature of the agreements is consistent with GAO's recommendation on page iv of the DIGEST and page 27 of the main report text.

On page 1, the report makes reference to "a private survey" of costs allegedly resulting from lengthy processing of permit applications in the New Orleans District. Such costs, according to the survey, amounted to almost \$20 million during an eight-month period. The report somewhat mildly qualifies this figure by observing that it "... may reflect the applicants' unrealistic expectations for rapid processing." We agree that the survey reflects the biases of those who performed it in a number of ways including the manner in which the survey data were obtained and presented. If the final GAO report is to continue to make reference to this "private survey", then in all fairness it should clearly identify its source. The survey (copy enclosed) is one which was performed by the Mid-Continent Oil and Gas Association, one of the Nation's largest private oil and gas industry organizations. It was compiled from a questionnaire which was sent to 62 oil exploration, production, and pipeline companies. It is significant that only 23 companies of those responding to the survey reported any problems with delays associated with COE permits.

The survey is, in our opinion, severely compromised by its lack of standardization. For example, each recipient was asked to provide a "best estimate of the cost to your company as a result of these delays." No guidance of even a general nature was offered as to methodology for compiling these estimates. The study, moreover, did not recognize the portion

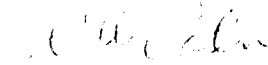
of "delay" that is attributable to applicant failure to provide complete information in a permit application or to respond in a timely way to requests for additional information. The survey's method of tabulating periods of delay is also inappropriate, in that it begins such tabulations on the day an application is first made to the Corps of Engineers, without regard to whether or not such application is a complete one. Thus, an indeterminate portion of the delays and reported costs could well be attributable to the applicants, but the survey makes no effort to recognize this or otherwise to identify the portions of costs and "delays" caused by permit applicants themselves.

In summary, we question the appropriateness of citing an unverified, poorly controlled, survey of this type as a source of cost information related to delays on permit applications. If the survey is to be cited in the final report, its limitations should be carefully explained.

The description of nationwide permits on page 12 should be expanded and clarified to recognize the two major existing nationwide permits. One of these authorizes minor discharges into all waters of the United States, subject to seven specific conditions. The second authorizes discharges, without limitation as to size or volume, into certain wetlands, lakes and streams having low volume flows, and other defined minor waters of the United States, subject to four specific conditions. These permits are defined in 33 CFR 323.4-2 and 323.4-3.

We appreciate the opportunity to comment on this draft report prior to its issuance to Congress.

Sincerely yours,


William Drayton, Jr.
Assistant Administrator for
Planning and Management

Enclosures



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE ADMINISTRATOR

MAR 19 1980

Mr. Henry Eschwege
Director
Community and Economic Development Division
U.S. General Accounting Office
Room 6146
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Eschwege:

This is in response to your letter of February 14, 1980, to Secretary Klutznick concerning the draft report entitled "Permits Authorizing Dredging Projects Could be Processed Faster Through Managerial Changes" (Report). This letter contains the National Marine Fisheries Service (NMFS) general comments regarding issues raised in the Report. Enclosed are additional detailed comments on specific sections of the Report.

1. NMFS supports Recommendation 1 for establishing specific criteria for approving time extensions. We suggest, in addition, that these criteria should consider both the complexity of the application and the significance of the environmental impacts of the proposal.

2. Recommendation 3 is based upon potential overlapping jurisdiction between NMFS and Fish and Wildlife Service (FWS). We agree there may be overlap in some areas and increased coordination between the Services would be beneficial.

There are many instances, however, where there is an appearance of double jurisdiction which does not in fact exist. For example, dredging in a fresh water river that empties into an ocean may affect commercial marine fishery resources, under the jurisdiction of NMFS, and fresh water sport fishery resources within the authority of FWS. Jurisdiction may appear to overlap because both agencies are reviewing the same data for the effect of dredging on fishery resources. Yet the temperature and flow requirements



for the marine commercial species may be different than for the fresh water sport varieties. Thus it is possible for one agency to object to a permit while the other may not, based on a review of the same data. Each review, however, serves a different beneficial purpose, and neither should be eliminated.

3. NMFS agrees with the basic conclusion of the Report that many permits can be processed more rapidly than has occurred in the past. We believe that the memoranda of agreements with the Corps which will be signed this March by the relevant Federal agencies in response to Section 404(g) of the Clean Water Act will significantly reduce total processing time as well as improve individual permit decisionmaking. The lack of strict time limits on both decision and referral has in the past allowed large time delays to be experienced at the District Engineer level. These time delays were ostensibly due to lack of agreement between applicants and Federal environmental agencies which have expressed concerns and objected to permit issuance. The agreements will place strict time limits for decision on all concerned parties and should do much to resolve the time delays problem.

4. NMFS believes the primary reason for delay has been the difficulty in obtaining sufficient information on which to make permit decisions. The Corps of Engineers (COE) and NMFS may differ on the amount of information that should be submitted with the application, and the process of compiling additional information can be very time consuming. We believe, however, that several actions can facilitate information collection. First, pre-application meetings between NMFS and the applicant to determine the scope of the project, its impacts on fishery resources, and information needed before a decision can be made -- a procedure particularly important where there may be controversy over a project's impacts on marine resources -- would significantly shorten the permit process. Secondly, an application should not be considered complete and the time limits for permit decisions should not begin to run until all requested information has been submitted. Such a procedure would clarify the respective responsibilities of the applicants and the reviewing agencies, and should facilitate submission of adequate data by the applicant as well as the permit decision.

5. The Report observes that the negotiations process between the applicant and environmental agencies substantially contributes to delay in issuing permits. Although actions can be taken to reduce these delays, there are reasons why some permits can not, and should not, be completed within the normal time frame.

Negotiation ensues when NMFS has determined that granting a permit would have significant impacts on fishery resources. There are two alternatives -- deny the permit, or alter the project to minimize the adverse impacts.


NMFS prefers the latter action. Denying a permit does not accomplish the objectives of the developer and may hamper the achievement of other national goals. Negotiation, however, may the other hand, permit development to go forward with minimal adverse impacts on marine resources.

The process of finding a compromise is in some cases necessarily lengthy. Solutions are often creative and occasionally require the collection of new data. On balance, however, we believe the results are more constructive than the alternatives of denying the permit or allowing it to go forward without adequate protection for natural resources.

Delays in negotiation result from a lack of structure and management of the negotiation process. We believe a negotiation plan should be written by the parties with assigned tasks and realistic deadlines, and implemented by a representative of COE. To be successful, of course, the full cooperation of the parties is necessary.

Thank you for the opportunity to comment on this report.

Sincerely yours,



George S. Benton
Associate Administrator

Enclosure



Howland Hook Marine Terminal Corporation
a subsidiary of United States Lines and Farrell Lines

300 WESTERN AVENUE
 STATEN ISLAND, NEW YORK 10303
 (212) 273-6500

March 12, 1980

United States General Accounting Office
 Community & Economic Development Division
 441 G Street, N.W.
 Washington, D.C. 10548

Attn: Mr. Eschwege, Director

Dear Mr. Eschwege:

With your February 14th letter we received one copy of Appendix I, "Case A Howland Hook Application for a Maintenance Dredging and Ocean Dumping Permit, Application #78-231" from your draft report to the Chairman, House Committee on Merchant Marine & Fisheries titled "Permits Authorizing Dredging Projects Could Be Processed Faster Through Managerial Changes".

For your information and/or for inclusion in your final report, enclosed is a copy of a talk about our experience given at a March 5th Congressional Breakfast titled "Problems Obtaining a Dredge Permit: Too much MUD".

Please note in your item 3, page 28 regarding time required to research alternatives to ocean disposal, that it was a long process for us to "reinvent this wheel".

Regarding the overall 1½ years required, that includes 3 months of our work before the Corps application was filed in May 1978. You of course noted just the subsequent 15 months.

I assume you will obtain related interesting information at the March 14th hearings being held by Congressman John M. Murphy & Harold T. Johnson. We have completed a questionnaire as part of the survey they are doing for the Congressional Port Caucus.

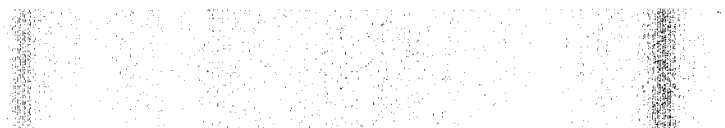
We look forward to receiving a copy of the final report in April. If we can do anything in the meantime, please call.

Very truly yours,
 Howland Hook Marine Terminal Corporation

C. Emmett King
 C. Emmett King,
 Facilities & Purchasing Engineer

CEK:cc
 encl.
 cc: C. Ragucci
 M. R. Gallo
 T. Van Houten

(080510)





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