

In Support of the State of Louisiana's Request to the Secretary of Commerce for Intervention

Statement prepared by James T. B. Tripp, General Counsel,
ENVIRONMENTAL DEFENSE FUND
257 Park Avenue South
New York, NY 10010

Statement endorsed by
NATIONAL WILDLIFE FEDERATION
6160 Perkins Rd. Suite 217
Baton Rouge, LA 70808

The Corps of Engineers is authorized by Congress to manage the Mississippi River for navigation and flood control. However, the Corps is also actively managing the River for collapse of the Mississippi River Deltaic Ecosystem, and Congress has not authorized that purpose. This on-going collapse is in turn contributing to increased instability of the navigation system, mounting vulnerability of oil and gas infrastructure and reduced vitality of Gulf fisheries, assets of national economic importance, and undermining the integrity of urban levee hurricane protection systems. Thus, the Corps' current management of Mississippi River water and sediment is actually compromising the core flood control and navigation missions of the Corps that date back to 1927.

Coastal deltaic collapse is occurring in large part because the sediment in the Mississippi River that used to be conveyed by high water River flows into the deltaic ecosystem is now confined and shunted by navigation and flood control levees to the Gulf of Mexico. In response to sea level rise and rapid sinking of the bird's foot delta, the River is depositing more and more of its sediment further north in and above its mouth. The Corps in turn is responding through increased reliance on riprap, navigational wing dams designed to confine the channel of the River, jetties that require annual maintenance and dredging practices that are designed to convey dredged sediments directly or indirectly to the Gulf. These Corps actions all reflect active management of lower River sediments for sediment starvation of the surrounding wetland ecosystem -- and thus deltaic collapse.

Upstream, the Corps is seeking to convey the River's sediment load out of the navigation channel into subsiding wetlands via diversions and pipelines – albeit all too slowly. The Corps could likewise be demonstrating that it is **not** actively managing the lower River for deltaic collapse by using the sediments that it is dredging there for environmental restoration purposes. These sediments could be used to rebuild barrier islands, to nourish existing wetlands and to raise elevations in the Barataria or Terrebonne Basins or the Central Wetlands. However, the Corps has not endeavored to design and implement such a program that uses dredged sediments for restoration. As far as we can tell, it has not made any real effort to secure significant funds from OMB or Congress to implement such a program.

The State's federally-approved Coastal Zone Management Program and its Master Plan consider the sediments that the Corps dredges as assets for restoration, not unwanted impediments to maintaining the navigation channel at the mouth. The Corps' current dredged disposal practices, in addition to actively fostering deltaic ecosystem sediment starvation, are thus inconsistent with the State's CZM statutory, regulatory and planning mandates. They are also in conflict with the Corps' own regulations in 33 CFR Part 231 that require that "least cost" disposal practices be consistent with legal and environmental requirements and Clean Water Act Section 404 regulatory prescriptions. Finally, they violate Section 7006(d)(1) of 2007 WRDA that mandates implementation of a program of beneficial use of dredged material for restoration purposes. The State is thus entirely within its legal rights to reject the Corps' refrain that its dredging practices are not inconsistent with the State's CZM program under 15 C.F.R. 932.32. The Corps' pugnacious defense of its current dredged material handling scheme is morally reprehensible, technically perverse and illegal.

Given the Corps' stance, we fervently support the State's initiative to seek the intervention of the Secretary of the US Department of Commerce to mediate in this dispute between the Corps and the State under 16 U.S.C. 1456(h) and 15 C.F.R. 930.44. Given that NOAA is playing a leading role as a member of the White House Coastal Mississippi - Louisiana Restoration Working Group, this intervention also provides the Working Group with an immediate opportunity to begin the process of redirecting federal management of the sediments of the Mississippi River away from the 20th century acceptance of deltaic collapse towards a 21st century engagement with sediment reintroduction and deltaic restoration, an orientation that is both consistent with and ultimately necessary for flood control and navigation.

We recognize that employment of the River's dredged sediments for restoration purposes will raise the federal cost of dredging the River and may impose some cost share burdens on the State in the short-term, although it will save costs of sustaining the navigation and storm protection systems on the long-term. We have made it clear to the Corps and the navigation industry that we are prepared to seek the required additional funds from OMB and Congress; indeed, we are doing so. However, our effectiveness in supporting such additional funds is undercut by the Corps' current posture. The Secretary of the US Department of Commerce deserves the opportunity to right this fundamental wrong.