

# Development of the Federal Standard

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# 1972

- During October of that year the Congress enacted the:
  - ▶ Federal Water Pollution Control Act
  - ▶ Coastal Zone Management Act
    - Provided a partial waiver of Federal supremacy at 307(c)
  - ▶ Marine Protection, Research and Sanctuaries Act



# Federal Water Pollution Control Act of 1972

- Established the Section 404 regulatory program for discharges of dredged or fill material into Waters of the U.S.
- Required that permitted discharges be certified by the state that the discharge would not violate applicable water quality standards
- Section 401(a)(6) stated, “No Federal agency shall be deemed to be an applicant for the purposes of this subsection.”



# State Reaction

- States not happy that Federal Government was being treated differently than private citizens
- Lawsuits threatened
- Congress implored by a number of states to change law



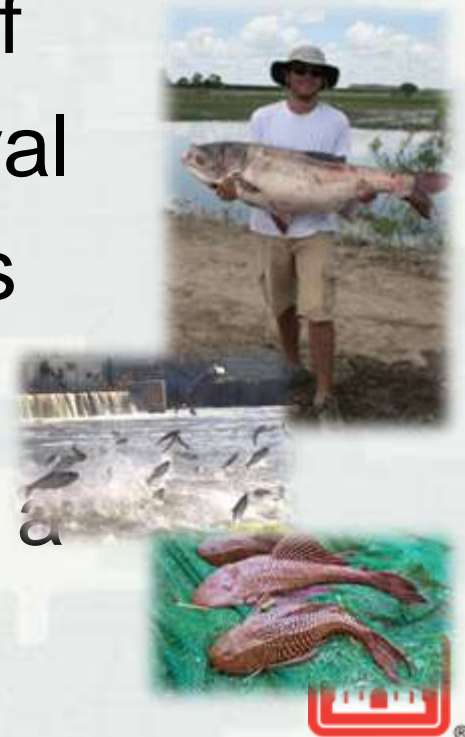
# Clean Water Act Amendments of 1977

- Amended and renamed the FWPCA the Clean Water Act
- Revoked Section 401 (a )(6)
- The revocation became a partial waiver of Federal Supremacy



# What Followed?

- Almost immediately States started adding on to water quality certifications
- About the same time several of States received federal approval of their coastal zone programs
- In 1978 the Director of Civil Works – Gen McGinnis issued a Policy Memorandum



# Policy Memorandum

- Required
  - Dredged material disposal plans be specified under federal requirements
  - States asked to pay extra
  - Excessive requirements could affect priority of work
- Memo Cited 1888 and 1954 legislation



# The 1888 R&HA

“A determination not to request maintenance funds for a project because the expense exceeds the anticipated economic benefits of continued use of the improvement is consistent with the duty imposed on the COE to apply money appropriated for improvements of rivers and harbors as may be most advantageous to the Federal Government and to discontinue appropriations for any river and harbor work which is deemed unworthy of further improvement.”



# Dredging Regulation

- In 1974 the Corps issued a dredging regulation at 33 CFR 209.145
- Following the McGinnis Memo the Corps sought to revise and update the 1974 rule
- Drafting began in 1983



# Dredging Regulations

## 33 CFR 335-338

- Vetting with the field revealed the Ops Chiefs wanted a way by which they could manage project funds while complying with reasonable state requirements
- Debates and discussions followed from 1983 through promulgation of the final rule in Apr 1988
- Regulation and Federal Standard concept were approved by the ASA(CW)



# Federal Standard

- Codified at 33 CFR 335.7
  - Captured the essence of the 1978 memo
  - Explained at 336.1(b) (8) and (9)
  - Excessive state requirements presented at 336.1(c), CZMA and WQ Cert
  - Deferral of dredging explained at 337.2
  - Reports on deferrals presented at 337.8



# Path Forward/Current Events

- Have not had a budget increase other than for inflation in over 40 years
- The new normal is doing less with less
- Deferral should be a routine course of carrying out the navigation mission
- Regulatory process is in place to support field deferral decisions



# Opportunities

- Ocean disposal
  - ▶ We place about 50-60 million cubic yards each year in ocean waters
  - ▶ Can that material be beneficially used?
- CDF Disposal
  - ▶ Traditional CDF sites are reaching or have reached capacity
  - ▶ Are there alternatives at less cost?



# Questions?



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