

TESTIMONY
OF
R. MICHAEL LYONS
BEFORE THE
SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON OCEANS AND FISHERIES
DECEMBER 14, 1999

GOOD MORNING. MY NAME IS R. MICHAEL LYONS AND I AM THE MANAGER OF ENVIRONMENTAL AFFAIRS FOR THE LOUISIANA MID-CONTINENT OIL AND GAS ASSOCIATION. MID-CONTINENT IS A TRADE ASSOCIATION WHICH HAS, FOR 75 YEARS, REPRESENTED THE OIL AND GAS INDUSTRY IN LOUISIANA. WE REPRESENT PRODUCERS, TRANSPORTERS, REFINERS, AND MARKETERS OF APPROXIMATELY 90% OF LOUISIANA'S OIL AND GAS.

WE HAVE CLOSELY FOLLOWED THE DEVELOPMENT OF ESSENTIAL FISH HABITAT (EFH) REGULATIONS OVER THE PAST 2 YEARS. UNFORTUNATELY, THE VAST MAJORITY OF LOUISIANA'S OIL AND GAS ACTIVITY IS CONDUCTED IN AREAS NOW CLASSIFIED AS EFH UNDER THE GENERIC AMENDMENT ADOPTED BY THE SECRETARY OF COMMERCE. IN FACT, THE ENTIRE GULF OF MEXICO AND MUCH, IF NOT MOST, OF LOUISIANA HAS BEEN SO CLASSIFIED. WE HAVE COMMENTED ON THE DEVELOPING PROGRAM AT EVERY OPPORTUNITY AND WILL COMMENT AGAIN PURSUANT TO THE RECENT CALL FOR COMMENTS BY THE DEPARTMENT AND NOTICED IN THE FEDERAL REGISTER.

OUR CONCERNS CAN BE SUMMED UP VERY SIMPLY: THERE IS NO NEED TO SUBJECT THE OIL AND GAS INDUSTRY TO FURTHER REGULATION IN LOUISIANA AND THE GULF OF MEXICO. OUR INDUSTRY IS AMONG THE MOST REGULATED INDUSTRIES IN THE WORLD. THERE ARE NUMEROUS PROGRAMS IN PLACE TODAY TO PROTECT HABITAT FROM ADVERSE IMPACTS ASSOCIATED WITH OUR ACTIVITIES. THESE PROGRAMS ARE ADMINISTERED BY THE EPA, COE, COAST GUARD, NMFS, USFWS, AND INDIVIDUAL STATES. IN MOST CASES, EACH OF THESE AGENCIES PARTICIPATES IN PERMIT REVIEW UNDER THESE PROGRAMS.

I HAVE WITNESSED OVER THE YEARS THE DEVELOPMENT OF TWO HABITAT PROTECTION PROGRAMS SPECIFICALLY ADDRESSING OIL AND GAS ACTIVITY: THE CORPS OF ENGINEERS 404/SECTION 10 PROGRAM AND THE

LOUISIANA COASTAL ZONE MANAGEMENT PROGRAM. I HAVE WITNESSED LONG DELAYS IN PERMITTING ASSOCIATED WITH THE IMPLEMENTATION OF EACH OF THESE PROGRAMS. ALONG WITH THESE DELAYS, AND THE COSTS ASSOCIATED THEREWITH, HAS COME EVER-INCREASING MITIGATION COSTS. THE END RESULT IN LOUISIANA IS A NO NET LOSS OF WETLANDS POLICY, APPROVED BY THE DEPARTMENT OF COMMERCE AND OTHERS, WHICH PROVIDES THAT WE REPLACE ANY WETLAND VALUES WHICH ARE ADVERSELY IMPACTED BY A PROJECT IN AREAS SUBJECT TO PROGRAM JURISDICTION. THESE ARE MINIMAL IMPACTS REALIZED AFTER WE HAVE AVOIDED AND MINIMIZED IMPACTS TO THE MAXIMUM EXTENT POSSIBLE. IN LOUISIANA, VIRTUALLY EVERY PARCEL OF EFH IS CURRENTLY COVERED UNDER ONE OR BOTH OF THESE REGULATORY PROGRAMS. IN OTHER WORDS, THE EFH PROGRAM IS, FOR LOUISIANA, COMPLETELY DUPLICATORY. INDEED, THE DEPARTMENT OF COMMERCE CURRENTLY PARTICIPATES IN BOTH THESE PROGRAMS. AS A RESULT, WE SUGGEST THAT ALL ACTIVITIES IN THESE AREAS BE EXEMPTED FROM THE REQUIREMENTS OF EFH REVIEW.

UNFORTUNATELY, HAVING EXPERIENCED THE GROWTH OF PROGRAMS LIKE THIS IN THE PAST, WE FULLY EXPECT DELAYS AND ADDITIONAL COSTS TO RESULT TO PERMITTEES SUBJECT TO THE PROVISIONS OF THE GENERIC EFH AMENDMENT. WE HAVE, IN FACT, ALREADY EXPERIENCED THESE ADDITIONAL DELAYS AND COSTS. WE OBJECTED TO THE IMPOSITION OF YET ANOTHER HABITAT PROTECTION PROGRAM IN THESE AREAS, PREDICTING JUST THESE TYPES OF UNNECESSARY IMPACTS, AND OUR FEARS ARE BEING BORNE OUT TODAY.

SEVERAL EXAMPLES (WHICH I SHALL DETAIL IN WRITTEN COMMENTS):

1. OIL AND GAS COMPANIES ARE NOW SUBJECT TO EFH REVIEW WHICH RESULTS IN DELAYS IN PERMITTING AND ADDITIONAL COSTS ABOVE AND BEYOND THE 404 AND CZM PERMIT COSTS.
2. THE COE HAS INDICATED TO US THAT EFH HAS RESULTED IN PERMIT DELAYS OF APPROXIMATELY 2 WEEKS ON AVERAGE.
3. ONE PERMIT WAS REVIEWED FOR EFH IMPACTS 182 MILES UP THE MISSISSIPI RIVER FROM THE COAST.
4. OIL AND GAS PLATFORMS IN THE GULF ARE NOW SUBJECT TO EFH REVIEW.

WE FULLY EXPECT SIGNIFICANT COSTS TO RESULT FROM THESE REVIEWS IN THE FORM OF DELAYED PERMITTING AND MITIGATION COSTS. THESE ARE, ONCE AGAIN, TOTALLY DUPLICATIVE OF EXISTING PROGRAMS IN WHICH THE DEPARTMENT OF COMMERCE PARTICIPATES.

I WAS ONCE TOLD THAT IF EVERYTHING IS MADE A PRIORITY THE NET EFFECT IS THAT NOTHING IS A PRIORITY. THE DEPARTMENT OF COMMERCE HAS, IN EFFECT, MADE EVERYTHING A PRIORITY. ONE OF OUR MAIN OBJECTIONS TO THE GENERIC AMENDMENT ADOPTED BY THE SECRETARY OF COMMERCE IS THAT IT IDENTIFIES ALL OF THE GULF OF MEXICO AND VAST AREAS OF LOUISIANA AS EFH. THIS IS CERTAINLY NOT ESSENTIAL FISH HABITAT WHICH SHOULD BE PRIORITIZED AND SUBJECTED TO ADDITIONAL REVIEW AND REGULATION. IT PLACES VIRTUALLY ALL OIL AND GAS ACTIVITY IN AND OFF LOUISIANA WITHIN ITS PURVIEW. SIGNIFICANT GOVERNMENTAL COSTS WILL UNDOUBTEDLY RESULT SIMPLY FROM REVIEWING ALL ACTIVITIES POTENTIALLY IMPACTING EFH IN THE U.S. THE ADDITIONAL PAPERWORK WILL ADD SIGNIFICANT COSTS, EVEN IF ALL THE PERMITS ARE APPROVED WITHOUT ANOTHER CONDITION. AND WE ALL KNOW THAT WON'T HAPPEN. CONDITIONS HAVE ALREADY BEEN ATTACHED TO PERMITS.

AS IF NORMAL DELAYS AREN'T ENOUGH, THERE HAVE ALREADY BEEN THREATS OF FORWARDING THE PERMITS TO WASHINGTON, D.C. FOR ADVANCED REVIEW. WE HAVE EXPERIENCED THIS BEFORE IN THE COE 404 PROGRAM. THESE DELAYS, WHILE RARE, CAN BE YEARS IN DURATION.

WHEN THE GENERIC AMENDMENT WAS PROPOSED IN 1998 WE CITED NUMEROUS AREAS OF CONCERN WITH LANGUAGE CONTAINED IN THE PROPOSAL. IT WAS OBVIOUS THAT THE DRAFTERS OF THE DOCUMENT WERE NOT FAMILIAR WITH OIL AND GAS ACTIVITIES. VIRTUALLY ALL OF THESE COMMENTS WERE REJECTED. SO, THE DOCUMENT NOW STATES IN PART: "EXPLORATION AND PRODUCTION ACTIVITIES SHOULD BE LOCATED AWAY FROM...WETLANDS..." MOST OF LOUISIANA'S OIL AND GAS ACTIVITY IS IN FACT LOCATED IN WETLANDS. THAT'S WHERE THE OIL AND GAS IS AND IF WE ARE TO PRODUCE IT, WE MUST DO IT IN WETLANDS. THERE ARE MANY OTHER EXAMPLES I COULD CITE WHERE COMMENTS WERE REJECTED BY THE FISHERYCOUNCIL, THE NMFS, AND THE SECRETARY.

TO SUMMARIZE: (1) THE DRAFT GENERIC AMENDMENT DESIGNATING VAST AREAS OF THE U.S. AS EFH IS INAPPROPRIATE. WE STRONGLY RECOMMEND THAT THE GUIDELINES BE NARROWED IN SCOPE TO THAT WHICH IS NOT ADEQUATELY COVERED BY OTHER PROGRAMS AND WHICH IS TRULY UNIQUE OR "ESSENTIAL". (2) WE RECOMMEND THAT CONGRESS REVISIT THE LAW TO NARROW THE SCOPE OF THE EFH PROGRAM. (3) WE RECOMMEND THAT INAPPROPRIATE RULES OR GUIDELINES BE REMOVED. (4) WE RECOMMEND THAT AREAS COVERED BY EXISTING FEDERAL AND STATE PROGRAMS BE SPECIFICALLY EXEMPTED FROM ADDITIONAL REVIEW.

IN CLOSING, THE EFH PROGRAM WILL ADVERSELY AFFECT, NOT ONLY OIL AND GAS PRODUCTION PROJECTS, BUT COASTAL RESTORATION PROJECTS, HURRICANE PROTECTION PROJECTS, ALL TYPES OF DEVELOPMENT PROJECTS LOCATED WITHIN JURISDICTIONAL EFH AREAS, AND A SIGNIFICANT PERCENTAGE OF LOUISIANA'S ECONOMY – AS WELL AS THAT OF OTHER AREAS OF THE U.S. IN MOST INSTANCES, THE EFFECT WILL BE DUPLICATIVE AND UNNECESSARY. WE HAVE IN PLACE TWO LARGELY DUPLICATIVE PROGRAMS PROTECTING HABITAT IN LOUISIANA, PROGRAMS IN WHICH THE DOC FULLY PARTICIPATES. WE DON'T NEED ANOTHER.