In your series on broad "systems" in resource administration, you have considered the role of the conservation organization leader, the role of the educator, and the role of the professional wild land manager, and the role of the Scientist.

I have been billed to discuss the role of the presidentially appointed executive, federal-career-administrator, but I have taken the liberty of extending adding a substantive to your list of "role-players" one whose absence illustrates the first point I want to make about it.

In succeeding sessions, you will hear about the role of the federal career administrator, and of the elected representative, but you haven't scheduled a speaker on the role of the regulator in natural resource administration.

That is what I want to talk about; your failure to list it emphasizes the point that regulation is the most un-understood aspect of resource administration in our government. Indeed, in many ways it is the most un-understood function of government generally.

So let us begin at the beginning and briefly trace—

Yet as only a moment's reflection will dispel any doubt that it is important, both historically, contemporaneously, and prospectively. Indeed—that—The-creation-of-a-board-or commission-to-assume-the-duty-of-regulating—to put the matter in perspective, consider for a moment the examples known to you of proposals for new regulatory boards in the resource field. Congressman Ottinger and Senator Kennedy of Massachusetts,
have called for the creation by Congress of a Council on the Environment. Other proposals now pending in Congress would create a Board of Land Appeals.

A few minutes on the history of this peculiar animal, the regulatory agency, might be useful. It is an often-repeated cliché that government commissions are needed to help save capitalism from destroying itself through its own abuses, but the cliché illustrates that regulation generally impinges upon a self-regulating economy. We have come so far from the notion of a self-regulating economy that in the economic sector of our society, we see statements like that of Governor Rhodes in the fullpage ad in the Feb. 26, 1968, Wall Street Journal:

Government is by definition a regulatory agency...

Government is a guideline to perpetuate the economic system that has made this nation the greatest, most powerful, and most prosperous in the world.

Regulation in the sense we now know it had its beginnings in state efforts to prohibit abusive railroad practices. The mememé Granger movement played the lead role.

The first entrance of the national government was in the Interstate Commerce Act of 1887, creating the granddaddy of regulatory agencies, the Interstate Commerce Commission. It was aimed at monopolistic practices, was the outgrowth of 20 years of legislative struggle (and, of all things, it was
initially placed in that dustbin of government functions, the Interior Department.)

A political or economic theorist would immediately recognize that regulation grew as a governmental constraint on the planning function in the private sector. Thus the broad regulatory policies of the Interstate Commerce Act against discrimination, and of the Sherman Act against monopoly and bigness.

In a way, regulation was the regulatory mechanism was a response to a-felt-needed-in-several-areas-growing complexity of the transportation (railroad) nets practices bogged down the courts struggling to regulate through the judicial process. Yet the judicial, case-by-case approach still followed by all the regulatory agencies can be traced to the first Chairman of the ICC, the renowned Judge Thomas M. Cooley of Michigan.

The Federal Power Commission, created in 1920, marked the transition from rate regulation to allocation. Its beginnings were in the Theodore Roosevelt era of the conservation movement. It took twenty years of Congressional struggle to get the Federal Water Power Act of 1920 and the original Commission was composed of the Secretaries of War, Interior and Agriculture. Licensing of water power developments on national public land and on navigable waters impinged and delimited the agency authority of the three departments whose heads constituted the Federal Power Commission, but the Congress made clear that the new Commission
was to have its own identity. In 1930 it became an independent body with five full-time commissioners. In the original act, Congress specified a policy goal -- river basin development as a legislative standard -- as between competing applicants, to grant the license to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the navigation and water resources of the region and administrative tools -- the power to prescribe a uniform accounting system, and the like.

In 1935, after the monumental FTC investigation into utility practices, the Public Utility Holding Company Act added parts II and III to the Federal Power Act, and amended part I. In section 202(a) it stated a broadened legislative purpose "of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources".

This broadens the allocative responsibility of the regulatory commission.

In 1938, the passage of the Natural Gas Act assigned to the Federal Power Commission the responsibility for administering the regulatory functions described therein; and these, too, are broadly allocative. The 1954 decision of the Supreme Court in Phillips, giving the Commission jurisdiction over producer prices makes the Federal Power Commission a major resource managing agency of this country.
How? With respect to offshore gas, and all gas which moves in interstate commerce, or is commingled with an interstate stream, the Commission's certificate is necessary for the construction and operation of the facilities; it must be sold under Commission approved rates, up to the last wholesale transaction; and it must keep its books of account in an approved manner.

In the natural gas act, the federal power act, and in most acts creating regulatory commissions, the statutory injunction is to conform with the public interest.

What is the public interest?

Originally, it seems to have had a meaning somewhat different than today's, specifically to refer to interests not private. In the course of time, it has developed to comprehend a positive aspect more allocative or elective — the term to describe the better or best of alternative choices.

As I discussed in Portland, this comes down to greater and greater concern with concepts of real economies, and with accommodation to non-economic values, as in the case of aesthetics, recreation, and the like.

What kind of an organism is it, which operates in relative independence of legislative or executive constraints? (And which, in the concept of expertise, is so favored by courts).

The Commission membership is bipartisan, staggered
terms, presidentially appointed, Senate confirmation, presidential designation of chairman.

Budget is an executive function, but bills are pending to change this.

The staff counsel role is deserving of special attention. Public interest alternatives were is their charter, and as they pursue it, they are freed of the constraint of Commission domination. Related to this is the independent corps of hearing examiners.

The broadened concept of public interest alternatives and of standing are recent judicial accretions to the public interest criterion. United Church of Christ, Scenic Hudson, and High Mountain Sheep, spell these matters out. On a more esoteric level, the Nashville Bank Merger cases, and the New England and Northwest divestiture decisions of the Supreme Court go in the same direction.

How does it function?

The basic adjudicatory model dominates the scene. This gives a cyclical aspect to policy making — damper upon changes and premium on stability. Stays the hand of the would-be innovator. Bill Henry and Newton Minow at FCC, Joe Swidler at FPC, for example, were restive under these constraints. Commission members, such as Johnson at FCC and Ross at FPC have on occasion broken the new ground.

The limitations on procedures are getting more and more
attention, particularly with respect to delay. The expanding horizons of the public-interest alternative are reactive to various sociological forces, particularly those described by Professor Reich in The Law of the Planned Society. In this connection, compare the recent District of Columbia Highway decision, the controversy about the use of National Airport, and the President's references to noise pollution.

Rule making has a less significant role, but it surely will be looked to more and more as the adjudicatory process gets more and more time consuming.

Judicial review is more significant in the regulatory process now than at previous times, as witness the cases already described. Courts are to protect the integrity of the processes, and basic constitutional fairness. Whether they give more or less attention to the presumption on favor of regulatory expertise may just depend on how they feel about the result reached.

The Federal Power Commission has a remarkable record before the Supreme Court, particularly on the gas side of its work, and on the jurisdictional gap-filling represented by Taum Sauk, Central of Jersey, etc. Florida Power and Light will be the last nail in the jurisdictional structure.

Let me wind up with a reference to the recommendatory function of the Commission -- Electric Power Reliability, Pipeline Merger, Pipeline Safety, and Recapture legislation.

The last is the most important, for it covers the
whole gamut of resource administration for the future. The 50-50 year licenses are expiring, and what role they are to play in the future is the policy question up for grabs. The Commission has recommended a practical scheme to get these questions resolved, but the question is fundamentally legislative.