

Coalition to Restore Coastal Louisiana
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Via E-mail

Admiral James. D. Watkins (Ret.)
Chairman
U.S. Commission on Ocean Policy
1120 20th Street, NW
Washington, DC 20036

Re: Supplemental Responses

Dear Admiral Watkins:

It was a pleasure and a privilege to appear before the Commission at its Gulf of Mexico Regional Meeting on March 7 and 8. The task before the Commission is vast and challenging and if we are able to be of any service to you we would be delighted to help. On that note, I received your letter of April 10 requesting some additional input on a few points. While I won't pretend to have "the answers" to your questions I will offer some thoughts that I hope are helpful to you. Let me preface my comments by noting that some of the questions go beyond the realm of issues on which the Coalition to Restore Coastal Louisiana has formal positions. But rather than parse my words unduly to hew the line of where Coalition positions leave off and my opinions begin I would suggest the following approach-- if you find a comment to be constructive and thoughtful then it should be attributed to the Coalition. If you find it to be anything else then it is my own.

In your letter you asked for some additional comments about how the Federal government might improve the connection between the regulation and restoration of wetlands in order to better manage coastal ecosystems and about how our nation's various coastal restoration needs can be prioritized on a more scientific and less political basis. That is no small task but I will give it a try.

Protecting and Restoring Wetlands as Part of Coastal and Ocean Stewardship. The crux of my presentation to the Commission was the pressing need for a more holistic approach to understanding and managing our marine and estuarine resources. Our current approach to managing those resources is characterized by disparate programs run by disparate agencies that manage select resources or resource users. The all too common result of this approach is conflict or confusion among agencies, resource users, and the public as well as degraded and less productive oceans and estuaries. Nowhere has this pattern been clearer than in the realm of wetland protection and restoration.

Wetland protection and restoration as a national priority is a fairly recent development. Prior to the passage of the Clean Water Act and the Coastal Zone Management Act the vehicles for expressing any national interest in wetlands and estuaries were few and far between—if they existed at all. Indeed, for most of our nation's history our policy was not that wetlands are something to be valued, protected, and restored but rather that they were worthless wastelands the draining and filling of which should be encouraged. Even the protection afforded them by the Clean Water Act is less than unambiguous coming as it does largely through judicial interpretation and regulatory guidance instead of clear statutory language.

Ambivalence and antipathy towards wetlands are not mere historic artifacts, their legacy is very much with us today. Even though public attitudes and governmental programs have changed dramatically in the past twenty-five years it those changes have not been translated into a coherent policy that explains the importance of our wetlands and justifies their protection, rehabilitation, and restoration. One still hears far too often that the reason wetlands are regulated is because activist courts read wetlands protection into the Clean Water Act and the reason efforts to restore coastal Louisiana and the Everglades are underway is purely politics. Indeed, the working assumption for most of the regulators we deal with is that they are administering permitting programs not protection programs. The notion that wetlands, particularly coastal and estuarine wetlands, are vital to the health of our oceans, our fisheries, our waters, our communities, cultures and economies is still not an engrained notion to many people and agencies. And even where the value is recognized it rarely drives effective stewardship action without a significant outside catalyst.

Perhaps I can use coastal Louisiana as an example to demonstrate what I am trying to say. As you know coastal Louisiana is to estuarine wetlands what Arizona and Utah are to canyons. Roughly 25% of the coastal wetlands of the lower forty-eight states and 40% of their salt marshes are found in Louisiana's coastal plain. A century ago, there were about 4 million acres of those wetlands. Today, we have about 3 million acres. That precipitous and ongoing decline is due overwhelmingly to human activities that fundamentally altered the hydrology of this region. Even after the passage of the Clean Water Act and the Coastal Zone Management Act the collapse of our coastal wetlands and estuaries continued.

The reasons for that are several but perhaps the biggest was the simple fact that many of the projects and practices implemented or encouraged over time by a litany of federal policies had unleashed a sequence of ongoing and secondary/cumulative impacts that the mere passage of new laws (such as the Clean Water Act or NEPA) could not undo or substantially alter. The mainline levees were in place, navigation channels and canals were well established, and coastal and off shore oil and gas development was a fact of life. All of those activities have their roots in policies, authorities, practices and values that predate any federal effort to protect wetlands. Without integrating all of those activities and their historic and ongoing impacts into a workable stewardship vision for this region, coastal Louisiana would continue to gallop into oblivion.

Yet for the longest time it was no one's job to do that. After NEPA was passed the Corps had to think about the effects of its practices. After the Clean Water Act it had to regulate the activities that could affect our waters and wetlands. Yet nothing triggered any responsibility for acknowledging and responding to the causes of 30-40 square miles of land loss each year. It was the recognition of that fundamental failure that led to the birth of the coastal restoration movement in Louisiana in the mid 1980s.

At that time, coastal Louisiana was in a position similar to that facing our oceans today. Our coast was in decline and in an unsustainable condition. It played host to a variety of uses and management regimes, some of which conflicted with others. Various aspects of the resource were managed or regulated by state and federal agencies but nothing provided a basis for encouraging or coordinating actions for the long-term benefit of the coast so it could to sustainably support all of the uses. It was a classic “deck chairs on the Titanic” situation.

Let me be clear here that the problem was not a lack of knowledge or committed individuals. Many people, including many working for state and federal agencies, recognized the problem. What was lacking was the authority to do anything about it. And without authority all of the communications, outreach, and consensus building in the world will come to little. In 1988 there was no governmental entity at the state or federal level that had been given the authority to recognize and embrace our coastal collapse as a problem to be solved. Every positive step since 1988 can be traced to successful efforts to expand the authority of state and federal agencies to take this on and to marry that authority with the resources to act and the duty to account for the results.

This is what I was trying to get across in my original testimony. No amount of program tweaking and awareness raising will substitute for empowering policies and authorities. I stress this point because it is not possible to coordinate and integrate wetland protection and restoration without a policy that makes it clear that coastal wetlands are valuable (and states why) so there can be a context for defending decisions to protect and restore them. Just as importantly, key agency players must have the authority and the mandate to carry out that policy. A policy that comes with no resources for implementation or other means of instilling an expectation of change and success is no policy at all.

We have seen that first hand. The Coastal Wetlands, Planning, Protection, and Restoration Act (the Breaux Act) is the bedrock federal legislation for pursuing coastal restoration work in Louisiana. On the plus side, it has brought the state and five federal agencies together to work in an unprecedented fashion to develop plans and projects to save our coast. It works because it states a policy, confers authority, provides funding and called for periodic congressional side.

On the minus side, the Act nobly makes environmental enhancement and restoration a program area of equal importance to navigation, flood control, and irrigation for the Corps of Engineers and requires that the Corps conduct its other activities in manner consistent with the comprehensive coastal restoration plan developed under the Act. Unfortunately it provided no funding for that coordinating function and no oversight vehicle so it has largely languished. Only in the past few months has any real effort been made to have prospective Section 404 permits reviewed by coastal restoration planners.

This failure of coordination has very real effects on the cost, scheduling, and very doability of restoration projects. Every permit creates a property right or at least an expectation that can thwart or drive up the cost of restoration projects. When multiple permits are needed for a project the opportunities for confusion and frustration are only expanded. When one looks back at the legislative fights over wetlands and fisheries regulatory programs and at the ongoing

fisheries litigation spawned by coastal restoration projects here it is clear that there is a systemic problem that needs to be addressed.

But how?, which is the question you really asked me to address. There is no pat answer to that question but there are several points that our experience suggests may help you get to an answer.

1. Establish a Clear Policy that States that Coastal Wetlands and Estuaries are Vital to the Health of Our Oceans the Well Being of the Nation. This can be a detailed policy or something as simple and effective as the “No Wetlands, No Seafood” campaign developed in North Carolina. The Essential Fish Habitat program established under the Magnuson-Stevens Act is perhaps the best framework for explicating this position right now but it is largely viewed as a creating a consultive right for the National Marine Fisheries Service rather being a clear and understandable policy statement that applies more broadly. As important as EFH may be it does not establish the value of coastal wetlands and estuaries as water purifiers, storm buffers, and natural protection for transportation and energy infrastructure, values that accrue to the benefit of our ocean resources as much as to anyone else.
2. Establish Comprehensive Stewardship Plans for Our Ocean Resources, Including Coastal Wetlands and Estuaries. These plans could serve to pull together a lot of very valuable work that is already underway under programs such as Coast 2050, the Marine Fisheries Councils, Essential Fish Habitat, the Chesapeake Bay Program, CalFed and others into a more comprehensive stewardship strategy. Let me stress that I am not suggesting recreating any of those other programs or making them subordinate to a new planning process. Nor am I suggesting that stewardship and regulatory authority are the same them Rather I am suggesting that an oceans oriented comprehensive plan could provide a context for coordinating various existing, understanding how they fit together and identifying unmet needs. From a wetlands standpoint such an approach could help establish why protecting, rehabilitating and restoring wetlands makes sense. It is a whole lot easier to explain why a permit is denied or conditioned if one can link it to fisheries production, storm protection, demonstrable water quality needs, or the accommodation of a publicly funded restoration project than it is to say “my regulations say to do this”. Such plans would provide a functional context for making decisions compelled by law or policy, encourage accountability, and take at least some measure of the politics out of permitting process.
3. Make it Someone’s Job to Oversee and Assess the Effectiveness the Stewardship Plans, Particularly the Effectiveness of Wetlands Protection, Restoration, and Mitigation. As I mentioned earlier, without a mechanism to provide meaningful oversight there is little reason to expect that bold plans, regulatory protections, and restoration project will produce much beyond frustration and cynicism. Presently, this is not being done well and when it is done at all it is done in a politically charged manner. In our region, the Gulf of Mexico Program is an excellent example of both the limitations of trying to coordinate actions without adequate authority and

resources and of an opportunity to do much more. The GOMP has for years struggled to establish a role and identity for itself but has been constrained by a political environment that has often been more focused preventing effective coordination and stewardship than enabling it. Though it has performed a number of important functions (e.g. supporting research on the Gulf's hypoxic zone) it is a program that deserves better and I would hope that one task of the Commission would be to investigate how it can be better used and supported to serve the needs of the Gulf, its resources and communities.

4. Establish the Value of Coastal Wetlands and Estuaries. Though this may be implicit in the policy statement suggested above, I think it warrants separate attention as well. I say this for two reasons. First, many of the existing navigation and flood control authorities that still hold sway date from an era in which our wetland resources were considered to be either worthless or boundless (if not both). To change the way those authorities are administered it is our experience that an affirmative statement of the value of those resources is essential otherwise programs and projects that affect wetlands and estuaries will tend to be controlled by the values and assumptions of bygone days. The second reason goes directly to the relationship between protecting and restoring wetlands. We frequently see areas that were recently allowed to be developed or destroyed, frequently with no demonstrably effective mitigation, being touted as candidates for publicly funded restoration projects. If an area is worth millions to the public to restore, it begs the question of why it was allowed to be destroyed or so poorly mitigated? In our experience, coastal wetlands are undervalued in the regulatory process and too often publicly financed restoration programs are used to substitute for effective protection and mitigation.

5. Assess the Effectiveness of Mitigation. This follows on the point made immediately above. Functional mitigation for damages to coastal wetlands is largely unproven. The dynamic nature of coastal systems coupled with the difficulty of pegging the extent of secondary and cumulative impact makes for a situation in which full and effective mitigation is the exception rather than the rule. This places both a responsibility and a burden wetland on restoration efforts. The responsibility comes from the realization that our stewardship duties to our wetland and water resources is not obviated by a failure of the regulatory process or the fact that some impacts are associated with activities that predated our protection programs. The burden comes from the very real sense that restoration efforts are at times being used to relieve certain agencies or private parties of their legal responsibilities at taxpayer expense. That sense can erode public and political support for other vitally needed restoration work.

Prioritizing Coastal Restoration Efforts. My advice on this topic is pretty much the same as I recommended above for integrating restoration and regulation. It is our experience that the best way of prioritizing national restoration efforts is to establish a context for evaluating their merits. Much of that could be done or encouraged by the comprehensive stewardship plans discussed above. In my judgment, the question of prioritizing these efforts is left to politics by default.

We really have not really tried a national value driven approach. If we as a nation are left to choosing between coastal Louisiana, Chesapeake Bay and Puget Sound then we—and our oceans-- have already lost.

By building on the foundation created by the Magnuson-Stevens Act, the National Estuary Program, the Breaux Act, the Chesapeake Bay Program, the Gulf of Mexico Program, the Estuary Restoration Act and other such programs the development of an oceans and coastal stewardship plan should be doable. Such a plan could provide guidance as to which areas are most critical (in terms of both productivity and jeopardy) to the health of our oceans. By stressing good science, public accountability, effective landscape and ecologic models, and a strong local commitment the issue of which areas deserve heightened protection or attention would be far less political. That said I am not suggesting that politics should or can be divorced from this process. Rather, an approach such as the one just outlined would relegate to the realm of politics that which is best left to that realm—the allocation of authorities and scarce resources to best pursue national needs. However, if no policy exists to establish a national interest and if no other process is devised to vet the science, establish values, and engage stakeholders we should not be surprised when the blunt tool of politics is brought to bear on questions it is least suited to answer.

I hope that these thoughts are of some value to you. I would be delighted to discuss them with you or any of the Commission staff to clarify or expand upon them. As always, it is a pleasure to be of service.

Respectfully,

Mark Davis
Executive Director