



Working to Protect and Preserve the Gulf of Mexico

839 St. Charles Ave., Suite 309, New Orleans, LA 70130
Mailing Address: P.O. Box 2245, New Orleans, LA 70176
Phone: (504) 525-1528 Fax: (504) 525-0833
www.gulfrestorationnetwork.org

Response to Follow-up Questions by the U.S. Commission on Ocean Policy to the Gulf Restoration Network

I write in response to your letter dated April 10, 2002, regarding follow-up questions related to my testimony before the Commission at its hearing in New Orleans, Louisiana, March 7-8, 2002.

1. In your group's opinion, what are the most critical changes needed at the federal level to address the major environmental problems in the Gulf of Mexico?

The most fundamental change needed at the federal level is a move away from the current crisis-oriented management approach toward decision-making that is coordinated among the various federal agencies, is adaptive, and is comprehensive. This approach must promote protection of marine species and their habitats and prevent marine pollution. Federal management programs must include proactive strategies for preserving important coastal habitats such as the establishment of additional coastal refuges, and addressing open water threats to coastal and marine resources, including threats posed by fishing, oil and gas development, shipping, and the like. Federal agencies must also be required to develop comprehensive multi-agency research programs to determine the impacts of shipping, pollution, and oil and gas activities on all marine species, including fish, marine mammals, and reptiles, and methods for minimizing those impacts. For example, to fully safeguard remaining populations of endangered and threatened sea turtles the present fragmented approach to protection efforts must be abandoned. Instead, a multi-agency ecosystem based approach to turtle conservation must be adopted that focuses on the development of comprehensive conservation programs, including strategies for preserving coastal habitats, to address all threats to sea turtles.

The Congress and the Administration must also identify needed changes in federal policy, such as flood insurance, transportation, and the like, that drive coastal habitat destruction. Federal policy must drive future development that is balanced with the need to reduce the risk of disaster, preserve marine and coastal species, and protect the valuable natural resources of the Gulf of Mexico.

Furthermore, the Congress and the Administration must make a commitment of federal resources aimed at addressing the growing threat to the Gulf's resources posed by nitrogen pollution. Broad implementation of nutrient reduction strategies, such as restoration of coastal and riparian wetlands and a strong commitment to a more sustainable approach to agriculture, must be pursued.

Finally, in the fisheries context a major overhaul of the present management system is needed. The causes of the current fisheries crisis are numerous and often interrelated. Key causes are systemic problems in the current fishery management system. Priority reforms needed to ensure sustainable management of the nations fisheries include:

- (1) Completion of a comprehensive assessment of twenty five years of the regional fishery management council system to identify strengths, weaknesses and recommendations for improvement;
- (2) Ensuring reauthorization of the Magnuson Stevens Fishery Conservation and Management Act (FCMA) contains provisions for broadening representation of the public interest on the regional fishery management councils;
- (3) Funding for fisheries research and data collection in the Gulf region commensurate to its contribution to the nation;
- (4) Amending the FCMA to require application of the precautionary approach in fisheries management, including the use of margins of safety against scientific uncertainty;
- (5) Utilizing effective strategies such as fishery observers and vessel monitoring systems to collect needed fishery management and marine ecosystem health data and ensure better fishery management regulation compliance to level the playing field for all fishermen;
- (6) Requiring federal agencies to bear the burden of proving that activities that affect the coastal environment will not have an adverse impact on fisheries habitat and increasing NMFS', as well as the Gulf Councils', ability to veto federal non-fishing related activities that are found to cause unacceptable adverse impacts to fisheries habitat; and
- (7) Amending the FCMA to develop Fishery Ecosystem Plans for major ecosystems and ensure that management action is consistent with these plans.

2. OUTLINE THE PROBLEMS CREATED BY PRESENT FLOOD INSURANCE POLICIES AND SPECIFIC RECOMMENDATIONS TO CHANGE THE SITUATION.

The National Flood Insurance Program (NFIP) was created to discourage development in dangerous flood-prone areas. The intent was to sell flood insurance policies to communities that enforced floodplain regulations and guided development away from the waters edge. Sadly, the original goal of the NFIP has largely been ignored. The availability of federally sponsored flood insurance and the expectation of entitlement to government relief if disaster occurs has instead encouraged both development and repeated rebuilding in high-risk areas. As more and more people have migrated to the coast, there has been a commensurate increase in development on at risk properties and increased vulnerability of these developments to weather-related coastal hazards. Since 1966 the number of households located in flood hazard areas has grown by 40 percent, and the cost to the nation for hazard assistance continues to rise.

Why has the NFIP failed to achieve its goal? First, present requirements of the NFIP intended to reduce flooding problems are not enforced. For instance, NFIP rules require that properties having sustained "substantial damage" be removed or elevated above the 100-year floodplain. Yet, a report issued by the National Wildlife Federation, entitled *Higher Ground: A Report on Voluntary Property Buyouts in the Nation's Floodplain*, found that "substantially damaged" structures experienced approximately the same number of losses after being damaged as they experienced before being damaged. In other words, the requirement is not being enforced. Therefore, repetitive loss properties

with federal flood insurance are generating approximately 25 percent of all loss claims and 40 percent of the total flood insurance payments. From 1978 to 1995, properties with three or more losses had total flood insurance payments of more than \$1.4 billion. Similarly, despite Federal Emergency Management Agency (FEMA) floodplain mapping intended to place persons on notice of flood risk, properties located outside the designated 100-year floodplain account for 20 percent of the repetitive loss properties studied by the National Wildlife Federation -- suggesting that NFIP's floodplain maps and ratings are substantially inaccurate.

Second, the NFIP simply does not require that development be directed away from flood-prone areas. For instance, although the structural mitigation requirements of the NFIP have resulted in fortified upward construction, they have not ensured that buildings are located landward of erosion prone areas. Continued development in erosion prone areas has resulted in increasing environmental damage and higher federal, as well as non-federal, relief costs in the aftermath of recurring hurricanes and storms.

Third, the rates charged by the NFIP remove development from normal market forces. Far too many of the rates for federal flood insurance are not actuarially sound. Insurance policies for beachfront homes along coastlines cost residents \$450 to \$900 per year for coverage that from an actuarial standpoint is worth \$10,000 to \$18,000 per year. The premiums charged simply do not proportionately reflect the sums needed to cover anticipated losses. Is it any wonder that between August 1995 and January 1998, net borrowing by the NFIP from the Treasury equaled \$810 million? These subsidized rates discourage actions to mitigate flood risk. Moreover, understating the risk encourages more people to locate in dangerous areas, exposing more assets to risk and increasing the economic loss associated with natural disasters.

Furthermore, the federal government is systematically subsidizing the cost of living in risky areas by underwriting much of the cost of building infrastructure in high risk areas, including sewage treatment plants, roads, levees and beach armaments. In essence, the federal government is encouraging people to live in high-risk areas, such as coasts and floodplains. As a result, the public and local governments have come to rely heavily on the federal government to indemnify their own poor land use decisions, individually and collectively, against inevitable flooding and disaster.

In short, the NFIP has become a financial safety net for increasingly risky development -- often in high-hazard, environmentally sensitive areas -- without measurably reducing the nation's dependence on flood relief.

RECOMMENDATIONS

- * Federal flood policy should be revised to emphasize the use of voluntary buyout options and predisaster planning to achieve significant reductions in repetitive flooding costs and foster reestablishment of important coastal habitats.
- * The NFIP must be revised to ensure that economic costs of losses are transferred from the federal taxpayer to the property owner and must discourage inappropriate development from occurring in high risk areas as delineated by FEMA or the states.
- * FEMA's flood insurance underwriting must be modified to more closely resemble the standards of the private insurance industry. Higher premiums for development would provide information to potential developers and purchasers of the relative risk of development. Also, the artificial 20 percent

annual rate increase cap, set by the 1994 Insurance Reform Act, should be eliminated, as it further hampers setting rates on an actuarial basis and establishing rates that encourage flood-risk mitigation. Additionally, rate schedules and community participation standards for the NFIP must be revised to provide increased incentives to reduce flood risk.

* The NFIP must be amended to require land use restrictions as a condition for eligibility for federal flood insurance. For example, the NFIP should be revised to require that communities incorporate land-use regulations, such as 30-year and 60-year set back, for eroding areas into the floodplain management.

* The issuance of new insurance policies should be prohibited in high risk areas and premium discounts implemented to direct development away from the water's edge.

* A consolidated and streamlined voluntary buy-out and relocation assistance program must be developed that can both react quickly to assist states and communities after disasters, and better assist states and communities to mitigate flood risk before disasters. An effective voluntary buyout and relocation option must:

- a. Combine federal, state, and local funds for one-time buyouts of high-risk properties from willing sellers;
- b. Return the purchased property to natural floodplain or open space use;
- c. Prohibit the expenditure of any future disaster assistance to that location; and
- d. Assist former property owners and tenants to move to higher ground and out of harm's ways, and, as appropriate, relocate homes and businesses outside the floodplain.

* The NFIP must be amended to include incentives for restoration of floodplain functions, the purchase of floodplain easements and wetlands and the promotion of wise floodplain management to reduce risk and protect the environment.

* The FEMA must be required to enforce vigorously the NFIP's substantial damage requirement for elevation or removal of substantially damaged buildings after floods. Additionally, the requirement should be changed to include cumulative substantial damage thresholds and to allow FEMA to make substantial damage determinations when necessary.

* Levels of funding and support for programs that provide technical assistance to states and communities for improving floodplain management and flood loss reduction activities must be increased.

* FEMA must be required to update floodplain maps more frequently and require maps to reflect reasonably foreseeable future hydrological conditions in the associated watersheds.

SOURCES

American Rivers. *Flood Insurance: A Financial Safety Net*. <http://www.amrivers.org/floodplainstoolkit/floodinsurance.htm>.

Millemann, Beth, and Kathie Dixon. *Savings and Loan of the Seas*, <http://www.foe.org/scissors95/greenpart28.html>.

National Wildlife Federation. 1998. *Higher Ground: A Report on Voluntary Property Buyouts in the Nation's Floodplains*.

Richman, Sheldon. *Federal Flood Insurance: Managing Risk or Creating It?* <http://www.cato.org/pubs/regulation/reg16n3h.html>.

Whiteman, David. "Coastal Development and the National Flood Insurance Program" in *Oceans and Coastal Resources: A Briefing Book*. Congressional Research Service Report 97-588 ENR. National Library for the Environment.

3. PLEASE PROVIDE THE REFERENCES USED TO DEVELOP THE GRN'S TESTIMONY ON WHALE POPULATIONS IN THE GULF

In the GRN's written testimony I discussed whale populations in the Gulf and the absence of information needed to determine with certainty that oil and gas activities and shipping do not have a significant adverse impact on those populations, including adverse impacts to feeding or breeding behavior. The source for our general discussion of the existence of various whale populations in the Gulf was *Sea Turtles and Marine Mammals of the Gulf of Mexico: Proceedings of a Workshop Held in New Orleans, August 1-3, 1989*, U.S. Department of Interior, Minerals Management Service, Gulf of Mexico OCS Region, OCS Study MMS 90-0009. References used in formulating our discussion of the potential impacts of these activities on whale populations were:

Gordon, J. January 2002. *Sperm Whales - Potential Concerns for Seismic Operations, a presentation at the Mineral Management Information Transfer Meeting*. Kenner, LA

Ketten, D. September, 1998. *A Summary of Audiometric and Anatomical Data and its Implications for Underwater Acoustic Impacts*. NOAA Technical Memorandum, Dolphin-Safe Research Program, Southwest Fisheries Science Center, National Oceanic and Atmospheric Administration.

Wursig, B. 1989. "Human Impacts on Cetaceans" in *Proceedings of Sea Turtles and Marine Mammals in the Gulf of Mexico*. New Orleans, LA. Pp. 39- 46.

May 24, 2001. "Oil Rigs Jostle Sperm Whales in the Gulf of Mexico". Environment News Service.

Other references that may be of interest to the Commission are:

Jefferson, T. May 1995. Ph.D. Theses on Distribution and Relative Abundance of cetaceans in the upper continental shelf of the northern Gulf of Mexico.

Wursig, B. 1990. *Cetaceans and Oil: Ecological perspectives*. Pp. 129-165 in *Sea Mammals and Oil: Confronting the Risks*. (J.R. Geraci and D.J. St. Aubin, eds). Academic Press.

VII. CONCLUSION

The Gulf of Mexico, like far too many of our ocean areas, is in serious trouble. The GRN believes that current approaches that vest authority over coastal and marine issues in numerous federal agencies, often with conflicting mandates, and focuses on individual species, activities, and areas, is simply inadequate to address the problems that we face. Only a comprehensive overhaul of the federal ocean governance structure will reverse current trends and help us to achieve sustainable ecosystem-based management of the valuable resources of the Gulf of Mexico.

Respectfully submitted,

Cynthia M. Sarthou
Executive Director