



Working to Protect and Preserve the Gulf of Mexico

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Testimony of Cynthia Goldberg, Gulf Restoration Network U.S. Commission on Ocean Policy, Gulf of Mexico Regional Meeting New Orleans, March 7-8, 2002

Thank you for the opportunity to provide testimony to the Commission on an important issue facing wetland protection in the Gulf region.

Wetlands are dynamic ecosystems that provide a number of benefits to society, ranging from supporting the seafood industry to protecting communities from the disastrous effects of flooding associated with tropical storms and hurricanes. Wetlands provide an array of commercial, cultural, recreational, and environmental benefits to people, fish, and wildlife.

Despite the fact that the importance of wetlands is well established, millions of acres of wetlands have been lost throughout the Gulf of Mexico region. Studies indicate that the Gulf region lost nearly 50% of its coastal and freshwater wetlands between the years 1780 and 1980. In Louisiana alone, coastal wetlands are being lost at an alarming rate of 25-35 square miles each year.

In recent years, the benefits provided by wetlands and the need to protect this complex natural resource have gained much recognition. Protection of wetlands was elevated in 1989 with the declaration by former President Bush that “no net loss” of wetlands was a goal of his administration. To achieve “no net loss,” a person that wishes to fill wetlands must first avoid impacts to wetlands and minimize the impacts that are unavoidable. For all impacts that are unavoidable, “compensatory” mitigation is often required to compensate for the impacts to wetland resources.

Compensatory mitigation may include activities such as restoration of degraded wetlands, creation, enhancement, and preservation of high quality wetlands. In this way, compensatory mitigation, in theory, offsets damages that occur to natural wetlands through development activities.

However, two recent studies completed by the National Academy of Sciences (NAS)¹ and the General Accounting Office (GAO)², which focused on the success of

¹ *Compensating for Wetland Losses under the Clean Water Act.*

<http://books.nap.edu/books/0309074320/html/index.html>. Copyright 2001. The National Academy of Sciences.

² *Wetlands Protection: Assessments Needed to Determine Effectiveness of In-Lieu-Fee Mitigation.* 2001. General Accounting Office. GAO-01-325.

compensatory mitigation in the wetlands permitting process, found that compensatory mitigation activities are falling far short of meeting the goal of no net loss.

I submit for the Commission's review a National Academy of Sciences report, entitled "Compensating for Wetland Losses under the Clean Water Act", released during June 2001, that outlines the deficiencies of the compensatory mitigation program. Conclusions drawn in this report include:

- The goal of no net loss of wetlands is not being met for wetland functions by the mitigation program, despite progress made in the last 20 years³;
- A watershed approach would improve permit decision making; and
- Performance expectations in Section 404 permits have often been unclear, and compliance has often not been assured nor attained.

I also submit for the Commission's review a report by the GAO entitled "Wetlands Protection: Assessments Needed to Determine Effectiveness of In-Lieu-Fee Mitigation" completed in May 2001. This study looked at the effectiveness of one type of compensatory mitigation, "in-lieu-fee" arrangements, in which developers pay fees to public entities or private nonprofit organizations that use accumulated fees to establish wetlands. In this method of compensatory mitigation, mitigation activities take place *after* the permitted project begins.

The GAO found that this method of compensatory mitigation was not effective at mitigating adverse impacts to wetlands. In many cases, Corps districts were not able to provide data that supported their claims that wetland functions and values destroyed by development were adequately replaced. In general, the study found that the Corps did not properly track the mitigation taking place under in-lieu-fee arrangements and the success of that mitigation.

While the Corps of Engineers headquarters recently released guidance that was intended to respond to the problems documented in each of the NAS and GAO studies, the guidance neglects to address some of the key concerns that were highlighted in these reports. Issues of concern in this guidance include:

- The use of upland vegetated buffer strips, upland areas, ponds, and other waters for compensatory mitigation. This is unacceptable and does not result in no net loss of wetlands.
- Insufficient monitoring of mitigation projects. While the guidance only suggests 5-10 years of monitoring, the NAS study clearly states that a 20-year monitoring period may be necessary to ensure that mitigated wetlands achieve functional goals.
- Implementation timing is inadequate. While the guidance allows mitigation activities to occur after wetland destruction occurs, the NAS study clearly states

³ In fact, members of NAS' Committee on Mitigating Wetland Losses estimate that as much as 80% of the wetlands lost to development are not being adequately compensated for with the Corps' current mitigation program.

that implementation of mitigation projects should be put in place concurrent with and preferably *before* the permitted activity begins.

Protection of our coastal and inland wetlands is vital to the economic, ecologic, and social prosperity of the Gulf of Mexico and its surrounding communities. Reliance of the wetland permitting program on an inadequate compensatory mitigation program is unacceptable. All of the recommendations presented in the NAS and GAO reports must be fully incorporated into the wetland permit process if we expect to come anywhere close to our nation's stated goal of no net wetland loss.