LOUISIANA MID-CONTINENT OIL AND GAS ASSOCIATION

801 NORTH BOULEVARD, SUITE 201, BATON ROUGE, LA 70802-5727
TELEPHONE (225) 387-3205 FAX (225) 344-5502
E-MAIL info@lmoga.com

November 13, 2003

Mr. William Conner
Chief, NOAA/Damage Assessment Center
1305 East-West Highway, SSMC #4, 10th Floor
Silver Spring, MD 20910

Dear Mr. Conner:

SUBJECT: LOUISIANA REGIONAL RESTORATION PLANNING PROGRAM
DRAFT REGIONAL RESTORATION PLAN – REGION 2

Louisiana Mid-Continent Oil and Gas Association (LMOGA) is a trade association representing individuals and companies who produce, transport, refine and market approximately 90% of the oil and gas which transported in and through the State of Louisiana. We have participated in the Regional Restoration Plan development, are supportive of the concepts and goals set forth in the RRP documentation, and are keenly interested in the outcome of the planning process.

As we have stated in previous comments, LMOGA is generally supportive of the Louisiana Regional Restoration Planning Program. We see benefits accrued to the environment, the trustees, and the responsible party (RP) in potentially restoring services to injured resources faster and more efficiently. We fully support the process of pre-identified and pre-screened restoration projects that an RP and the trustees can select. This option becomes even more attractive when the upfront engineering and permitting has been completed. We also support the cash settlement option, particularly for smaller restoration requirements. However, it appears that this option will essentially be unusable because of its high cost per unit of services provided. This is more fully explained below.

1. Calculation of projected cost of restoration.

LMOGA encourages NOAA to make every effort to make the funding of regional restoration an attractive option by bringing the per acre cost of funding more in line with per acre costs of RP implemented projects. It is only through such realignment that it will become likely that RPs will select this option.

By regulation, selected restoration options are to be the lowest cost option that will provide lost resources and resource services. As such, in cases where the trustees and RP carry out a full damage assessment / restoration planning process, the RP pays the cost of the lowest suitable alternative, rather than an artificially inflated average cost of regional restoration.

Using such data sources as mean costs of planned and implemented CWPPRA projects is likely to yield unrealistically high estimates of restoration costs, as these data sets tend not to be normally distributed. The population of projects included in the analysis is unduly influenced by high cost to benefit projects, such as CS-18, which is projected as costing more than $400,000 per acre protected. In fact, analysis of this data set indicates that the standard deviation of project cost/benefit exceeds the mean, an indication of a significantly skewed data set. As such, basing regional restoration costs upon the mean from a skewed data set violates one of the central provisions of both the OPA rule and the Louisiana rule.

Regarding marsh creation, the estimated brown marsh costs were calculated using the average bid price from seven contractors. Whenever a restoration project is bid, the lowest qualified bidder will be chosen; therefore, it would be inappropriate to use an average bid price for this estimate. Rather, NOAA should consider taking the lowest bid price of the qualified bidders.

A recommended alternative that would produce more reasonable estimated restoration costs might be to normalize the data set or to establish a minimum requirement for cost/benefits prior to including a project in the data set. It should be recognized that many of these projects are proposed for federal funding since they have not been funded by private or local entities. While it is desirable to accumulate the funding necessary to implement such projects, RPs would simply not choose this higher cost option.

2. Potential double counting

It seems that there is a potential for double counting inherent in the calculation of projected costs or regional restoration. The proposed estimation methodology inflates the total cost by adding estimated pre-construction costs, monitoring costs, and oversight costs to the implementation cost. It is not clear whether the implementation costs from such data sets as CWPPRA projects do, or do not, include many of these costs in the implementation costs already. At a minimum, some of the pre-construction costs are represented in the costs of these projects. It is likely that monitoring and project oversight costs are also included. If this is indeed the case, the projected regional restoration costs are artificially high.

3. High incremental cost of monitoring and oversight.

Projected monitoring costs are very high, especially for forested wetlands. Along with problems with selection of comparison data (i.e., use of large releases with extensive and multi-faceted restoration programs), there seems to be an inherent problem in the estimation of incremental costs. As the data indicate, there tends to be a benefit of scale that accrues from relatively larger projects. Simply, larger projects are more cost effective, from a monitoring and oversight perspective, than are smaller projects. For example, monitoring on a four acre marsh restoration project is more than 40 % more expensive than on a 10 acre project and nearly four times as expensive as a 40 acre project. Since of the goals of the regional restoration program is to accrue funding for the implementation of larger projects, monitoring and oversight costs should reflect the benefits of scale inherent in such projects and should not be based upon an average that inflates costs.

4. Need to use other data sources.

LMOGA believes that other data sources, such as private mitigation banks, privately implemented restoration projects, and local government restoration projects should be included in the data set to be analyzed to produce restoration cost estimates. While these data may be more difficult to collect, their inclusion is critical to the accurate estimation of regional restoration costs. Private restoration projects and those implemented by Ducks Unlimited and The Nature Conservancy were not taken into account. We have requested cost data for crevasse-splay restoration approaches from the Southeast Louisiana Refuge and will forward this data and other data for your consideration.

5. Assumptions in DSAY calculations.

The discussion of the assumptions made for the calculation of DSAYs for each of the restoration alternatives is difficult to decipher, several of the assumptions made may create artificially inflated costs for some of these options. For example the assumption that marsh restoration only produces a 50% value of restored services relative to injury but a shoreline protection project produces 100 % value ignores a very basic assessment of the quality of the habitat being protected or created, as well as the quality of the habitat that was lost. It is entirely possible that marsh acreage lost is functioning below optimal levels and that marsh restoration projects may exceed service flows from pre-existing marshes. More should be done to evaluate these assumptions and to make their impact on the calculations of DSAYs clear.

6. Other comments.

- The draft plan does not describe the overall NRDA process from pre-assessment through injury assessment and restoration plan development. Neither does the draft plan describe the role of the RP in the process. While the Louisiana NRDA regulations place a big emphasis on a cooperative approach, the draft plan focuses primarily on the trustees' role.

- It is not clear how closure is reached for the different options, particularly for the cash-out option. Please specify.

- Table C-1 should be revised to provide priority order and include all potential restoration projects with estimated costs, acreage, habitat value, and public vs. private, if available.

- On page 1, the document states that the goals of the statewide program are to "reduce the cost of the NRDA process." This theme is repeated elsewhere (for example, page 5). While the program as described in this document may reduce administrative costs for the government, there is nothing that shows how this will reduce total costs (i.e., costs to the RP and government combined).

- On page 5, the document states that it relies on the boundaries for the four coastal regions described in the Coast 2050 Plan. The meaningfulness of these boundaries has been questioned by the National Technical Review Committee (and probably others) that is reviewing Coast 2050 and the Louisiana Coastal Area (LCA) Plan. Developing a separate RRP for each of the regions that are in

part defined by these boundaries does not make sense and should probably not be pursued. If the boundaries are not abandoned, their use should be clearly justified. Also, if the boundaries remain intact, the footnote on page 18 (in which it is noted that these boundaries may be ignored by the Trustees) should be spelled out more clearly on first mention of the boundaries and emphasized elsewhere.

- On page 5, the document claims to improve coordination between NRDA and other mandates. Were the contents of this document considered in a consistency assessment that incorporated regulations such as Section 404 of the Clean Water Act and the proposed Louisiana Coastal Area (LCA) Plan that is being drafted by an interagency group? (Note the project list provided in this document does not match the preferred alternatives project lists provided in the LCA Plan.)

- On page 6, the document claims that 25-30 square miles of land is lost every year in coastal Louisiana. This is no longer an accurate number—recent data show that land loss rates are slowing down. The most recent estimates from USGS suggest loss rates of about 14 square miles per year over the next 50 years (on average, assuming that the Louisiana Coastal Area Plan is not implemented).

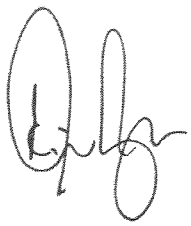
- The rationale behind the various decisions made to develop Figures 3 and 4 are not clear. Please provide the rationale.

- On page 18 and perhaps elsewhere, the document refers to project "success." Success in this context requires a clear definition. In general, restoration projects are considered successful if they have met their stated performance standards, but the document does not discuss proposed performance standards for the projects that it promotes.

- In responsibly run restoration projects, clear objectives and performance standards are designed at the outset of the project, and success is defined in relation to performance standards. Recently, the EPA's Mitigation Action Plan recognized the importance of performance standards. This document does not consider this aspect of restoration planning and monitoring, and instead appears to focus on ongoing and open-ended monitoring requirements without clearly spelling out that projects should have a pre-defined performance standards that establish an end point.

We appreciate your consideration of our comments and make ourselves available to discuss this further. Please call me at (225)387-3205 if your have any questions.

Sincerely,



R. Michael Lyons