

# No Net Loss Policy

## I. Nature of the Tool

A “No net loss” policy can be defined as a principle by which counties, agencies, and governments strive to balance unavoidable habitat, environmental and resource losses with replacement of those items on a project-by-project basis so that further reductions to resources may be prevented.<sup>1</sup> “No net loss” policies can be applied to almost every environmental issue and concern in Florida. From wetland protection, where the policy is most widely known, to farmland, public hunting lands, and public waterfront access, “no net loss” policies have become important tools in protecting Florida’s environment and protecting the public’s access to the environment.

“No net loss” has been the key policy in wetlands protection at both the federal and state level. Beginning with President George H.W. Bush, each administration has adopted the “no net loss of wetlands” policy.<sup>2</sup> In Florida, policy-makers have adopted a “no net loss” strategy that aims to maintain a minimum number of wetland acres throughout the state. However, because of the state’s increasing population and growing demand for development, state agencies must continue to issue permits for wetland destruction to land developers. In order to maintain a “no net loss” of wetland habitats, policymakers have adopted a number of strategies such as wetland restoration, creation, enhancement, reallocation and mitigation. In addition to wetland protection, in 2005, the Florida Department of Agriculture and Consumer Services included in its *Florida’s Forest Resources Plan* a “no net less of forestland” policy.<sup>3</sup>

In 2004 bills in both the Florida House of Representatives and the Senate addressed the need for waterfront access and proposed a study to include ways in which “no net loss” of public access to waterfronts could be achieved.<sup>4</sup> However, both bills died on their respective calendars.

## II. Relationship to Waterfront

“No net loss” policies can be adopted as amendments to comprehensive plans, land development regulations or as administrative policies in Florida communities. Countless conservation goals may be achieved through implementation of these policies, as discussed briefly above.

Importantly, in coastal and waterfront communities, “no net loss” policies can be applied to working and recreational waterfronts. By implementing the policy, communities can preserve public access to docks, slips, boat ramp parking areas, and boatyards, among other things.

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<sup>1</sup> Another definition is: A concept whereby conservation losses in one geographically or otherwise defined area are balanced by a gain elsewhere.

<sup>2</sup> White House Office on Env'tl. Policy, *Protecting America's wetlands: A Fair, Flexible, and Effective Approach* (Aug. 24, 1993), available at <http://www.wetlands.com/fed/aug93wet.htm>. Advance Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of “Waters of the United States,” 68 Fed. Reg. 1991 (Jan. 15, 2003).

<sup>3</sup> Florida Dep’t of Ag and Consumer Serv., *Florida’s Forest Resources Plan*, available at [http://www.fl-dof.com/plans\\_support/ps\\_pdfs/FL\\_forests\\_appendixApril172005.pdf](http://www.fl-dof.com/plans_support/ps_pdfs/FL_forests_appendixApril172005.pdf) (last visited July 19, 2006).

<sup>4</sup> See Senate Bill 2294 and House Bill 0777.

Implementing a “no net loss” policy can allow managed growth in waterfront communities; developers may continue to build but the public will not lose access and enjoyment of the water.

After adopting a “no net loss” policy with regard to working and recreational waterfronts, a common way to apply the policy uses a one-to-one ratio.<sup>5</sup> For instance, in order for a developer to privatize an existing public waterfront, there must be suitable land available for a new public waterfront. As an additional safeguard, the community should include within its policy a limitation on where the new waterfront facilities may be located to ensure that they will not be located too far away or at much less desirable locations.

### III. Pros & Cons

“No net loss” policies represent a compromise between development and conservation. They are persuasive and work well in theory but may be difficult to implement in practice.<sup>6</sup> Development pressures are strong in most of Florida’s waterfront communities. Developers may hold enough political influence to keep the policies from being implementing or enforced. Additionally, when waterfront property becomes scarce, “no net loss” policies can be even more difficult to implement. Developers and residents alike may support moving marinas inland to canals and intracoastal waterways.<sup>7</sup>

### IV. Best Policy Practice

In 2005, the Martin County Commission adopted an amendment to its Comprehensive Plan creating a “no net loss” policy for marinas.<sup>8</sup> Through the Comprehensive Plan, the Commission delineated Marine Service Areas where marina owners who sell to residential developers have to establish new comparable sites within the county. The County may limit the areas where the new marina may be built, i.e. within the same neighborhood as the original marina, through land development regulations. A problem arising under the policy is that the policy does not preclude conversions which maintain water access for the residents, i.e. “dockominiums.”<sup>9</sup> But, according to David Quigley, the principal planner on the “no net loss” policy, the policy has sent a signal to developers that Martin County is serious about the issue.<sup>10</sup>

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<sup>5</sup> EPA has applied this ratio to the wetlands no net less policy. Florida, under the newly enacted Chapter 2006-98 Laws of Florida, requires that the Florida Wildlife & Conservation Commission find replacement public hunting lands for any public hunting lands that are closed or privatized in the future so that the number of hunting acres do not fall below the baseline established upon enactment of the law. *See* Chapter 2006-98, Laws of Florida (formerly House Bill 265). Additionally, in its interim policy, Monroe County Florida has used the ratio.

<sup>6</sup> Monroe County has utilized a “no net loss” policy in its interim development plan; the plan is part of a moratorium on waterfront development in the county. For a greater discussion of moratoria, please refer to the moratoria policy menu item.

<sup>7</sup> This was the case in Martin County, Florida. Marine Industries Association officials decided not to support the county’s “no net loss” policy, which they helped draft, because the policy would be difficult to implement. Instead, the industry would like to allow marinas to be moved inland, far from popular boating areas.

<sup>8</sup> *See* Martin County Florida Comprehensive Plan, Chapter 4; Martin County ordinance, no. 687.

<sup>9</sup> Dockominiums are a form of “exclusive dockage which serves the limited number of boaters who can afford to purchase highly priced pieces of public trust lands and waterways.” Catherine Robinson Hall, *Dockominiums: In Conflict with the Public Trust Doctrine*, 24 SUFFOLK U.L. REV. 331 (1990).

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<sup>10</sup> Telephone conversation with David Quigley, Martin County planner, August 17, 2006.