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June 13, 2016

Dan Ashe
Director
U.S. Fish and Wildlife Service
U.S. Department of the Interior
1849 C St. NW
Washington, D.C. 20240

Re: Proposed Revisions to the U.S. Fish and Wildlife Service Mitigation Policy¹

Dear Director Ashe:

I write to request that you withdraw the Proposed Revisions to the U.S. Fish and Wildlife Service Mitigation Policy (proposed policy). It needs to be revised substantially. The proposed policy implements the Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment on Mitigation (Memorandum), which, among other things, introduced the principle of net conservation gain in November 2015.² I had grave concerns about the Memorandum, generally, and the fundamental shift from mitigation to net gain, specifically. I sent the attached letter to the President, and conducted an oversight hearing to examine the Memorandum. The concerns expressed in the letter and during the hearing were validated by my review of the proposed policy. Those concerns include the paradigm shift from mitigation to net gain, the inherent challenge to consistently apply mitigation across agencies, and the lack of definitional clarity by the Administration.

The U.S. Fish and Wildlife Service (Service) does not have authority to require net conservation gain. I have raised this concern with a number of federal agency personnel to include Mr. Michael Bean, Principal Deputy Assistant Secretary for Fish and Wildlife and Parks, as part of the record of the hearing on the Memorandum. Although the proposed policy outlines in some detail legal authorities the Service relies upon to support the proposed policy, it fails to provide any specific legal authority related to net conservation gain. Congress has authorized federal agencies to permit actions that result in resource impact.

Furthermore, the principle of net gain itself is disconcerting. First, the Service fails to define net conservation gain rendering the intent and implementation of the proposed policy unclear. Second, the principle of net conservation gain raises a number of questions that remain

¹ 81 Fed. Reg. 12,380

² The Service uses "net conservation gain" in lieu of the Memorandum's use of the term "net benefit goal." Those terms are interpreted to be interchangeable.

unanswered by the proposed policy. The Service is unclear whether net conservation gain necessarily applies to species, habitat, or both. The Service does not indicate relative value of short-term versus long-term impacts and benefits. The proposed policy generally indicates that net conservation gain improves the status of affected resources, but fails to clarify whether affected resources refers to every resource affected, only 'important, scarce, or sensitive resources' or something else. And, the Service neglects to indicate how voluntary mitigation efforts would factor into an overall advance compensation calculus.

Administratively, the proposed policy presents serious challenges to the regulated public. The Memorandum calls for consistent application of mitigation across the directed agencies. However, if each agency and sub-agency independently issues its own administrative action on mitigation, it is very difficult for the regulated community to understand the greater framework in which it would operate. Given varying authorities and missions, Alaskans have a right to concurrently review all the administrative actions that stem from the Memorandum in order to best understand the implications of mitigation implementation and how net conservation gain may be consistently achieved across the directed agencies.

The Service indicates that accelerated habitat loss is a catalyst for the proposed policy. The Service states that developed acreage increased in America from 71 million acres in 1982 to 114 million acres by 2012. The Service expressly excludes Alaska in its justification for the proposed policy by stating 37 percent of all land development in the U.S. — excluding Alaska — has occurred since 1982. Only one percent of Alaska is developed juxtaposed to approximately 17 percent in the Lower 48. Because Alaska represents a significantly different developed landscape than that the Service seeks to affect, I strongly urge you to consider exempting Alaska from the proposed policy. Implementation of the proposed policy without fundamental changes could have devastating impacts on the livelihoods of many Alaskans.

Mitigation is a very complex principle. Implementing mitigation presents potentially innumerable variables, and requires thoughtful development and application across a spectrum of interests. Existing federal, state and local mitigation constructs add to the complexity. Please withdraw the proposed policy and re-engage with states, federal agencies, and the regulated public and develop a policy that is clearer and more balanced and allows various mitigation efforts to work in parallel.

Thank you for your careful consideration of these and other stakeholder comments.

Sincerely,



Lisa Murkowski
United States Senator