

July 30, 2021

Shannon Estenoz
Assistant Secretary for Fish and Wildlife, and Parks
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Martha Williams
Principal Deputy Director, Fish and Wildlife Service
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Ms. Estenoz and Ms. Williams:

The undersigned conservation, ecological restoration and mitigation organizations support the successful completion of a rule governing wildlife conservation offsets pursuant to Section 329 of the 2021 National Defense Authorization Act (NDAA). Secretary Haaland advanced this directive as a member of Congress, and we value the opportunity to work with her team to implement it. This rule-making strengthens the Department of Interior (Department) position as an essential leader on policy addressing urgent national priorities for climate, infrastructure, and biodiversity conservation.

We write to request that the Department and U.S. Fish and Wildlife Service (Service) i) develop and issue the rule before any new or revised guidance on wildlife mitigation, and that ii) the rule apply to all means of “maximizing available credits and opportunities for mitigation” as directed by Sec. 329. The latter should include banks, in-lieu fee programs, and permittee-responsible projects, and it should apply beyond Endangered Species Act (ESA)-listed species, as appropriate.

First, issuing the rule ahead of new guidance will establish legally-binding provisions necessary for the delivery of greater benefits to imperiled species (i.e., endangered and threatened listed species and their designated critical habitat and other species proposed for listing or at-risk of being listed). Consistency, predictability, and transparency – the hallmarks of successful policy – require legally-binding provisions. These establish the clear regulatory framework that will ensure high standards based on the needs of species and incentivize greater private investment in conservation.

Guidance can then focus on particulars for which examples and statements of discretionary intent can be helpful to the public. The preamble to a rule is contemporaneous guidance and the first step to identifying the difference between legally-binding provisions and advisory statements.

Second, applying the rule to all opportunities for mitigation is both practically necessary and essentially helpful. The Department and the Service already follow the complete mitigation sequence of avoiding, minimizing, and offsetting (or compensating for) adverse effects. Avoidance and minimization are governed by Sections 7 and 10 of the ESA, which need no alteration. Offsets in all forms – banks, in-lieu fee programs, and permittee-responsible projects – are recognized by the Service, but currently evaluated case-by-case without the consistency provided by regulation. Applying a rule to all forms will improve their use and accelerate their contributions to the conservation of imperiled species.

Collectively, our organizations and companies have delivered conservation progress through hundreds of conservation banks, in-lieu fee programs and permittee-responsible mitigation projects. This work has conserved and restored thousands of acres of high-quality habitat, not including the hundreds of thousand acres restored under the Clean Water Act and other environmental programs. We know that measurable performance standards, specific timelines for agency review and approval, and equivalent requirements for all forms of offsets are essential to robust, quantifiable conservation outcomes.

Ensuring consistent, equivalent standards across all forms of offsets for imperiled species and habitats will accelerate the Department's and the Service's fulfillment of mandates and trust responsibilities, and ambitious goals for biodiversity, climate, and green infrastructure. When well-designed and effectively implemented, a robust, comprehensive compensatory mitigation rule will contribute to species' viability, maintain and restore quality habitats, reduce conflict between conservation and land use activities, and support private land stewardship. And it will allow the Service to meet its obligation to "give the species the benefit of the doubt," as was Congress's intent for the ESA.

The Department and the Service have a prime opportunity to establish a formal structure that provides greater assurances for stakeholders, permittees and mitigation providers on the requirements and standards for successful species offset actions. We offer our technical assistance as the Department capitalizes on this unique and urgent moment to answer the needs of imperiled species with a comprehensive mitigation rule.

Sincerely,



Sara Johnson, Executive Director
Ecological Restoration Business Association



Jacob Malcom, Director, Center for Conservation Innovation
Defenders of Wildlife

