



VIA ELECTRONIC FILING

May 9, 2016

U.S. Fish and Wildlife Service
Division of Policy, Performance and Management
5275 Leesburg Pike, ABHC-PPM
Falls Church, VA 22041-3808

Re: Docket No. FWS–HQ–ES–2015–0126: Proposed Revisions to the U.S. Fish and Wildlife Service Mitigation Policy; Federal Register Vol. 81, No. 45 (Tuesday, March 8, 2016);

Dear Sir/Madam,

The GPA Midstream Association (“GPA”) appreciates the opportunity to provide comments to U.S. Fish and Wildlife Service (Service) for the proposed revisions to the Service’s Mitigation Policy (Proposed Policy).

GPA Midstream is a non-profit trade organization made up of over 100 corporate members, all of whom are engaged in the processing of natural gas into merchantable pipeline gas, or in the manufacture, transportation, or further processing of liquid products from natural gas. GPA Midstream membership accounts for approximately 92% of all natural gas liquids produced by the midstream energy sector in the United States. Our members also produce, gather, transmit, and market natural gas and natural gas liquids.

GPA Midstream has reviewed the Proposed Policy and determined that the proposed changes will directly impact GPA Midstream members. We request that the Service consider the following comments when developing the final policy and also include these as topics within the scoping process for the Service’s National Environmental Policy Act (NEPA) analysis.

- As a general comment, the Proposed Policy appears to reach beyond the Service’s statutory authority. The Service should ensure that its mitigation goals fall within its current statutory authority and provide a through legal justification clearly identifying its legal authority for proposed changes.
- The Service’s regulatory agenda has produced many broad sweeping regulatory and policy changes in recent months. The Service has not provided the public with an analysis of the combined regulatory changes or given the public an opportunity to comment on the impact of the changes when considered cumulatively as part of the larger regulatory agenda. The Service should conduct a separate NEPA analysis of the cumulative effects of all the proposed regulation changes when considered together. At a

minimum, the NEPA scoping process for this action should address the cumulative effects of other recent rulemakings and policy changes.

- The NEPA analysis public scoping notification contained in the Proposed Policy is buried and is not a meaningful attempt to seek public input into the NEPA scoping process for the Proposed Policy. The Service should issue a separate standalone public notice seeking input into the NEPA scoping process to ensure a broad spectrum of input is captured.
- The Proposed Policy is far reaching, appears to be regulatory in nature, appears to greatly expand the Service's regulatory authority over non-Federal lands and non-Federal projects, and lacks statutory and regulatory justification for the proposed changes.
- The proposed requirement of "net conservation gain" appears to be outside of the Service's current statutory authority. The concept as illuminated in the Proposed Policy is ambiguous, overreaching, and would be impractical and costly to implement. Compliance with the requirement of "net conservation gain" could necessitate taking of private lands to meet conservation goals. The impacts of this concept should be explored further in the NEPA analysis, including a thorough review of the Service's statutory authority to have such a requirement in its final Mitigation Policy.
- The Service states in the Proposed Policy that it will seek "avoidance of all impacts" on high value habitats. Based on the Service's broad authority to designate Critical Habitat as granted in its recent rulemaking, this statement causes GPA Midstream members concern.
- The Service states that avoidance, minimization, and mitigation will be its approach to applying to the Proposed Policy to impacts, in that order; however, the Proposed Policy appears to be heavily focused on mitigating all impacts rather than applying regulatory flexibility to avoidance and minimization measures.
- The Service should revisit its standard of "net conservation gain." As presented in the Proposed Policy it is inconsistent with the intent of "net benefit goal" in the November 2015 Presidential Memorandum on Mitigating Impacts from Natural Resources from Development and Encouraging Private Investment. The memorandum specifically states that it will, "...encourage private investment in restoration and public-private partnerships, and help foster opportunities for businesses or non-profit organizations with relevant expertise to successfully achieve restoration and conservation objectives." GPA Midstream would like to see a more collaborative, flexible, and realistic approach to avoidance, minimization, and mitigation presented within the Proposed Policy in accordance with the presidential memorandum.
- The Service should not attempt to address the effects of climate change through mitigation. The Proposed Policy states that, "Accelerating climate change is resulting in impacts that pose a significant challenge to conserving species, habitat, and ecosystem functions." This statement is ambiguous in its sources, is inflammatory, and does not accurately reflect the fact that the issues continuing to drive most species listing decisions are other factors such as habitat loss from development, habitat fragmentation, and disease. GPA Midstream would like to see references to specific scientific studies

included in the Proposed Policy to provide context for this statement, or the statement should be removed.

- The Service includes a summary of future population growth in the Proposed Policy under *New Threats and New Science* as an apparent factor justifying the proposed changes. It is presumptive and subjective at this time estimate habitat loss over the next five decades from human population growth and utilize a projected impact as a justification for the Proposed Policy. Any changes in the Service's mitigation policy should be based on scientific fact and need. This statement should also be removed.

GPA Midstream appreciates your consideration of our comments on the Proposed Policy. We offer our continued assistance as the Service considers the comments received and initiates its NEPA review of the proposed action.

Sincerely,

Matthew Hite
Vice President of Government Affairs
GPA Midstream Association

