June 13, 2016

Comments regarding the March 8, 2016
Proposed Revisions to the U.S. Fish and Wildlife Service Mitigation Policy

Submitted by:

Energy and Wildlife Action Coalition

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Public Comments Processing
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The Energy and Wildlife Action Coalition ("EWAC") submits these comments in response to the U.S. Fish and Wildlife Service ("Service") March 8, 2016 announcement of Proposed Revisions to the U.S. Fish and Wildlife Service Mitigation Policy (the "Proposed Policy"), which guides Service recommendations on mitigating adverse impacts of various water and land use activities upon fish, wildlife, plants, and their habitats.[1] The Proposed Policy, if adopted, is intended to replace the Service's current mitigation policy, which was published on January 31, 1981 (the "1981 Mitigation Policy").

EWAC is a national coalition formed in 2014 whose members consist of electric utilities, electric transmission providers, and renewable energy entities operating throughout the United States. The fundamental goals of EWAC are to evaluate, develop, and promote sound environmental policies for federally protected wildlife and closely related natural resources while ensuring the continued generation and transmission of reliable and affordable electricity. EWAC supports public policies, based on sound science, that protect wildlife and natural resources in a reasonable, consistent, and cost-effective manner.

EWAC agrees that the 1981 Mitigation Policy would benefit from an update and offers the Service some comments and recommendations on how the Proposed Policy might be improved upon in its final iteration.

I. EWAC APPRECIATES THE REOPENING OF THE COMMENT PERIOD, BUT URGES THE SERVICE TO CONSIDER CAREFULLY ITS FORTHCOMING REGULATIONS AND RULEMAKINGS AS A WHOLE.

EWAC appreciates that the Service reopened the comment period at the request of the regulated community. EWAC's extension request was premised on the following documents and events, which the Service has indicated are forthcoming: (1) a policy addressing "compensatory" mitigation under the Endangered Species Act ("ESA");[2] (2) its final policy regarding Voluntary Prelisting Conservation Actions; and (3) a revised Habitat Conservation Planning and Incidental Take Permitting Handbook ("HCP Handbook"). EWAC continues to believe that the Service would be better served by public comments that take into consideration the bigger picture created by the Proposed Policy, the ESA-focused compensatory mitigation policy, the final Voluntary

[1] 81 Fed. Reg. 12379 (March 8, 2016).

[2] *Id.* at 12383.

Prelisting Conservation Action policy, and the revised HCP Handbook.[3] A piecemeal approach will inevitably result in inconsistencies and/or ambiguities across the various policies and guidance that could result in inconsistent application across Service offices, as well as unnecessary delays and difficulties in implementation.[4] Allowing the public to review these documents together before finalization will help ensure these documents are harmonized at the outset.

Since these anticipated policies and guidance have not yet been published, EWAC reiterates the importance of ensuring these forthcoming documents are consistent and work together. To achieve this result, EWAC requests that the Service consider not finalizing the Proposed Policy until the closing of public comment periods on the aforementioned policy and guidance documents. Should the Service decide to finalize the Proposed Policy prior to releasing the other forthcoming guidance and policy documents referenced above, EWAC requests that the Service stand ready to revise the then-finalized Proposed Policy – including providing an opportunity for the public to review and comment on any proposed revisions – in order to ensure consistency among the various relevant documents.

II. EWAC COMMENDS THE STRIDES THE SERVICE HAS MADE IN UPDATING THE 1981 MITIGATION POLICY, AND SUPPORTS MANY ASPECTS OF THE PROPOSED POLICY.

Below, EWAC expresses its support for various specific aspects of the Proposed Policy, including:

- Given the complexities and challenges in quantifying certain species impacts, EWAC commends the Service's recognition that habitat conservation measures generally are the most effective means to achieve conservation for fish, wildlife, and plant species, and the focus on habitat conservation as the backbone for the Proposed Policy.[5]

[3] EWAC also has heard that a revised ESA Section 7 Consultation Handbook is forthcoming albeit on a slower timeline. This document also would shape EWAC's view of the mitigation policy, but understands that the Service may not be able to wait for all potentially relevant documents to be published.

[4] For example, the Service's proposed revisions to its regulations governing the incidental take permitting program under the Bald and Golden Eagle Protection Act ("BGEPA") indicate that certain definitions under the BGEPA rules were being revised to adopt a "modified" version of the definition from the Proposed Policy (i.e., the term "practicable") and that certain definitions would be revised to "comport" with the Proposed Policy (i.e., the term "Preservation Standard"). *See, e.g.*, Eagle Permits; Revisions to Regulations for Eagle Incidental Take and Take of Eagle Nests 81 Fed. Reg. 27939 (May 6, 2016).

[5] 81 Fed. Reg. 12382.

- EWAC appreciates the Service's acknowledgment that under certain circumstances, research or education may be included as part of a compensatory mitigation package.[6] This acknowledgment is significant as there are often situations where an increased knowledge of a species' life cycle requirements, susceptibility to certain environmental stressors, or other issues may be just as critical to ensuring long-term conservation as simply preserving a particular parcel of habitat. In fact, such knowledge could improve the efficacy of future mitigation projects.

- EWAC supports the Service's acknowledgment that, with respect to conservation banks, responsibility for ensuring completion of compensatory mitigation measures rests with the bank sponsor and not the project proponent.[7] Recognizing that a project proponent has discharged its duty with respect to mitigation once the requisite credits have been purchased is important to providing predictability for the project proponent, which, from the project proponent's perspective, is one of the most significant incentives for the use of conservation banks in the first place.

- EWAC commends the Service's recognition in the Proposed Policy that alternative approaches to mitigation (e.g., habitat credit exchanges) may be used to provide compensatory mitigation.[8] Such recognition allows for use of innovations that have emerged since the 1981 Mitigation Policy, including developments relating to conservation technology and funding.

- EWAC supports the Service's acknowledgment that it may be difficult or cost-prohibitive to achieve the mitigation goal entirely within the action's affected area, and that efforts applied in other areas may achieve greater benefits for the species at issue.[9] Recognizing the need to weigh various factors and incorporating this flexibility into the Proposed Policy is valuable to the regulated community.

- EWAC supports the Service's instruction to consider effects of the action and mitigation outcomes "commensurate with the expected duration" of such impacts.[10] This is important because project impacts to species can be short-term or temporary. It is therefore appropriate for mitigation and conservation measures to reflect proportionally project impacts.

- EWAC is encouraged by the Service's acknowledgment that compensatory mitigation for bald and golden eagles may include preserving those species' habitats and enhancing

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[6] *Id.* at 12391.

[7] *Id.*

[8] *Id.*

[9] *Id.* at 12390.

[10] *Id.* at 12387.

their prey base.[11] The 2009 regulations establishing the permitting program for non-purposeful take of bald and golden eagles similarly recognize these options; however, these options have not yet been realized in the permitting context.[12] Current mitigation options for eagles are limited to power pole retrofits, which present significant challenges for those seeking BGEPA permits. For example, it is common for the Service to direct BGEPA permit applicants to local utility providers to schedule and prioritize retrofitting work. Often, however, utility companies are unable to accommodate the needs of BGEPA permit applicants who need to meet their mitigation requirements for projects within a particular timeframe, as the utility companies have their own schedules of priorities. Together with the emphasis on conservation banks and in-lieu programs in the recently proposed revisions to the BGEPA permitting rule,[13] EWAC is hopeful this is an indication that the Service will expand the available mitigation options under BGEPA.

III. EWAC RECOMMENDS THAT THE SERVICE APPLY THE PROPOSED POLICY WITH CARE SO THAT THE PROPOSED POLICY WILL NOT CONFLICT WITH STATUTORY, REGULATORY, AND JUDICIAL STANDARDS APPLICABLE TO THE ENDANGERED SPECIES ACT.

Despite several statements that various aspects of the Proposed Policy are not intended to supersede statutory or regulatory authorities,[14] there are key aspects of the Proposed Policy EWAC believes could be misapplied in practice. For example, it is possible that the Service's various local offices may use the Proposed Policy in a rigid manner, essentially treating guidance as red-letter law. In this Section III, EWAC highlights some areas that could be applied in such a way as to contradict the ESA, its regulations, and associated case law. This list is not exhaustive, and ultimately EWAC recommends that the Service, especially in light of the forthcoming ESA-specific compensatory mitigation policy, exclude the ESA from the final policy in light of these potential issues.

a. The Proposed Policy's "no net loss" concept.

The Proposed Policy emphasizes the Service's intent to apply a mitigation hierarchy in order to achieve a net benefit or, at a minimum, no net loss to fish, wildlife, plants, and their habitats. The

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[11] Id. at 12396.

[12] Eagle Permits; Take Necessary to Protect Interests in Particular Localities; Final Rules, 74 Fed. Reg. 46836, 46855 (Sept 11, 2009).

[13] Eagle Permits; Revisions to Regulations for eagle Incidental Take and Take of Eagle Nests, 81 Fed. Reg. 27939 (May 6, 2016).

[14] E.g., "Some Service authorities define some of the terms in this section differently or more specifically, and the definitions herein do not substitute for statutory or regulatory definitions in the exercise of those authorities." *Id.* at 12393; and "Nothing in this policy supersedes the statutes and regulations governing prohibited "take" of wildlife (*e.g.,* ESA-listed species, migratory birds, eagles)…" *Id.* at 12389.

Service, however, points to no underlying statutory authority for requiring either a net benefit or no net loss to the same resources. Indeed, even ESA section 10, which authorizes Service issuance of incidental take permits for non-federal activities and is the only circumstance in which the ESA requires mitigation, does not require that such permits achieve a net benefit or "no net loss" to listed species. Instead, it provides that an applicant must, "to the maximum extent practicable," "minimize and mitigate" the impacts of the taking of listed species for which it seeks an incidental take permit.[15] Indeed, the Service's HCP Handbook, points out that "[n]o explicit provision of the ESA or its implementing regulations requires that an [incidental take permit] must result in a net benefit to the affected species" and that the Service may merely "encourage" that incidental take permit applicants develop habitat conservation plans that do so.[16] Thus, the standard for mitigation set forth in the Proposed Policy is inconsistent with the standard for mitigation set forth in the ESA itself.

Section 7 of the ESA requires federal agencies to ensure that actions they fund, authorize, or carry out do not jeopardize the continued existence of listed species or result in the destruction or adverse modification of designated critical habitat. As the Service recently observed in its decision not to designate critical habitat for the Northern long-eared bat, Section 7 does not, however, oblige a federal action agency or landowner to restore or recover the listed species at issue; rather, section 7 merely requires the agency "to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat."[17]

In consideration of the above and as mentioned elsewhere in these comments, EWAC recommends that the Service's regional and field offices be well-trained in whether and how the requirements of the statutes, rules, regulations, and case law which govern the particular statutes those offices administer interact with the Proposed Policy so that the guidance provided by the Proposed Policy is not implemented in such a way as to supersede the actual requirements and limitations of the various statutory schemes within the Service's purview. Put simply, EWAC is concerned that Service implementation of the Proposed Policy without proper training may subject the regulated community to higher standards than are required by applicable law and jurisprudence.

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[15] 16 U.S.C. 1539(a)(2)(B).

[16] *Habitat Conservation Planning and Incidental Take Permit Processing Handbook* at 3-21.

[17] 81 Fed. Reg. 24707, 24709 (April 27, 2016).

b. The Proposed Policy's hierarchical approach.

Furthermore, the Proposed Policy states the Service's preference that impacts first be avoided and minimized before a project proponent may move on to providing compensatory mitigation. This sequential preference and the inclusion of "avoidance" are inconsistent with the language of ESA section 10, which requires that impacts be minimized and mitigated to the maximum extent practicable, and with recent federal case law interpreting that standard.[18] Indeed, in *Union Neighbors United, Inc. v. Jewell*, a federal district court held as errant a plaintiff's interpretation of ESA section 10 that would have required that impacts to listed species first be minimized to the "lowest possible amount before applying mitigation measures to offset any take that could not possibly be avoided or minimized."[19] In light of the foregoing, EWAC recommends that the Proposed Policy either exclude the ESA from its purview or acknowledge that the ESA itself and relevant case law conflict with the Service's general preference that impacts be avoided and minimized before compensatory mitigation is considered and ensure personnel are trained accordingly.

c. The Proposed Policy's emphasis on advanced implementation of mitigation.

Section 5.7.1 of the Proposed Policy expresses the Service's preference that compensatory mitigation measures be implemented and credits earned in advance of project impacts.[20] EWAC is concerned that this preference, without any qualification, does not account for the fact that in many situations, funding, but not necessarily implementation, of mitigation prior to impacts has been an acceptable approach to mitigation timing. This is particularly true for regional-scale conservation plans under the ESA, where strategic delays in implementing mitigation can allow for pooling of mitigation funds that can and does result in greater landscape-scale benefits to affected species. In fact, this circumstance is expressly noted in the Service's HCP Handbook.[21] Indeed, in that regard, the Service's preference for mitigation to be implemented upfront may conflict with the "primary intent" of the Proposed Policy itself – "to apply mitigation in a strategic manner that ensures an

[18] *Id. See also Union Neighbors United Inc., v. Jewell*, 83 F.Supp.3d 280, 286-288 (D.D.C. 2015).

[19] *Union Neighbors*, 83 F.Supp3d at 286-288.

[20] 81 Fed. Reg. 12382, 12392 (March 8, 2016).

[21] The HCP Handbook states that "[s]ometimes, the HCP applicant may need to conduct activities prior to the time when replacement habitats can be provided… One…method is requiring a specified cash payment into a mitigation fund prior to commencement of HCP activities… Mitigation funds have often been used in regional HCPs in which the responsible party for habitat mitigation under the HCP is a state or local government agency." HCP Handbook at 3-22.

effective linkage with conservation strategies at appropriate landscape scales."[22] EWAC again urges the Service to either expressly exclude the ESA from the final policy or ensure that the final policy is consistent with existing guidance.

d. The Proposed Policy's treatment of mitigation under ESA section 7.

Finally, the Proposed Policy's emphasis on compensatory mitigation in the ESA section 7 context suggests a movement towards such mitigation becoming a standard component of the ESA section 7 process. In addition to the fact that neither section 7 of the ESA nor its implementing regulations contain a requirement for compensatory mitigation, the Proposed Policy directly contradicts the Service's section 7 Consultation Handbook, which expressly states: "Section 7 requires minimization of the level of take. It is not appropriate to require mitigation for the impacts of incidental take."[23] EWAC suggests that the Service either exclude the ESA from this policy or revise the Proposed Policy to be consistent with its long-standing section 7 guidance.

IV. THE PROPOSED POLICY SHOULD RECOGNIZE THAT SEVERAL OF THE STATUTES CITED AS AUTHORITY FOR THE PROPOSED POLICY NEITHER CONTEMPLATE NOR REQUIRE MITIGATION IN THE FIRST PLACE.

The Proposed Policy sets forth the statutes that purportedly provide the Service with direct or indirect "specific authority" for conservation of certain resources and "mitigation planning for actions affecting" those resources.[24] EWAC is concerned that several of the statutes listed by the Service as providing authority for mitigation planning in fact provide no authority for mitigation at all. For example, while the incidental take permitting mechanism found in section 10 of the ESA *requires* that permittees minimize and mitigate the impacts of the authorized taking to the maximum extent practicable, the Migratory Bird Treaty Act ("MBTA") does not mention mitigation or any concept akin to mitigation in the entirety of the statute. Although the Service acknowledges that it can neither accept nor require compensatory mitigation under the MBTA,[25] it is somewhat troubling that the MBTA, nevertheless, is listed by the Service as a statute upon which the agency relied as providing authority for the Proposed Policy. Similarly, while the National Environmental Policy Act ("NEPA") contemplates that federal agencies might utilize "mitigation" in order to reduce the

[22] 81 Fed. Reg. at 12382.

[23] Consultation Handbook at 4-53 (emphasis in the original); *see also* Consultation Handbook at 4-19 ("…remember that the objective of the incidental take analysis under section 7 is minimization, not mitigation").

[24] 81 Fed. Reg. at 12382 and 12395.

[25] *Id.* at 12398.

overall impact of a proposed project to a level that does not cause significant effects to the human environment, NEPA is a procedural, rather than substantive, statute and cannot force a federal agency to require the underlying project proponent to provide mitigation. EWAC, therefore, recommends that the Service consider revising the Proposed Policy to remove reference to statutes that, in fact, provide no real or implied authority for requiring mitigation.

V. THE PROPOSED POLICY SHOULD RECOGNIZE THE CONSTITUTIONAL LIMITATIONS ON THE SERVICE IN REQUIRING MITIGATION.

EWAC notes that the concept of mitigation ratios and proportionality to actual resource impacts are scarcely mentioned in the Proposed Policy. While mitigation serves a valuable purpose by offsetting certain environmental impacts for which a permittee is responsible, in order for a permitting agency's mitigation demand to be constitutional, the mitigation must have both an "essential nexus" and "rough proportionality" to the effects it seeks to mitigate.[26] All forms of mitigation arising in the ESA and BGEPA context are subject to the constitutional limits on takings of private property, specifically the limits on "exactions"—conditions imposed on an agency's approval—as laid out in the Supreme Court's series of rulings in *Nollan*, *Dolan*, and *Koontz*.[27] The Supreme Court has established that its takings analysis for exactions applies regardless of whether the mitigation demand is for conveyance of an interest in real property or for money.[28] Fundamentally, in order for an exaction to be constitutional, there must be an "essential nexus" between the condition and the underlying purpose of the agency's approval to which the condition is attached,[29] and the condition must be "roughly proportional" in both nature and extent to the impact of the proposed land use.[30] Courts' "heightened scrutiny" standard of review of exactions places the burden on agencies to explain the rationale behind the mitigation demanded, the way in which that mitigation is tied to the approval sought, and the proportionality between the mitigation and the effects to be mitigated.[31]

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[26] *Koontz v. St. John's River Management District*, 133 S. Ct. 2586 (2013).

[27] U.S. Const. amend. V; *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Koontz*, 133 S. Ct. 2586.

[28] *Koontz*, 133 S. Ct. at 2603 (holding "that the government's demand for property from a land-use permit applicant must satisfy the requirements of *Nollan* and *Dolan* even when the government denies the permit and even when its demand is for money").

[29] *Nollan*, 483 U.S. at 837; *Dolan*, 512 U.S. at 386.

[30] *Dolan*, 512 U.S. at 391.

[31] *Dolan*, 512 U.S. 374; *Koontz*, 133 S. Ct. 2586.

In the context of an incidental take permit under ESA section 10, the mitigation required to fulfill the permit issuance criteria must be aimed at offsetting the impacts of the taking authorized and must be roughly proportional in magnitude to the injury to that species.[32] These requirements apply equally to a mitigation demand that takes the form of a transfer of a property interest, an in-lieu fee, or any other form. The Supreme Court has cautioned that mitigation conditions that do not abide by these requirements may have an unconstitutional coercive effect, even where the conditions are not accepted by the permittee:

> Our precedents . . . enable permitting authorities to insist that applicants bear the full costs of their proposals while still forbidding the government from engaging in "out-and-out . . . extortion" that would thwart the Fifth Amendment right to just compensation. Under *Nollan* and *Dolan* the government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts.
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> Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation. As in other unconstitutional conditions cases in which someone refuses to cede a constitutional right in the face of coercive pressure, the impermissible denial of a governmental benefit is a constitutionally cognizable injury.[33]

Thus, the Supreme Court requires a consistent focus on the nexus between the mitigation demand and the injury to listed species, as well as the proportionality between the two. The Proposed Policy should expressly acknowledge these limitations and the Service should provide training to Service staff concerning them.

VI. THE PROPOSED POLICY SHOULD PROVIDE THAT MITIGATION LANDS SHOULD RECEIVE CREDIT AT THE TIME OF PRESERVATION.

EWAC suggests that the Proposed Policy address the timing of receipt of mitigation credit for lands that will be preserved and for those upon which restoration and/or enhancement activities will be implemented. As written, the Proposed Policy appears to imply that for those mitigation

[32] As stated in II(b) and in accordance with the issuance criteria, the Service must consider the minimization and mitigation program as a whole as it relates to the impacts of the taking.

[33] *Koontz*, 133 S. Ct. at 2595–96 (citations omitted).

lands upon which restoration activities are planned, credit will not be given until completion of the restoration activities.[34] This approach discourages those providing mitigation from seeking out properties that could be restored or enhanced because those providers are essentially penalized while undertaking restoration and/or enhancement activities. Surely the Service would prefer that sub-optimal properties become safe havens for sensitive flora and fauna. However, under the Proposed Policy, there appears to be little incentive for an individual or entity to undertake potentially costly restoration with no guarantee that any credit will ever be delivered and at the very least, will be delayed. Therefore, EWAC requests that the Proposed Policy be revised to: (1) encourage Service personnel to provide clarity at the outset of a mitigation project both as to under what circumstances restoration will be deemed complete and how credits will be allocated once those milestones are achieved; and (2) allow for, *at a minimum*, partial mitigation credit for lands that have been preserved but for which restoration and/or enhancement activities are not yet complete.

VII. SERVICE PERSONNEL SHOULD BE TRAINED ON PRECISELY WHAT THE PROPOSED POLICY DOES AND DOES NOT RECOMMEND.

In the introduction to Section III above, EWAC indicated its concern that the Service's local offices may apply the Proposed Policy in a rigid manner, treating what is meant as guidance as red-letter law. Similarly, EWAC is concerned that the Service's local offices may not have an intimate familiarity with the actual language and intent of the Proposed Policy and, as such, may mistakenly impose certain "requirements" on project proponents. For example, EWAC is aware of at least one circumstance where Service personnel already have indicated that the Proposed Policy requires endowments for any instance of perpetual management of mitigation lands. EWAC does not interpret any provision of the Proposed Policy to indicate such a requirement, and EWAC reiterates its recommendation that the Service provide training to all personnel as to the intent and reach of the guidance created by final version of the Proposed Policy.

In light of the above example, EWAC suggests that the Proposed Policy clarify that the Service will not require organizations such as public entities and large, public corporations to provide any endowment for mitigation lands. In such instances, the possibility that such organizations would be unable to meet their mitigation requirements is so remote that such a requirement is unwarranted.

[34] 81 Fed. Reg. at 12385 and 12392.

VIII. THE PROPOSED POLICY SHOULD ACKNOWLEDGE THE TRANSFER OF LIABILITY WHERE PROPONENT-RESPONSIBLE MITIGATION MANAGEMENT RESPONSIBILITIES ARE TRANSFERRED TO A THIRD-PARTY MITIGATION LAND MANAGER.

As stated in Section I, EWAC commends the Service for specifically recognizing that, in a banking scenario, the responsibility for ensuring completion of compensatory mitigation measures rests with the bank sponsor and not the project proponent.[35] However, the Proposed Policy does not acknowledge that, where a project-proponent takes on a proponent-responsible mitigation project and then transfers the mitigation land and management responsibilities to a third-party manager (or similar) accepted by the Service, mitigation responsibility also transfers to the third-party. Where the land is protected in perpetuity by conservation easement, is funded by an endowment or other assurances, and has a Service-approved land management plan, this transfer of liability is appropriate. EWAC recommends that the Service expressly acknowledge that the responsibility for mitigation transfers to the third-party manager as it has done for conservation banks.

IX. THE PROPOSED POLICY SHOULD INCLUDE AN INDEPENDENT DISPUTE RESOLUTION PROCEDURE FOR THOSE CIRCUMSTANCES WHERE DISAGREEMENTS OVER APPROPRIATE MITIGATION ARISE.

Neither the 1981 Mitigation Policy nor the Proposed Policy contain a mechanism to aid in resolving conflicts among the Service, federal action agencies, project proponents, and/or mitigation providers where disputes over the appropriateness, degree, timing, or other aspects of mitigation arise. EWAC recommends that the Proposed Policy be revised to include a provision for an independent dispute resolution procedure. Such a procedure could be achieved, for example, by designating a dedicated team within the Service that would assist the relevant parties in achieving agreement in a timely, efficient, and effective manner, while taking into full consideration the mission of the Service and any federal action agency, the purpose and need of the project at issue, the economic and practical considerations with which the project proponent is bound, and the availability and capability of any mitigation provider involved in the dispute. EWAC feels strongly that this inclusion would greatly increase the efficacy of the Proposed Policy.

[35] *Id.* at 12391.

X. CONCLUSION

EWAC appreciates the Service's consideration of these suggestions and recommendations as it continues to evaluate the Proposed Policy. EWAC looks forward to continuing to work with the Service in its effort to continually improve implementation of federal wildlife laws and the effectiveness of mitigation programs in connection with those laws. Please feel free to contact the following EWAC representatives should the Service seek additional clarity on any of the above:

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