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November 23, 2009

Kurt A. Johnson  
National Climate Change Scientist  
Office of the Science Advisor  
U.S. Fish and Wildlife Service  
4401 N. Fairfax Dr., Room 700d  
Arlington, VA 22203

RE: USFWS Proposed Strategic Plan for Climate Change/Five-Year Action Plan

Dear Mr. Johnson:

The Northwest Mining Association appreciates the opportunity to comment on the U.S. Fish and Wildlife (“FWS”) proposed Strategic Plan for Climate Change and associated Five-Year Action Plan (referred to collectively as the “FWS Plan”).

NWMA is a 114 year old, 1,750 member, non-profit, non-partisan trade association based in Spokane, Washington. NWMA members reside in 40 states and are actively involved in exploration and mining operations on public and private lands, especially in the West. Our diverse membership includes every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA’s broad membership represents a true cross-section of the American mining community from small miners and exploration geologists to both junior and large mining companies. More than 90% of our members are small businesses or work for small businesses. Most of our members are individual citizens.

NWMA’s members have extensive first-hand experience with the Endangered Species Act (“ESA”) and are key players in fish, wildlife and habitat stewardship. Potential revisions to FWS policies and regulations and how they impact our members exploring and operating on National Forest System and BLM administered federal lands, in addition to private lands, are particularly important to NWMA.

NMWA supports policies that encourage economic growth and opportunity, freedom of enterprise and a common-sense, balanced approach to conservation and environmental stewardship. Given the breadth and history of resource development by NWMA members, we submit the following comments:

## **NWMA CONCERNS WITH FWS PLAN PROCESS**

### FWS is Putting the Cart Before the Horse

The FWS is very open in its stated desire to be a “leader” in relation to climate change policy discussions. The FWS plan outlines a number of commitments intended to “reshape the face of conservation and are key to enabling us to take our appropriate role in the conservation community as we address the challenges of a changing climate system.” (FWS Plan, page 10) FWS appears to believe that part of that role should be in *leading* policymakers in Congress. For example:

*“We anticipate that with the next two-three years, The U.S. Congress and the Federal Government will make political decisions and policies relative to climate change...To help shape those decisions and policies, the Service must already have in place a climate change leadership and management capability...”* (FWS Plan, page 15)

*“We will show leadership by effectively representing fish, wildlife and habitat conservation interests in discussions relating to national climate policy and legislation. We will help create climate change legislation that incorporates wildlife adaptation strategies as outlined in our Strategic Plan.”* (FWS Plan, page 16)

*“We will establish Service capability and show leadership in the climate policy discussions and effectively represent Service mission interest in discussions relating to national climate legislation. We will work to achieve climate change legislation that reflects our Guiding Principles and our Strategic Plan...”* (FWS 5-Year Action Plan, page 2)

With all due respect to the FWS, the Service’s responsibilities are to implement policies, not to establish or “shape” them. Congress, states, local governments and the public are still in the midst of a spirited discussion about fundamental questions relating to climate change, such as:

- Should greenhouse gases be regulated?
- What should be the framework of such regulation?
- How should the tradeoffs involved be balanced?
- What should be the timeline for the institution of any policy decisions?

These discussions are a healthy and necessary predicate to any viable climate change regulatory regime. If ever there was an issue that calls for full public scrutiny through the legislative and regulatory processes, domestic regulation of climate change is it.

Clearly, any federal climate change policy aimed at regulating CO2 emissions would have tremendous macro-economic, consumer pocketbook, environmental and national security implications for the nation. U.S. citizens need to have a full understanding of the positive and negative implications of such a regime and have their voices heard.

### FWS Using Climate as Justification for Expansive Broadening of Regulatory Authority

Among the most sobering aspects of the FWS Plan is its explicit effort to use the issue of climate change as a means to extensively broaden FWS authority. Among our key concerns:

- The FWS Plan would apply to any and all fish and wildlife and their habitats. It would not be limited to species that would meet the statutory requirements for threatened or endangered status under the ESA.
- The FWS Plan seems to be intent on “federalizing” huge land areas across the U.S. under the guise of climate change adaptation policies. It seeks to apply biological planning and design to “drive conservation at broad landscape scales.” This includes “identifying any landscape-level habitat linkages and wildlife corridors across public lands.” (FWS 5-Year Action Plan, page 7)

NWMA finds striking the pejorative terms FWS applies to economic uses of the land. It notes that its priority will be on those landscapes “most vulnerable” to climate change. Among the “disturbances it seeks to remedy: agricultural conversion, energy development and transportation.

*“The Science Advisor and the National Climate Team will work with partners to build a shared capacity to evaluate and design policies and plans for land-use (e.g. transportation, agriculture, forestry, fire management, invasive species management) and for energy that fully consider the impacts and implications of climate change (e.g. “green infrastructure” that highlights the importance of the natural environment in decisions about land-use planning).” (FWS 5-Year Action Plan, page 2)*

The Service historically has had its hands full managing species within the confines of the responsibilities statutorily entrusted to it. The Service’s own data shows that its success rate in recovering those species identified as threatened or endangered is abysmal. We believe FWS, fish and wildlife and their habitats, and the American public would be best served in focusing the Service’s already stretched resources and expertise in reforming the ESA to make it work for those species that good science and hard data show to be in trouble right now.

### The FWS Plan’s Stakeholder Processes are Skewed

The FWS Plan makes it clear that the Service views climate change as a political opportunity to “galvanize” the conservation community. However, it gives nearly zero attention to other stakeholders and sectors with a stake in wildlife and habitat conservation.

The truth is that many of the actual conservation and restoration efforts that occur on the ground are achieved by various industry sectors and landowners, including NWMA members. The plan makes little effort to either acknowledge those contributions or to actively engage and encourage those sectors’ participation in this effort. The complicated and difficult truth is that climate change policy must be built not simply upon satisfying one constituency and galvanizing it as a political force. Any viable policy must be built on reaching solutions that balance conservation goals with the needs of the nation for economic, mineral and national security.

## **FWS PLAN LACKS SOUND SCIENTIFIC BASIS**

FWS takes great pains in its introduction to justify its expansive plans (and requests for funding) based on an apocalyptic crisis facing wildlife and their habitats:

*“At the dawn of the 21<sup>st</sup> century, we find our commitment and our resolve and our passion and creativity being called upon as we face what portends to be the greatest challenge to fish, wildlife and habitat conservation in the history of the Service: The Earth’s climate is changing at an accelerating rate that has the potential to cause abrupt changes in ecosystems and mass species extinctions.”* (FWS Plan, page 1)

However, a careful reading of the report shows that FWS has little actual scientific data to support its claim of crisis based on climate change. Consider these breathtakingly large caveats FWS is forced to acknowledge:

*“One of the major challenges of addressing climate change effects on fish and wildlife will be identifying and accounting for the uncertainty that remains in our understanding of future climate change and how that change will affect ecological systems. Our understanding of future climate change is based largely on projections from global climate models (General Circulation Models) that are run using different greenhouse gas emissions scenarios. The projects are not perfect; they contain a degree of uncertainty due to our inability to perfectly model the climate system, to variations between models, and to the large geographic and temporal scales associated with model results...”* (FWS Plan, page 8)

*“Another source of uncertainty relates to the greenhouse gas emissions scenarios that are used to obtain projections. The IPCC has developed a number of these scenarios, but we do not know which of them will occur in the future, because, as the IPCC has stated, the scenarios are ‘based on assumptions concerning future socio-economic and technological developments, that may or may not be realized, and are therefore subject to substantial uncertainty...’”* (FWS Plan, page 8)

Predictive models are not scientific data on which determinations of actual climate change impacts can be based. While virtually all scientists agree that the Earth has been warming since the end of the Little Ice Age, temperatures have actually declined for the past eight years or so. This cooling has proceeded in spite of the fact that manmade greenhouse gas emissions have continued to increase. Many climatologists, including those who believe strongly that anthropogenic greenhouse gas emissions are the primary driver of global warming, now predict that this global cooling may persist for one or two more decades, if not longer.

What this dip in temperature means in the larger scheme of things is obviously unclear. However, it is important that this remarkable change in our climate is something that virtually none of the IPCC and other climate models predicted. It underscores the importance of taking our time and getting climate policies right, based on actual scientific data – not highly subjective and often inaccurate predictive models.

The Polar Bear Example: Exhibit One for Problems in Treating Predictive Modeling as “Scientific Data”

The FWS acknowledgement of the problems with predictive modeling is breathtaking, especially given the Service’s dependence on such “data” (IPCC predictive modeling of future risks) in making decisions on species today. The ESA listing for the polar bear is a perfect example of the problems with such an approach.

In its plan, FWS points to the polar bear as exhibit one for why immediate and expansive action by FWS is necessary:

*“A growing body of evidence has linked accelerating climate change with observed effects on fish and wildlife populations and their habitats in the United States. Polar bear population declines have already been noted in the Arctic...”* (FWS Plan, page 5)

In 2008, FWS determined that the polar bear qualifies as a threatened species under the ESA. Under the ESA, a species is “threatened” if it is *likely* to become endangered within the *foreseeable future* throughout *all or a significant portion* of its range. Polar bears are not currently threatened. The actual data shows the species has healthy population numbers and continues to occupy the full extent of its original habitat range.

Thus, the remaining question was whether the species is likely to become threatened within the foreseeable future. Under the ESA, use of the terms “likely” and “foreseeable future” create a requirement that, in order for a listing to be justified, the best scientific and commercial data must reliably demonstrate that endangerment of the species is probable. The scientific basis for such a claim relative to the polar bear is, to date, unsubstantiated.

The basic premise of the polar bear listing petition was a contention that climate change resulting from greenhouse gas emissions will likely result in the loss of 50-100 percent of the summer ice in the Arctic by 2100 which, in turn, will result in the demise of polar bears as a species. A careful look at the literature cited to support this notion (*The Special Report on Emissions Scenarios of the Intergovernmental Panel on Climate Change*) shows that such a claim is speculative at best. It is simply one of 40 *potential* future scenarios put forward by IPCC.

It is important to emphasize the fact that IPCC started from scenarios and then modeled around those assumptions. In fact, IPCC made very clear that its intent with the exercise was to assist in understanding how climate change might occur *if* a set of complex assumptions informing a particular scenario proved true. It did not intend the modeling to be predictive. In fact, because of such key uncertainties, the literature expressly disclaims any contention that the climate change scenarios presented are “likely.” In listing the polar bear as threatened, FWS did so predicated on the mere existence of a risk factor – without hard scientific data showing actual impacts to the species.

It is just this slippery analytical slope upon which FWS now suggest it rest its entire mission. The fundamental flaw in the FWS analysis of the polar bear is showing itself yet again in the draft FWS Plan – a reliance on predictive modeling to make fundamental decisions on the land. This is an approach fraught with inefficiency and regulatory imprecision and flies in the face of the

assumption of “good science” by which the FWS is required to abide in carrying out its basic responsibilities.

The FWS states as one of its key climate change principles a commitment to “Best Science.” NWMA strongly supports that principle. However, modeling for predictive purposes is not science and should not be characterized as such.

### Questions Regarding “Science-Based” Methods to Identify Vulnerable Species

The FWS Plan places a priority on targeting conservation by working with its conservation “partners” in developing science-based methods to identify the most vulnerable species and then making those species the Service’s priority. (FWS 5-Year Action Plan, page 19) This element of the plan raises the following concerns:

- The FWS Plan lacks even a basic definition of what will qualify as “climate-vulnerable species.” This definition is critical to understanding the scope of the plan and the effect of its implementation on local, state, regional and national economies and on national energy and mineral security.
- FWS speaks of doing “species and habitat vulnerability assessments.” Exactly what will be the actual scientific basis/criteria underlying these assessments and the setting of the species baselines? If it is primarily predictive modeling, we would be extremely concerned given the acknowledged shortcomings of such modeling discussed above.

## **FWS PLAN IMPACTS ENERGY AND MINERAL SECURITY**

The FWS Plan makes little effort to maintain the careful balance that has always characterized responsible resource planning, particularly in the West. It in no way acknowledges the very real need for resource policies to balance the needs of the nation’s citizens for affordable, accessible energy and mineral resources and the needs of fish, wildlife and their habitats. The FWS Plan, particularly when coupled with the Department of the Interior’s Secretarial Order 3289, seeks to limit future access to public land resources for important societal purposes. Furthermore, it brings into question whether existing agreements, permits and leases will be honored. Leasing and permitting, if allowed at all, are expected to be extensive, arduous and economically unfeasible. Existing and future activities will very likely be negatively impacted and even forced to closure through special interest groups’ nebulous claims of climate-related impacts.

Inevitably, this system sets up an endless cycle of conflict, challenges and litigation. That environment advances neither the causes of wildlife and habitat conservation nor energy and mineral security.

## **FWS SHOULD FOCUS EFFORTS ON REAL ESA REFORM**

FWS would be best served in first getting those missions and responsibilities in hand that are already defined for it by statute. The Service has its hands full, and its resources stretched, dealing with the ESA.

ESA reform has long been a priority of NWMA and many others who care about the successful recovery of species in trouble. If FWS truly wants to take bold action and exert leadership, the best place to start would be the identification and active promotion of reforms to a statute that is broken, outdated and which rarely helps species actually recover.

The ESA as currently written:

- Discourages innovative environmental conservation;
- Effectively confiscates private property;
- Denies people their livelihoods;
- Costs our economy billions of dollars per year with little positive benefit;
- Prevents well-meaning experts at FWS from doing the real work of helping species flourish; and
- Fails miserably in the central mission that Congress intended: recovering species that are in trouble and allowing them to be delisted.

According to the FWS's own data, the ESA has a greater than 99 percent failure rate when it comes to species recovery. NWMA believes the nation can do better. We have advocated for the following principles to improve the performance of the ESA by:

- Giving state and local governments a greater say in the listing and recovery process;
- Opening the listing process to the sunshine of public disclosure, including the requirement to publish notice of listing petitions within a reasonable amount of time of their receipt at any FWS office;
- Providing all members of the public full and equal access to the full range of information contained in the FWS "Environmental Conservation Online System" (ECOS) online database. ECOS houses modules that provide information on endangered and threatened species including candidate species, conservation plans, critical habitat, litigation and petitions;
- Restoring the primacy of independently verifiable science in driving all aspects of ESA listing processes and regulation;
- Replacing the failed "critical habitat" process with science-based recovery plans;
- Increasing communication and coordination among federal agencies;
- Improving the Section 7 consultation process;
- Developing better incentives for landowners who have endangered species or habitat on their property;
- Compensating private property owners for the loss of use of their property; and
- Decreasing the number of ESA-related lawsuits.

If FWS is serious about meeting the challenges facing the nation's wildlife and habitats, it needs to prove it can be successful with the central mission already statutorily assigned to it. The above set of reforms would be a good start.

## CONCLUSION

Thank you for the opportunity to provide input on this important public policy issue. The FWS needs to step back from the proposed Strategic Plan for Climate Change and focus on its core mission already defined by statute. Furthermore, the recent revelation concerning emails and internal documents from the IPCC's Climate Research Unit at the University of East Anglia in the U.K. brings into serious question the validity of the "science" used as the basis for the FWS Plan. At this time, it is difficult to say what the full implication of this information is, but this could well be the greatest act of scientific fraud in history. Particularly in light of this new information, attempting to rush through broad new policies under the guise of a "crisis", as is being done with FWS Plan, is not justified.

Sincerely,

A handwritten signature in cursive script that reads "Laura Skaer".

Laura Skaer  
Executive Director