

Statement by the Honorable Dan Sullivan on Proposed Revisions to the U.S. Fish and Wildlife Service Mitigation Policy Hearing Senate Subcommittee on Fisheries Water, and Wildlife:

September 21, 2016

Good afternoon and thank you for being here to discuss what I think is an exceptionally important issue—the Fish and Wildlife Service’s proposed revisions to its mitigation policies and the impacts these changes could have on projects across United States and in particular my home state of Alaska. I know some of you had to travel far to be here and most of you had to shuffle competing demands on your schedules on short notice. I appreciate you all participating in this hearing.

This hearing gives us a chance to review the Service’s broad proposal that has the potential to extend the scope of federal review and consideration of infrastructure, energy, and private development and land use projects throughout the nation. The Fish and Wildlife Service’s proposal, when added to the existing mass of procedural and resource reviews for federal actions and permits for private development, will increase costs, delay or paralyze projects, essentially withdrawal lands, and discourage needed investment. In short, broadly crafted and poorly explained policy proposal like the Service’s proposed revisions may have significant impacts.

A recent report from the American Society of Civil Engineers found that there is an over \$1.4 trillion funding gap for need infrastructure spending through 2025. That’s \$1.4 trillion worth of roads, water, waste water, basic electricity, airport, and port repairs and investment that will be required to meet the nation’s infrastructure needs in the next decade. In some places in the U.S. these investments will rebuild crumbling roads and bridges. But in Alaska sometimes there is no infrastructure and investments in wholly new projects are vital to improving people’s lives and access

to basic necessities like lower priced goods, medicine, electricity and water. On top of all of these investments the nation still needs to strategically explore and develop fossil fuel and renewable energy resources to provide for secure, abundant, lower cost energy. From responsible development on the North Slope of Alaska to renewable energy development and transmission lines on public lands in the West and Midwest of the Lower 48, these projects will need to undergo numerous environmental, natural resource, and wildlife reviews and consultations, which the proposed revisions would only further complicate.

As drafted I am concerned that the Service's proposed revisions will add more complexity to the dizzying array of regulatory requirements big and small projects must face. FWS also is proposing to potentially veto projects by requiring a "no action" alternative in some cases. This is particularly worrying in light of the huge need to responsibly review and permit projects that have the promise to decrease the infrastructure gap as well as lower energy prices, increase mobility, and bring opportunity to people across this country. In particular advanced compensatory mitigation requirements proposed by the Service in addition to those already administered by the Army Corps of Engineers may be duplicative and end up adding additional burdens with minimal resulting benefits. Keep in mind every dollar spent on compensatory mitigation is a dollar that is not spent building our infrastructure, growing our economy, or providing services for our citizens.

Alaska's unique situation also raises concerns under the policy revisions. Alaska, as recently recognized by the Supreme Court in the *Sturgeon* case, is different than the rest of the country with regards to our lands. 88% of Alaska is public. Compare that to 1% of land in private ownership. The large proportion of these lands are undeveloped. Alaska also contains more wetlands than in all the rest of the United

States. Alaska also has unique requirements under statute to prioritize and protect subsistence resources. Taken together and informed by our state's experiences implementing mitigation measures under Army Corps and BLM, the difficulties in addressing mitigation in Alaska have imposed delays and millions of dollars in costs to projects, and in some cases killed the projects out right. Yet, the proposed revisions are completely silent on the unique difference posed by applying these broad revisions to mitigation in Alaska.

Finally, the scope of authority asserted by the Service in its proposal is exceptionally broad and far from clear. The Service bases its authority to implement its new "net gain or at least no net loss" policy on no less than 26 statutes. However, most, if not all of these statutes, either 1) only allow the Service to provide recommendations to other agencies; 2) do not authorize the Fish and Wildlife Service to implement a net benefits policy; or 3) provide contradictory authorities to a net benefits policy. It is an axiom of basic administrative law that agencies may only exercise the authority delegated to them by Congress. It should cause all of us and Service great concern that its own grant of authority from Congress to implement these policy revisions is so unclear at this stage of the proposal.

Given the directive in the President's memorandum on mitigation implementing the proposed revisions to the Service's Mitigation Policy is the tip of the iceberg. However, in the context of the Fish and Wildlife Service and its congressionally delegated authority, the proposed revisions raise serious concerns and could have the unintended consequences of subjecting projects to further delays and costs eventually locking up lands to beneficial development for Americans that sorely need it.