

March 23, 2022

Via E-mail and U.S. Mail

Director Martha Williams
Office of the Director
U.S. Fish and Wildlife Service
Main Interior
1849 C Street NW, Room 3331
Washington, DC 20240-0001
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Re: Pressing Wildlife Priorities for the Southeast and Meeting Request

Dear Director Williams:

Congratulations on being named the next U.S. Fish and Wildlife Service Director. We look forward to working with you to ensure conservation and recovery of imperiled species and habitat. The Southern Environmental Law Center is a 501(c)(3) nonprofit that has long advocated for our Southeastern region's rich biodiversity and natural treasures on behalf of a wide variety of local, regional, and national groups. As you officially take the helm of the Fish and Wildlife Service ("FWS" or "Service"), we request an opportunity to meet with you to discuss how we can work together to protect our region's robust biodiversity and address the most pressing issues facing our Southeastern ecosystems.

The Southeast boasts an astounding level of species and habitat diversity. In 2016, the Southeast was recognized as one of only two Global Biodiversity Hotspots in the United States, indicating high species diversity threatened by habitat destruction.¹ The Southeast is home to more than 1,800 endemic plant species, yet has already suffered enormous habitat loss: 85.5 percent of its habitat has been "highly altered or converted to anthropogenic land cover."² The Southeast's varied freshwater ecosystems—from forested mountain streams to coastal plain wetlands—are particularly biodiverse. More than 550 different freshwater fish are found in the Southeast, comprising 79% of all freshwater fish species in the U.S. and Canada.³ Ninety-one percent of the U.S.'s mussel species, or nearly 40% of the world's freshwater mussel species, inhabit the Southeast, as well as almost one-third of all crayfish species in the world.⁴

¹ Reed F. Noss, Announcing the World's 36th Biodiversity Hotspot: The North American Coastal Plain, CRITICAL ECOSYSTEM PARTNERSHIP FUND (Feb. 18, 2016), <https://www.cepf.net/stories/announcing-worlds-36th-biodiversity-hotspot-north-american-coastal-plain>. To be designated a "Hotspot," a region must have more than 1,500 endemic plant species and must have lost at least 70 percent of its natural habitat.

² *Id.*

³ Duncan Elkins et al., *Illuminating hotspots of imperiled aquatic biodiversity in the southeastern US*, GLOBAL ECOLOGY & CONSERVATION (2019).

⁴ *Id.*

Under the Trump Administration, the Service abandoned scientific integrity with serious consequences for environmental resources, including imperiled ecosystems. In the Southeast, wildlife and habitat continue to experience the harmful effects of past and ongoing ill-advised and unscientific agency decisions. We look forward to working with you to return the Southeastern Region of FWS to conservation-focused and scientifically-supported decisionmaking. Below, we highlight several priorities we would like to discuss with you regarding needed actions for conservation of the ecosystems of the Southeastern United States.

Reject Region 4's Quota System for Removing Species' Protections

In 2017, Region 4 of FWS began implementing an annual goal for removing protections for imperiled species, called the Wildly Important Goal or WIG.⁵ This objective, promoted by Region 4 Director Leo Miranda, established an arbitrary quota of downlisting, delisting, or denying listed status for 30 species per year. Rather than evaluating species solely on the best available science, as required under the Endangered Species Act ("ESA"), this quota incentivized FWS to review species' statuses with an eye towards removing protections, rather than providing the protections necessary for conservation. In order to keep up with the quota, the agency has shifted staff and resources away from critical species recovery efforts to completing Species Status Assessments to justify predetermined negative listing decisions.

We are concerned this quota may still be in place, based on recent adverse listing proposals for species that Region 4 previously considered as candidates to meet the WIG, like the proposed delisting of dwarf-flowered heartleaf. Meanwhile, past decisions made during the tenure of the WIG—including "not warranted" decisions for species like the hellbender salamander and Berry Cave salamander—should be reconsidered with status reviews reinitiated for these species.

Pause the Proposed Downlisting for the Red-Cockaded Woodpecker

FWS formally proposed in October 2020 to downlist the iconic red-cockaded woodpecker from endangered to threatened with a species-specific ESA Section 4(d) rule, removing many of the protections the species has long depended upon. The agency's own science demonstrates downlisting is not justified, and we are grateful that the agency has now recognized the initial proposed rule's shortcomings, issuing a revised proposed rule with improved clarity and measures to better ensure continued conservation and recovery of red-cockaded woodpeckers. Nonetheless, the proposed downlisting still ignores the anticipated impacts of climate change on the species' habitat and fails to account for the species' dire status across the western half of its range. The decision to prematurely downlist would set a harmful precedent of ignoring science and bowing to pressure from other agencies and private interests irrespective of ESA requirements.

⁵ E.g. Jimmy Tobias, Pacific Standard, *Fish and Wildlife is 'Conserving' Imperiled Animals by Denying Them Protection*, May 1, 2019, <https://psmag.com/environment/fish-and-wildlife-is-conserving-nearly-extinct-animals-by-denying-them-protection>.

Rescind Proposed Delisting of the Nashville Crayfish

FWS proposed to delist the Nashville crayfish, which is currently listed as endangered, in November 2019. None of the risk factors that led to the listing of the Crayfish in the 1980s, however, have improved; they have gotten much worse as Nashville has grown. The Crayfish is endemic to Mill Creek, a tributary to the Cumberland River that runs through the most rapidly developing part of Davidson and Williamson counties (Nashville and suburbs). In its delisting proposal, FWS relied on decades-old population data, chopped the Mill Creek watershed into ten segments contrary to the best available science, and ignored the potential exacerbating effect of climate change. FWS should withdraw this unsupported proposal.

Recommit to Red Wolf Recovery

For decades, the reintroduction of red wolves into Eastern North Carolina in 1987 was heralded as a conservation success story. The red wolf population peaked around 130 animals in the mid-2000s, and steadily maintained an estimated population of 100 for more than a decade. But beginning in 2014, FWS turned its back on this wild population of America's only endemic wolf, rolling back the agency's own conservation measures. As the population plummeted, the agency then proposed a rule in 2018 to constrict the designated red wolf recovery area to a sliver of its former size and that would have allowed for the killing of red wolves off of federal lands. The population now numbers as few as 10 wild red wolves, and no red wolf litter has been born in the wild since 2018.

Against this backdrop, we are heartened by FWS's stated recommitment to the red wolf population in recent months. FWS formally rescinded the 2018 proposed rule that was antithetical to red wolf recovery in November 2021. In February of this year, FWS held a public meeting about its upcoming plans for releasing captive red wolves into the wild, promising to improve outreach with local residents, as well as assuring that it will resume adaptively managing coyotes in the wild and working to grow the wild population. We look forward to continuing to work with FWS to rehabilitate this critically important wild population and recommit to its recovery on the landscape.

Maintain and Enhance Protected Spaces for Wildlife

As one of the fastest growing areas of the country,⁶ Southeastern ecosystems face many threats from human activities—including highways and development, logging, agriculture, pollution, poor land management, and introduction of invasive species, among others. These impacts of human presence in the Southeast are further fragmenting and destroying previously intact natural habitats, introducing a host of threats to wildlife.⁷ At the same time, the climate crisis is exacerbating threats

⁶ See U.S. Census Bureau, Press Release, *Southern and Western Regions Experienced Rapid Growth This Decade*, U.S. DEP'T OF COMMERCE (May 21, 2020), <https://www.census.gov/newsroom/press-releases/2020/south-west-fastest-growing.html>.

⁷ Adam J. Terando et al., *The Southern Megalopolis: Using the Past to Predict the Future of Urban Sprawl in the Southeast U.S.*, 9 PLOS ONE e102261 (2014).

to species, and preexisting habitat destruction will impede the ability of species to otherwise adapt to higher temperatures, increased rainfall, and sea level rise. Against this backdrop, set-aside spaces for purposes of conserving wildlife and habitat like National Wildlife Refuges become even more important. In line with President Biden's 30x30 goal, FWS should enhance protections for habitat and species on the Refuge system and other federal lands, and develop concrete ways to increase protected habitats for Southeastern wildlife.

One concerning example of a project that would damage wildlife habitat is the City of Virginia Beach's proposal to build a road along a strip of public land that cuts through the Back Bay National Wildlife Refuge. The city's so called "Nimmo Parkway Phase VII-B" proposal would bisect an extensive system of forested wetlands in a biologically valuable and sensitive area of the Refuge, and would result in forest fragmentation, damage to habitat and wildlife corridors, and potentially alter wetlands hydrology. Upgrading the existing "Sandbridge Road" to withstand current and projected flood levels would be much less disruptive to valuable Refuge habitat, and we are urging Refuge officials to maintain their historic position in support of this alternative and to advocate for it during the federal reviews of the proposal.

At Cape Romain National Wildlife Refuge in South Carolina, FWS recently halted its practice of allowing for the commercial harvest of horseshoe crabs in the Refuge without a special use permit. Cape Romain is a critical stopover for migratory birds, including the threatened rufa red knot which depends on nutrient-dense horseshoe crab eggs to fuel its continued migration onward after stopping at Cape Romain. Harvesters had previously taken crabs from closed islands during spawning, just as red knots were arriving to feed on horseshoe crab eggs. In August 2021, on the heels of litigation over FWS's allowance of the horseshoe crab harvest on Refuge property, FWS issued a memorandum stating the harvest was no longer allowed without prior approval. Now, as part of an application for a special use permit, FWS is considering whether harvesting is appropriate and compatible with the Refuge's purpose. Given the presence of red knots during the harvest and the general purpose of Cape Romain to protect birds, FWS should find horseshoe crab harvesting inappropriate and incompatible.

A final example is Twin Pines Minerals' proposal to mine titanium and other heavy mineral sands at the doorstep of the Okefenokee National Wildlife Refuge—a proposal that the Service has already acknowledged may alter the hydrology of the swamp and increase wildfire occurrence within the Refuge, threatening habitat for federally listed and at-risk species like the Suwanee alligator snapping turtle and red-cockaded woodpecker. We appreciate the Service's focus on this proposal to date and encourage the Service to oppose Twin Pines' project and any other proposals that may jeopardize the integrity of the Okefenokee moving forward.

Reinstate Science and Climate Considerations in Endangered Species Act Implementation

We look forward to seeing FWS return to science under new leadership, and we appreciate that the agency intends to rescind or revise many changes to the ESA implementing regulations that the Trump administration finalized between 2019 and 2020. We urge FWS to move forward with

those much-needed regulatory revisions as quickly as possible in light of the extreme threats posed by the twin extinction and climate crises. Many unique Southeastern ecosystems are imperiled by climate change, including coastal estuaries, bottomland hardwood forests, longleaf pine forests, Carolina bays, and pocosin peat bogs. In accordance with President Biden's Executive Order 13990 regarding science-based decisionmaking and climate resilience,⁸ these regulatory revisions should require FWS to give due consideration to the current and future effects of climate change on species and their habitats in the agency's listing decisions, status reviews, and consultations.


Finally, we are also encouraged by FWS's revocation of the Migratory Bird Treaty Act regulations that illegally and unreasonably limited the scope of the Act's protections, and we look forward to continuing to work with you as you develop a robust incidental take permitting framework to advance conservation for migratory birds.

Again, we would welcome an opportunity to meet with you to discuss in greater detail these and other priorities for our Southeastern wildlife and habitat.

Sincerely,



Ramona H. McGee
Senior Attorney &
Wildlife Program Leader



Anders Reynolds
Federal Legislative Director

⁸ Executive Order 13,990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (Jan. 20, 2021); *see also* Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking, 86 Fed. Reg. 8,845 (Jan. 27, 2021) at 8,847 (Sec. 3(b)(iv)), <https://www.whitehouse.gov/briefingroom/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrityand-evidence-based-policymaking/>.