United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

IN REPLY REFER TO

July 12, 2007

MEMORANDUM

To: Deputy Secretary of the Interior

From: Director, U.S. Fish and Wildlife Service H Dale Hall

Subject: Review of Documents Under the Endangered Species Act

As a result of inquiries regarding the inappropriate influence of Deputy Assistant Secretary (DAS) Julie MacDonald on Endangered Species Act (ESA) work products, you asked me to expand the request I had made of California and Nevada Operations Office Director Steve Thompson to all Fish and Wildlife Service (Service) Regions. I apologize for the tardiness of this response, but as you might imagine, there have been a lot of Federal Register notices, Section 7 consultations and other actions transpire since the arrival of DAS MacDonald in the Department of the Interior.

Before I relay the results of the review, I'd like to outline what was requested and how the review ensued. The roles and responsibilities of the Assistant Secretary's office include review of documents to ensure conformance with established policy, and the authority to examine current policies and execute changes to those policies based on legal interpretations. The gathering and analysis of any science used is the responsibility of the Director of the FWS, working through the career scientists in the bureau. A clear line of separation of duties is imperative if we are to maintain scientific credibility and the trust of the American people.

When I arrived as the Director in October, 2005, I began to examine how ESA packages were reviewed in Washington, both in the FWS and by DAS MacDonald on behalf of the Assistant Secretary. I became troubled by the apparent lack of clarity in the division of responsibilities and had several meetings with the Assistant Secretary and his DAS staff. You were confirmed and appointed to the position of Deputy Secretary very shortly after my arrival, and we began to discuss ways to clarify and improve both the quality of ESA documents and the review process for publication.

With your concurrence, on February 3, 2006, I sent a memorandum to the Directorate of the FWS explaining my views on how science should be used in making recommendations and decisions regarding ESA actions, as well as the process we would use in review and comment as the science was examined from a policy and legal perspective (Attachment 1). On February 7, 2006, I met with Acting Assistant Secretary Hogan and DAS's MacDonald, Smith and Hoffman to discuss how the division

of responsibilities should be carried out. The results of that meeting were successful from both a team concept and integrity of science approach. My email of February 8, 2006 (Attachment 2), documented the agreements made and reiterated my thanks for the cooperative manner in which the subjects of science and policy were fostered and appreciated. I also want to thank you for your support and involvement to bring better working relationships within the Department of the Interior on very important issues under the ESA.

In May, 2007, I visited California and had discussions with CNO Director Steve Thompson and his key field office leaders regarding next steps in re-evaluating any ESA packages that might have been inappropriately modified by DAS MacDonald, as had been discussed with you prior to my visit. Director Thompson had already begun discussions with his Regional leadership on this topic, so our discussions were informed by good input from the field. You subsequently asked me to embark on a full review of documents under the ESA subsequent to DAS MacDonald's arrival. I directed each Regional Director to involve their field office leadership to determine what, if any, ESA **decisions** had been modified or changed by DAS MacDonald inappropriately. This directive recognized two important points: 1) while there may have been inappropriate actions by DAS MacDonald in her interface with our career employees, the most important question to answer rests with decisions that were changed and the health of species that may have been undermined; and 2) the directive recognized that the Office of the Assistant Secretary **does** have the authority and privilege to be involved in policy interpretation and implementation. Policies established at the Assistant Secretary level that involve interpretation of law are both appropriate and legitimate in the operations of the Department of the Interior.

The nationwide review performed by the Regions identified ten decision actions that, in the opinion of the Regions, should be re-examined to ensure a final decision that is clear and comports with best available science. My discussions with the Regional Directors also revealed that on several occasions the Regional Director defended the FWS proposal and resisted changes that might have been inappropriate. I held a conference call on July 11, 2007, to have a final discussion with all Regional Directors prior to my transmittal of this memorandum. Each recommendation was discussed with the appropriate Regional Director to ensure they supported their recommendations and that no other packages should be added. It was agreed by all that the list below represents a comprehensive review and the final recommendations of ESA actions that should be re-evaluated.

CALIFORNIA/NEVADA OPERATIONS OFFICE

- Arroyo toad Critical Habitat
- California red-legged frog Critical Habitat

PACIFIC REGION

- Marbled murrelet 5-year review
- Bull trout Critical Habitat
- 12 species of picture wing flies Critical Habitat

ROCKY MOUNTAIN REGION

- White-tailed prairie dog 90-day finding
- Lynx Critical Habitat
- Preble's meadow jumping mouse 12-month finding/proposed delisting
- Preble's meadow jumping mouse Critical Habitat

SOUTHWEST REGION

- Southwest willow flycatcher Critical Habitat

This constitutes my report to you in answer to your assignment to review ESA packages completed under the tenure of DAS MacDonald. My intent is to instruct the Regions to, within a reasonable time, re-evaluate the questions posed under each of these actions. The exact timeline will depend on appropriations, court decisions and other factors that affect workload. I do, however, expect these efforts to receive as high priority as can be given.

I hope this fulfils your request for a review and meets your expectations. I want to thank the employees of the Service for due diligence in completing this assignment, and also to you for your professional approach and support of the ESA. I am available to discuss this with you at your convenience.