



Written Statement for the Record

**The Honorable Heather Carruthers
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on behalf of the National Association of Counties

for the hearing

“An Examination of FEMA’s Limited Role in Local Land Use Development Decisions”

before the

**House Committee on Transportation and Infrastructure
United States House of Representatives**

**September 21, 2016
Washington, D.C.**

Thank you, Chairman Shuster, Ranking Member DeFazio and distinguished members of the Committee for this opportunity to testify on FEMA's role in local land use development decisions.

My name is Heather Carruthers and I am an elected county commissioner in Monroe County, Florida, where I currently serve as the County Mayor. Today, I am representing the National Association of Counties (NACo).

About NACo

NACo is the only national organization that represents county governments in the United States, including Alaska's boroughs and Louisiana's parishes. Founded in 1935, NACo assists America's 3,069 counties in pursuing excellence in public service to produce healthy, vibrant, safe and resilient communities.

About America's Counties

Counties are highly diverse, not only in my state of Florida, but across the nation, and vary immensely in natural resources, social and political systems, cultural, economic and structural circumstances, and public health and environmental responsibilities.

Many of our responsibilities are mandated by the federal government and by state governments. Although county responsibilities differ widely between states, most states give their counties significant authorities. These authorities include construction and maintenance of roads, bridges and other infrastructure, assessment of property taxes, record keeping, running elections, overseeing jails and court systems and public hospitals. Counties are also responsible for child welfare, consumer protection, economic development, employment/training, land use planning and zoning and water quality. We enact zoning and other land use ordinances to safeguard valuable natural resources and protect our local communities depending on state law and local responsibility.

About Monroe County, Florida

Monroe County lies on the southernmost tip of Florida and encompasses more than 3,737 square miles. The county is home to the Florida Keys, Florida Keys National Marine Sanctuary, Everglades National Park and part of the Big Cypress National Preserve. Although we are the largest county in Florida by land mass, the majority of the county—73 percent — is under water, and the majority of our 77,136 residents live in the Florida Keys. All of Monroe County is considered a coastal floodplain and is subject to the Federal Emergency Management Administration's (FEMA) National Flood Insurance Program (NFIP) requirements. In fact, in our county alone, we have more than 27,000 NFIP policies for residences and businesses.

In my county – which has been designated by the State of Florida as an Area of Critical State Concern – we have limited land, a sensitive environment and more than 30 endangered species. Combined, these

factors have required us to regulate development through a Rate of Growth Ordinance (ROGO), which limits the number of building permits we can issue over the next decade to approximately 3,500. As a result, there are roughly 11,000 undeveloped parcels in Monroe County.

There are 28 threatened and endangered animal species in Monroe County, with another four species proposed for listing by the U.S. Fish and Wildlife Service (USFW). The listed species include shorebirds, butterflies, rodents, the iconic Florida Key deer and five species of sea turtle. The Keys are also home to four listed plants.

The primary industry in Monroe County is tourism, and nearly four million tourists visit the Keys each year to enjoy our unparalleled natural environment, rich culture and history. Other major economic drivers include commercial fishing, local government, the school system and the Naval Air Station Key West, which is one of the military's premiere aviation training facilities. These industries – particularly our service industry – do not produce many high-paying jobs. Given our distance from the mainland and our limited land and strict growth regulations, the cost of living in Monroe County is well above the national average. Indeed, the United Way has estimated that the basic survival budget for a family of four in Monroe County is nearly three times higher than the national poverty level.

The Local Perspective on Endangered Species Regulation and the National Flood Insurance Program

The topic of this hearing is of great importance to my county and many other counties across the United States. The NFIP is indispensable to our homeowners and businesses, and changes to the program and its requirements for participating communities directly affect our residents and our local economy. We are also entrusted by our constituents to establish local land use policies that protect our county's environment and its many species and their habitats, while also allowing for development that benefits our community and local economy. We have worked hard to identify solutions that help us achieve these key goals.

Mr. Chairman, I will focus my remarks today on the following points:

- **First, local governments work daily to craft land use policies that protect our endangered species, mitigate against disasters and facilitate economic development. We carry out this difficult balancing act in compliance with existing state and federal species protection regulations.**
- **Second, NFIP is of vital importance to the economic health of flood-prone communities, and imposing additional species protection regulations through the program will force local governments to significantly alter the land use policies that they have carefully crafted.**
- **Third, species protection regulations carried out through NFIP have typically been one-size-fits-all solutions that consider neither the variance in local communities nor their existing species protection efforts. Because of this, their implementation results in land use policies**

that are often damaging to local economies and less effective at protecting endangered species.

For these reasons, which are elaborated upon below, we believe that advancing species protection efforts through NFIP is problematic and ultimately counterproductive at the local level. The careful balancing of a community's unique needs and circumstances, carried out by its elected officials, should not be upended by one-size-fits-all federal regulations that are imposed without consideration of such factors.

First, local governments work daily to craft land use policies that protect our endangered species, mitigate against disasters and facilitate economic development. We carry out this difficult balancing act in compliance with existing state and federal species protection regulations.

In most states, land use planning and regulation is carried out primarily at the local level. Through this land use authority, we carry out the important and ongoing work of shaping the local communities within our jurisdiction. Our task is to create an environment that is livable for our residents, conducive to economic growth, protective of our natural environment and threatened and endangered species, and resilient against natural and man-made disasters. Local plans, ordinances and regulations enable us to balance these considerations in a manner that best suits the unique needs and circumstances of our local communities, and we expend significant time and resources to achieve these goals.

After our county was determined by the State of Florida to be an Area of Critical State Concern because of our sensitive and special environmental resources, we updated our Comprehensive Plan to include strict development restrictions. After five years of challenges and discussion, the plan was adopted in 1991.

In 1992, the county adopted our Rate-of-Growth-Ordinance in compliance with that Comprehensive Plan that sets forth a point system whereby we allocate a limited number of building permits the State allows us to issue each year. Both positive and negative points are awarded based on certain criteria such as infrastructure availability, flood elevation, hurricane wind resistance, affordable housing, water conservation, energy conservation, habitat protection, and protection of historic and archaeological resources. The number of building permits the State allows is tied to hurricane evacuation. The Rate-of-Growth-Ordinance creates a competitive development arena and encourages compliance with the allocation scoring criteria; thereby directing the award of permits to developments that are, for example, designed in areas outside of sensitive habitat and away from the coastal high hazard areas.

As we set and carry out our land use policies, we must comply with a series of state and federal regulations that aim to protect threatened and endangered species, including the Endangered Species Act (ESA). In 2006, we partnered with state agencies and voluntarily submitted a Habitat Conservation Plan and Incidental Take Permit application to the USFWS to protect the Key Deer and other protected

species on Big Pine Key and No Name Key, two islands located in the lower Florida Keys. On June 9, 2006, USFWS issued a permit that limits development on those islands.

In sum, land use policies at the local level are the product of much coordination and partnership with state and federal partners, and are tailored to the specific needs and circumstances of each community.

Second, NFIP is of vital importance to the economic health of flood-prone communities, and imposing additional species protection regulations through the program will force local governments to significantly alter the careful balancing of their land use policymaking considerations.

NFIP was enacted in 1968 to offer residents and businesses federal flood insurance. Although the program is voluntary, communities are heavily incentivized to participate in NFIP, because if a community does not participate, its property owners cannot purchase flood insurance policies. Since flood insurance policies are often required by mortgage lenders when a property is in a floodplain, a community that does not participate in NFIP severely limits the ability of its residents to sell and purchase homes and commercial buildings.

In 2012, the Government Accountability Office (GAO) estimated that 2,930 of the nation's 3,096 had NFIP policies in their jurisdictions. NFIP is important to local economies, and especially vital in Monroe County because all of our parcels lie within a coastal floodplain.

While there are approximately 77,000 full-time residents in the Keys, our functional population is twice that number. More than half of all residences in the Keys are second homes and vacation homes, limiting the supply of housing for working families. In fact, the median price of a home in the Keys today is \$480,000. That's why the NFIP is so important to our workforce and residents. Without it, buyers cannot secure federally-backed mortgages. That goes for buyers of primary homes, rental residences and businesses as well.

The importance of NFIP was highlighted after a federal court halted issuance of new NFIP policies for nearly 50,000 parcels in Monroe County following a lawsuit filed by conservation groups. For seven years, the injunction (known as the "FEMA injunction") remained in place, and the owners of the parcels were unable to obtain institutional loans and/or build. In fact, there was a moratorium on all building within the county, even for those individuals who had obtained one of the county's allotted building permits.

During the FEMA injunction, costs for construction skyrocketed and the permitting process dragged. The county documented homeowners paying over \$1,000 more in permit fees and waited six months to a year for USFWS approval to build. The only homeowners and businesses that were able to build, were those property owners who did not need flood insurance and had the deepest pockets. This injunction hurt our working families and small businesses and further slowed economic growth and drove up business and housing costs even further in the county.

The additional injunction requirements also directly impacted county functions because we had to allot staff time for coordination across geographic information system (GIS) platforms at the local level. This created a bureaucratic and financial burden for our local governments and for our residents.

Although participation in NFIP is technically voluntary, local governments have little choice but to comply with NFIP's participation requirements. In this way, NFIP's participation requirements effectively serve as federal regulations that force local governments to adjust their policies in order to maintain eligibility for the program.

Since local governments are not consulted regarding NFIP participation requirement changes, they have no opportunity to provide input on the potential impact of these changes at the local level, and must implement additional requirements regardless of how they affect carefully crafted policies. It is generally true in Monroe County that if you cannot get federal flood insurance, you cannot build.

Third, species protection regulations carried out through NFIP have typically been one-size-fits-all solutions that consider neither the variance in local communities nor their existing species protection efforts. Because of this, their implementation results in land use policies that are often damaging to local economies and less effective at protecting endangered species.

In contrast to the careful balancing and consideration of a community's unique circumstances that take place when local governments set their land use plans and policies, federal species regulations imposed through NFIP participation requirements are one-size-fits-all solutions. **Furthermore, these regulations fail to take into consideration the often extensive efforts that have been carried out at the local level to protect threatened and endangered species.** This leads to scenarios in which, in order to maintain eligibility for NFIP, local governments must put aside the decisions and judgments they have made regarding the best means of achieving various land use policy goals, and instead adopt ill-fitting regulations that may ultimately do less to protect endangered species in their jurisdiction.

In the past, owners of properties within Endangered Species habitat areas were required to seek approval for development from USFWS before they could be granted a building permit by the County. In 1997 as a result of a lawsuit brought by environmentalists, the USFWS completed a Biological Opinion (BO) for the effects of the NFIP on Federally protected species in the Florida Keys. The 1997 BO found the NFIP jeopardized nine species in the Keys. In 2003 the Service re-initiated consultation and amended the 1997 BO and concluded that the effect of the NFIP would result in jeopardy on eight of ten species evaluated in the BO.

The BO contains Reasonable and Prudent Alternatives (RPA's) that required Monroe County and other participating communities in the Florida Keys to revise their Flood Damage Prevention Ordinance(s) to implement a Permit Referral Process whereby the participating communities are required to evaluate building permit applications for potential impacts to the covered species and to report to the FWS and

FEMA on issued permits. **In other words, the responsibilities of the Service and FEMA were shifted to the local governments as unfunded mandates.**

These Ordinance recommendations were developed by FEMA to meet the requirements of the RPA's and require the County to make permit determinations based on Species Assessment Guides (SAGs) developed by the Service. The SAG's contain limits to the amount of habitat that can be impacted and in the event the impact limits are exceeded, the County may ultimately be required to deny a building permit. In other words, the burden for assuring development complied with the ESA restrictions shifted from the property owner (who previously was required to get sign-off from USFWS before receiving a permit from the County) to FEMA, who now must coordinate with USFWS and then back to the County. Additionally, FEMA informed the County that if it did not comply with the RPA process, it would be placed on probation, with the ultimate threat that non-compliance would trigger removal from NFIP for all County residents.

The entire process of developing the BO and the RPAs was based on calculations provided by the County. In essence, because USFWS is not really accustomed to land regulations, and because that responsibility generally resides with local governments, the level of regulation provided by the BO and RPAs simply repackaged existing County regulations.

Further, as FEMA has little expertise in the biological and endangered species arena, their annual oversight and review of County compliance with the policy consists of making sure all the fields on the FEMA forms have been filled out. **In short, the entire FEMA review process adds no real value to the species protective measures the County had already developed and enforced. It simply adds bureaucratic redundancy and cost.**

Closing

Thank you again Chairman Schuster, Ranking Member DeFazio and members of the Committee for this opportunity to provide the local perspective on this important discussion about the impact of species protection regulations carried out through NFIP. We look forward to continued dialogue with the Committee on our shared goal of protecting threatened and endangered species while enabling the livability and economic vitality of our communities.