



# Don't Leave Immigration Out of Our Environmental Laws

By Julie Axelrod

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## Introduction

In 2016, for the first time in decades, immigration control took center stage in a populist election. The last few years have been an era of polarization, not only between Republican and Democratic partisans, but between populism and elitism, with environmentalism as an “elitist” issue and immigration control as a “populist” issue. Those who care about the environment have been lining up on the opposite side of the partisan divide from those who care about immigration control.

This divide has been as unfortunate as it is misguided: The reality is that the two are intimately linked. In fact, mass immigration, because it artificially drives American population growth, intensifies every environmental problem, from carbon emissions to mass extinction. But the general public has no idea of this basic reality, even though the connection is obvious. The irony of the current debate is heightened by the fact that our very first environmentalist president was Teddy Roosevelt, the great populist and believer in immigration control. President Teddy Roosevelt, the founder of the conservation movement, certainly saw no contradiction between populism and the preservation of our natural and cultural heritage.

Fortunately, the solution to this destructive political divide actually resides in the proper implementation of statutes that have already been law for decades. Our nation's two most important environmental laws are the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). NEPA, signed into law in 1970 by President Nixon and known as the “Magna Carta” of environmental law, requires that the potential environmental consequences of an agency's actions be carefully considered and divulged to the public before the agency acts.<sup>1</sup> NEPA also established the Council for Environmental Quality (CEQ) within the Executive Office of the President to oversee the NEPA compliance of all federal agencies. The Endangered Species Act, signed by President Nixon in 1973, and called by environmental groups such as the Center for Biological Diversity “the strongest law for protecting biodiversity passed by any nation”, directs all federal agencies to take positive action to conserve endangered and threatened species.<sup>2</sup> Section 7 of ESA requires agencies to consult with the U.S. Fish and Wildlife Service (USFWS) before taking any action that would have a detrimental impact on listed endangered species.

But the implementation of both laws suffers from the same great failure: The federal agencies responsible for immigration policies operate as if actions that relate to the entrance and settlement of foreign nationals into the country (that is, immigration), are exempt from compliance with NEPA and ESA. Incredibly, no federal agencies implementing immigration programs and policies consider the environmental impacts of legal immigration and amnesty programs, nor do they ever consult with the USFWS under ESA's Section 7 about the impacts of any of their programs on endangered species. Such an exemption has no basis in law, and this failure has been going on for decades.

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## The Solution in Plain Sight: Proposed Environmental Regulation Updates

The Trump administration has announced that it is currently contemplating major changes to the implementing regulations of both NEPA and ESA through the CEQ and the USFWS. This past August 20, the administration closed a comment period on its proposal to implement the most substantive update to the regulations implementing NEPA since 1978, and on September 24 comments will close on several proposed major revisions to ESA.<sup>3</sup> Though these proposed changes have been met with trepidation, resistance, and also a large number of fund-raising appeals from environmental groups, if done right, the proposed updates could actually reform rather than eviscerate environmental protection in this country.<sup>4</sup> The Trump administration has stated that these updates to the regulations will provide efficient and effective environmental protection and are needed to replace our infrastructure.<sup>5</sup> But these updates should not just be about building infrastructure.

Rethinking the nation's implementation of our key federal environmental laws provides the perfect opportunity to address the greatest and most consequential agency failure in the application of these laws. This failure is the blind spot of federal agencies to the environmental impacts of the mass movement and settlement of people from around the world to this nation. Mass migration is a phenomenon that causes deeply significant impacts to the environment in the United States, and this mass migration is primarily the result of policy choices by the U.S. government. Mass migration has directly increased the population of the United States significantly since NEPA and ESA were passed.

Mass immigration's most profound environmental impact is due to population growth. According to the Pew Research Center, immigrants and their descendants accounted for 72 million people in U.S. population growth between 1965 and 2015, after the Hart Cellar Immigration Act of 1965 was passed.<sup>6</sup> The bulk of this immigration-induced population growth occurred well after the passage of NEPA in 1970. Unless current policies are changed, immigration will also continue to greatly increase the national population in ever-growing amounts for the foreseeable future. Not only does immigration cause national population growth, today it's the *primary* cause of national population growth. If immigration unfolds as the Census Bureau expects, the nation's population will increase from 325.5 million in 2017 to 403.7 million in 2060 — a 78.2 million (24 percent) increase in just four decades. If there were no net immigration, the U.S. population would still be 3.4 million larger in 2060 than it is today. Therefore, 74.8 million (about 96 percent) of the projected increase in the U.S. population by 2060 will be due to future immigration.<sup>7</sup>

To imagine that the environmental laws were never meant to evaluate the effects of population growth during their implementation requires putting on blinders toward the public's great concern over population growth in the early 1970s, when NEPA and ESA were passed, as well as utter disregard of congressional findings set forth in NEPA itself.

## The Update to NEPA: An Opportunity to Correct Long-Standing Neglect of the Law

### *NEPA's Specific Concern with Population Growth*

NEPA, in particular, is explicitly concerned with population growth; in fact, population growth is the *first* concern addressed in NEPA's "Congressional declaration of national environmental policy":

*The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, **particularly the profound influences of population growth**, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. [Emphasis added.]*<sup>8</sup>

## The Rockefeller Commission

Shortly after the passage of NEPA, Congress passed a law specifically calling for a study on population growth, “An Act to establish a Commission on Population Growth and the American Future.”<sup>9</sup> This commission, chaired by John D. Rockefeller III (the “Rockefeller Commission”), would “conduct and sponsor such studies and research and make such recommendations as might be necessary to provide information and education to all levels of government in the United States, and to our people regarding a broad range of problems associated with population growth and their implications for America’s future.”<sup>10</sup> Clearly, the consequences of population growth were of primary congressional concern when NEPA was passed. The Rockefeller Commission went on to release its report (the “Rockefeller Report”) on population growth on March 27, 1972.<sup>11</sup>

In Chapter 5 of its report, the Rockefeller Commission examined population growth’s effect on “Resources and the Environment”. The commission studied both the implications of population growth for “local areas” as well as for the “nation as a whole”. It came to three main conclusions about domestic population growth:

1. *Population growth is one of the major factors affecting the demand for resources and the deterioration of the environment in the United States. The further we look into the future, the more important population becomes.*
2. *From an environmental and resource point of view, there are no advantages from further growth of population beyond the level to which our past rapid growth has already committed us. Indeed, we would be considerably better off over the next 30 to 50 years if there were a prompt reduction in our population growth rate. This is especially true with regard to problems of water, agricultural land, and outdoor recreation.*
3. *While the nation can, if it has to, find ways to solve the problems growth creates, we will not like some of the solutions we will have to adopt. With continued growth, we commit ourselves to a particular set of problems: more rapid depletion of domestic and international resources, greater pressures on the environment, greater dependence on continued rapid technological development to solve these problems, and a more contrived and regulated society. So long as population growth continues, these problems will grow and will slowly, but irreversibly, force changes in our way of life. And there are further risks: Increasing numbers press us to adopt new technologies before we know what we are doing. The more of us there are, the greater is the temptation to introduce solutions before their side effects are known. With slower population growth leading to a stabilized population, we gain time to devise solutions, resources to implement them, and greater freedom of choice in deciding how we want to live in the future.*<sup>12</sup>

Significantly, the commission’s conclusion wasn’t that Americans couldn’t live in a country with a larger and denser population, but that Americans couldn’t live *as freely* in a country with a larger and denser population:

*Population growth forces upon us slow but irreversible changes in life style. Imbedded in our traditions as to what constitutes the American way of life is freedom from public regulation — virtually free use of water; access to uncongested, unregulated roadways; freedom to do as we please with what we own; freedom from permits, licenses, fees, red tape, and bureaucrats; and freedom to fish, swim, and camp where and when we will. Clearly, we do not live this way now. Maybe we never did. But everything is relative. **The population of 2020 may look back with envy on what, from their vantage point, appears to be our relatively unfettered way of life.** [Emphasis added.]*<sup>13</sup>

From the vantage point of nearly 2020, this prediction is indeed prescient, when regulations, red tape, permits, and fees seem to be an inescapable part of everyday life, and the very need for the proposed revisions to the environmental laws is an attempt to reduce their burdens. Thus, for CEQ and the USFWS to incorporate awareness and consideration of population into their regulations would not be just more red tape, but an opportunity to choose a freer, less regulated future.

The Rockefeller Commission discussed the causes of population growth as well as the effects. In Chapter 2 of its report, the commission explained that three factors affect population growth: fertility, mortality, and immigration. It noted that in the 20<sup>th</sup> century, the United States had seen substantial changes in all three components, with birthrates and immigration rates being more important in the modern era than further advances in medicine affecting mortality, which at this point increase longevity primarily for those no longer having more children. Though the commission noted that in past times, such as the first decade of the 20<sup>th</sup> century, “40% of population growth” was “attributable to immigration”, it chose to focus mostly on an analysis centering on birthrates for its projections into the future from the vantage point of March 1972.<sup>14</sup> Notably, in early 1972, despite changes to the immigration system passed in 1965 that would many years later result in significant changes, immigrants had been declining as a share of the population for decades. Therefore this emphasis on birthrates rather than

immigration in the report is not surprising, even though, with the hindsight of approaching 2020 and several decades of an ever-increasing immigrant share of the population, it appears neglectful.

The authorization and publication of the Rockefeller Report virtually contemporaneously with the passage of NEPA implies strongly that NEPA's original proponents would have never considered that policies directly accelerating population growth should be exempt from the law, even if they did not realize at the time that it was immigration in particular that should have been their main concern. Moreover, Congress did not exempt immigration from NEPA's scope. NEPA was designed to promote informed decision-making, and informed decision-making about the causes and environmental effects of population growth goes to the very heart of the purpose of the Act. In the years since NEPA's adoption, it has become obvious that environmentally informed decision-making about population growth is inextricably intertwined with decisions about immigration.

### *President Clinton's Council on Sustainable Development*

Congress' passage of NEPA and its commission of the Rockefeller Report in the 1970s may have been the high-water mark of government concern over the environmental impact of population growth, but they did not prove to be the government's last acknowledgement of the subject. President Bill Clinton formed the President's Council on Sustainable Development shortly after taking office. In May 1999, it published the report "Towards a Sustainable America: Advancing Prosperity, Opportunity, and a Healthy Environment for the 21<sup>st</sup> Century."<sup>15</sup> This report concluded that "the impacts of human activity on the environment" can be described as the "combined influence of population, affluence, and technology."<sup>16</sup> It also came up with 10 national goals to achieve sustainable development; the eighth was moving "toward stabilization of the U.S. population."<sup>17</sup> Nor did the Council on Sustainable Development shy away from the role played by immigration. The Population and Consumption Task Force of the Council on Sustainable Development, co-chaired by former U.S. Sen. Tim Wirth (D-Colo.), in the introduction to its own 1996 report, stated: "We believe that reducing current immigration levels is a necessary part of working toward sustainability in the United States."<sup>18</sup>

### *Citizens Across the U.S. Feel Environmental Impacts of Immigration*

Today, the United States' population has surged past 325 million, meaning that many of the environmental effects of increased population growth contemplated in the 1970s have come to pass. Though technology has certainly ameliorated some of the worries contemplated by the Rockefeller Commission, such as resource use, population growth, and specifically immigration-induced population growth, have resulted in demonstrable and significant effects on many aspects of the American environment.<sup>19</sup> Examples include traffic congestion, energy consumption, water resources, wildlife and its habitats, our ecological footprint, urban sprawl and the loss of rural lands, carbon dioxide emissions, soil and air quality, vegetation, noise, recreation, visual resources (aesthetics), cultural and historic resources, and waste management (including hazardous and toxic wastes).<sup>20</sup> Discussion of all of these particular impacts on particular citizens and locations are frequently found within the environmental impact studies produced by the government as part of their NEPA compliance. But even when environmentalists object to the building of a new road or reservoir because of its destruction of natural habitats, proponents of these projects will often win the debate by pointing out that population growth makes these projects necessary despite their environmental downsides.<sup>21</sup> The idea that NEPA mandates discussion of the inevitable *consequences* of population growth but not the *causes* of population growth turns the purpose of NEPA on its head. The effects of continued population growth will only become more significant in the future if the United States remains on its current population growth trajectory, and Americans continue to feel the effects of ever-greater overcrowding in their daily lives.

### *Immigration: Population Growth by Government Choice*

Unlike the days when population growth was primarily a result of the free choices of Americans in planning their own families, today population growth is primarily the result of immigration, a federal government policy. The U.S. government is choosing high population growth, not the American citizenry. Many people might shy away from contemplating population "control" or stabilization measures because they envision some sort of American version of China's coercive one-child policy and rightly reject the idea of such restrictions on American freedom. However, we would likely have natural population stabilization without any such restrictions if the government stopped choosing to import population from abroad. Opponents of such coercive policies, the adoption of which is downright unimaginable in countries that are not overpopulated, should

be the first to advocate reduction of immigration. The population stabilization that would naturally result would likely mean more freedom for Americans to choose their own destiny in the future without regulation.

Given that population growth's environmental effects are not in doubt, and that mass immigration's effect on population growth is not in doubt, the profound environmental effects of mass immigration are also not in doubt. Nor is the original intent of NEPA to assess environmental effects of population growth through government choice in doubt. Therefore, agency failure to conduct any analysis of mass immigration whatsoever amounts to a violation of NEPA. CEQ's current regulations already, in accordance with the statute, require all agencies implementing environmentally significant policies and programs to analyze those environmental consequences. The direct, indirect, and cumulative impacts incurred by the U.S. population growth are unquestionably environmentally significant. But CEQ has never ensured that the agencies implementing immigration programs and policies followed through by analyzing their immigration programs' environmental impacts.

### *Faulty NEPA Procedures by Agencies that Regulate Immigration*

Several different agencies are responsible for implementing our nation's immigration policies. The Department of Homeland Security, the Department of State, the Department of Justice, the Department of Health and Human Services, and the Department of Labor all have roles in the regulatory apparatus that implements immigration policy. Collectively, therefore, these agencies have been responsible for regulating the admission and permanent settlement of the approximately 60 million foreign nationals who have settled into the United States since NEPA was signed into law in 1970. The substantial amount of population growth caused by these foreign nationals and their descendants has completely escaped analysis under NEPA.

Agencies sometimes avoid the application of NEPA by characterizing policies and programs as "non-discretionary". However, the implementation of immigration programs is widely recognized as entailing a vast array of discretionary choices that affect immigration policy in a host of ways. For instance, professor Richard Boswell, director of the immigration law clinic at the University of California Hastings College of the Law, has written that "Congress has delegated broad, and, arguably, unchecked discretion to a myriad of government agencies to enforce the immigration statutes."<sup>22</sup> The exact degree of agency discretion allowed by Congress in specific programs is often disputed, but immigration experts widely agree that agency policy is allowed some significant amount of variation. Therefore, discretionary choices will affect levels of immigration as well as where immigrants will settle, and these myriad decisions will have environmental impacts.

Examination of the NEPA procedures of those agencies charged with a significant role in immigration reveals that none of their NEPA procedures even address the subject. Immigration's potential impacts on the environment are simply not mentioned. It's not that any of these agencies explicitly find a categorical exclusion for immigration-related actions. Rather, they operate as though there were an exemption to immigration in the NEPA statute itself, which not only allows them not to conduct an environmental analysis but excuses them from even considering whether they ought to conduct one before they act. Such neglect of immigration is arbitrary and capricious.

The Center for Immigration Studies is currently litigating a claim against one of these agencies, the Department of Homeland Security (DHS). The lawsuit challenges the NEPA procedures DHS adopted in 2014, and its implementation of employment-based immigration, family-based immigration, long-term nonimmigrant visas, parole, Temporary Protected Status, refugees, asylum, and Deferred Action for Childhood Arrivals (DACA) without ever even attempting to fit their implementation into a NEPA framework of any kind. This case is *Whitewater Draw Natural Resource Conservation District et al. v. Kirstjen Nielsen et al.*, 16-cv-2583, filed in the Southern District of California. This case, the first of its kind against DHS, brings to light not only the environmental impacts caused by these programs due to population growth, but also the inevitable environmental degradation of the ecosystems in the Southwest every time the government implements an amnesty program such as DACA.

DHS is only one of the agencies that has arbitrarily and capriciously ignored immigration in its NEPA procedures, however. Other agencies, for instance, the Department of State, are involved in many immigration programs as well. The Department of State has an even more prominent role than DHS in one of the nation's immigration programs, the Diversity Visa Program. Given the interagency nature of the implementation of immigration, CEQ taking the lead in correcting this neglect of NEPA would be particularly appropriate. However, a lack of action by CEQ does not excuse the agencies' failure to perform their duties under NEPA. As the D.C. Circuit said in one of the earliest cases involving agency obstruction over compliance with NEPA: The statute's language does not provide an "escape hatch for footdragging agencies; it does not make NEPA's procedural requirements somehow 'discretionary.' Congress did not intend the Act to be a paper tiger."<sup>23</sup>

## NEPA Must Give the People a Voice in Immigration Matters

Congress enacted NEPA to “promote environmentally sensitive decision-making.”<sup>24</sup> NEPA was intended to ensure that the agency reaching a decision on an action that will have an environmental impact “will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision.”<sup>25</sup> This “audience includes the President, who is responsible for the agency’s policy, and Congress, which has authorized the agency’s actions.”<sup>26</sup> The president and Congress may use the environmental information to decide “larger issues of policy that may include matters outside the scope of a single agency’s discretion.”<sup>27</sup> The “‘larger audience’ also includes the public,” and NEPA analysis provides “a springboard for public comment.”<sup>28</sup> As one court put it: “At the very least, NEPA is an environmental full disclosure law.”<sup>29</sup> In enacting NEPA, Congress “may not have intended to alter the then-existing decision-making responsibilities or to take away any then-existing freedom of decision-making, but it certainly intended to make such decision-making more responsive and more responsible.”<sup>30</sup>

NEPA aims to give the public a voice in governmental decisions that impact their daily lives and the environment they live in. NEPA was designed to prevent policies that have an environmental cost to the public at large and to future generations from being thoughtlessly imposed by distant bureaucrats in the capital and those with the resources and connections to influence them. In the words of the Democratic members of the House Committee on Natural Resources in their report on the activities of the Committee during the 114<sup>th</sup> Congress: “Before NEPA, a disproportionate share of heavily polluting projects ended up being sited in poor and minority communities that lacked political connections. ... No NEPA could mean more unintended consequences such as pollution or damage to fish and wildlife and their habitats from hastily conceived, poorly reasoned government projects or permits. ... NEPA is an important environmental justice tool that levels the playing field and saves taxpayer dollars. It helps people to maintain and improve their quality of life by ensuring that they have a voice in decisions that impact their communities.”<sup>31</sup>

## Public Comments on the Proposed Rulemaking

The Center for Immigration Studies submitted a public comment in which we informed the government of the points made in this *Backgrounder*. But CIS was not alone in pointing out this issue. Several plaintiffs in *Whitewater Draw Natural Resources Conservation District v. Nielsen* also submitted comments that emphasized how national immigration policy has local environmental effects. For instance, Californians for Population Stabilization commented:

*Today, nearly all of California’s population growth comes from immigration. That enormous population growth has put major strains on California. More population growth has meant more pollution, more cars, more trucks and buses on our roads, less green space, more chemicals, trash and runoff cascading into our streams, lakes and oceans, more damage to California’s biodiversity (we are recognized as one of only 25 biodiversity hot spots in the world with many species of flora and fauna extinct or in danger of becoming so), and more and more pressure on declining water supplies.*<sup>32</sup>

A second plaintiff, Floridians for a Sustainable Population, commented:

*Too many decisions about land use — rezoning, highway funding, expanded airports — have been made by growth-intoxicated leaders based on the assumption that all growth is good and that business interests and profits take priority over healthy reefs, fisheries, clean water and clean air. Florida’s population can and must be stabilized to secure a decent quality of life that is economically viable for all our citizens.*

...

*The Florida of orchards, grasslands, marshes, pine scrub and open beaches continues to disappear at a rapid rate under the bulldozer’s blade of constant new development. In the 2000-2010 decade, despite a severe economic downturn near the end, Florida’s 30 urbanized areas sprawled out and destroyed 1,220 additional square miles of surrounding farmland and natural habitat. (About the size of Broward County.) The chief finding of [an urban sprawl study of Florida<sup>33</sup>] is that one factor — population growth — far outweighed all consumption factors in Florida’s losses of open space during the last decade.*<sup>34</sup>

The ignored environmental impacts also include degradation of land on the border. Another plaintiff, Ralph Pope, a retired Forest Service range conservationist, wrote:

*[The] presence of many hundreds of thousands of humans who are traveling on foot through, on many occasions very rugged and remote areas of Southeast Arizona and Southwest New Mexico, has caused obvious and undeniable damage to the unique native ecosystems located on hundreds of thousands of acres of once pristine and unspoiled lands, most of which is federally owned. I have personally witnessed the eroding ecosystem health and increasing levels of human disturbance over much of the land that makes up the Douglas Ranger District during my life. My tenure working on the Douglas Ranger District, as well the untold number of days spent outdoors in my childhood and young adult years, has provided me with a very unique and definitive knowledge of what these lands were like prior to the recent onrush of illegal immigrants and smugglers who have greatly impacted and harmed the natural setting and environment of Southeastern Arizona and Southwestern New Mexico.*

*Many of the ecosystems found along the border are extraordinarily unique and found nowhere else in the world. Of particular, spectacular beauty and value are the “sky islands” — islands of unique vegetation in a desert setting. The Chiricahua Mountains, Graham Mountains, Catalina Mountains and Huachuca Mountains, along with various other smaller mountain ranges are “sky islands.” The fragile, extraordinarily diverse ecosystems that occupy these mountain ranges are found nowhere else in the world.*

*All of these mountain ranges have been degraded to varying degrees over recent decades by the hundreds of thousands of illegal border crossers who start fires that can burn out of control, dump garbage, pollute the waters, trample the native vegetation, and destroy the wilderness characteristics of the land. I have grown sad and frustrated by this ongoing destruction of the unique and once pristine environment that I love and have spent my career trying to protect. This degradation is epitomized by the destruction of Burro Springs, located in a federally designated Wilderness. Border crossers use the springs as a “layover spot.” For years, illegal border crossers have defecated right next to the water, taken baths in the water and left garbage all over the area.<sup>35</sup>*

The Trump administration should take these, and other public comments that demonstrate the environmental effects of immigration under advisement as CEQ considers how best to modernize NEPA.

## Consultation Under Section 7 of the ESA

NEPA is not the only environmental law that cannot fulfill its mandate of environmental protection if the impacts of immigration are ignored. Congress passed the Endangered Species Act in 1973, with the goal of making the preservation of imperiled American biodiversity a serious federal priority. Sometimes the use of ESA to protect species at the expense of other priorities has caused significant controversy, a famous early example being the temporary halting of the construction of the expensive Tellico Dam by the Tennessee Valley Authority (TVA) to save the snail darter, a paperclip-sized fish living in the Little Tennessee River.<sup>36</sup>

Yet, the ultimate threat to American biodiversity is population growth. It is population growth that causes the destruction of wildlife habitat. As the sustainability expert and professor Phil Cafaro, commissioned for *Whitewater Draw NRCD v. Nielsen*, explained in his report:

*By all accounts, biodiversity (the variety of living things, comprehensively understood in terms of genetic diversity, species diversity and diversity of natural communities) is rapidly diminishing across the globe. The United Nations Secretariat of the Convention on Biological Diversity estimates that humanity could extinguish one out of every three species on Earth within the next one to two hundred years (SCBD 2010), while according to Raven et al. (2011): “biodiversity is diminishing at a rate even faster than the last mass extinction at the end of the Cretaceous Period, 65 million years ago, with possibly two-thirds of existing terrestrial species likely to become extinct by the end of this century.”*

*While paleontologists debate the causes of previous mass extinctions, the primary causes of the current one are clear: ever more people to consuming, degrading and appropriating ever more resources. The consensus among conservation biologists is that the five most important “direct drivers” of biodiversity loss are habitat loss, the impacts of alien species, over-exploitation, pollution, and global climate change (Primack 2014). All five direct drivers are themselves mainly caused by the “primary drivers” of increased human populations (Brashares et al. 2001, McKee et al. 2003) and increased human economic activity (Wood et al. 2000). According to the Millennium Ecosystem Assessment, the force of*

*these extinction drivers increased immensely over the past century as human populations and human economies exploded in size (Reid et al. 2005). Subsequent research (Butchart et al. 2010, Steffen et al. 2015) bears out the MEA's further conclusion that the forces driving extinction are increasing in power, as societies become more populous and wealthy.*

*Conservation scientists agree that habitat loss is by far the number one threat to nonhuman species. For example, over 1,400 species currently are listed as threatened or endangered in the U.S. under the Endangered Species Act (ESA). In a thorough study of ESA information published in the U.S. Federal Register, D. S. Wilcove and colleagues found habitat degradation or loss implicated as a cause for 85% of threatened and endangered species in the United States, making habitat loss by far the number one cause of species endangerment (Wilcove et al. 1998).*

*Importantly, habitat loss is directly tied to overall human numbers. Figure 12 shows that the area of developed land — from which natural wildlife habitats have been permanently erased — in U.S. states is closely correlated with the population sizes of those states. The larger a state's population, the larger the area of developed land in that state.<sup>37</sup>*

Immigration, therefore, presents a threat to American biodiversity. Yet the Endangered Species Act does nothing about it. If the protection of endangered species is of such paramount concern that it outweighs Americans' own use of their land or job prospects out of a desire to preserve biodiversity for future generations of Americans, why is it of no concern when it comes to the "rights" of foreign nationals to move to the United States? The agencies that implement immigration ought to at least follow the requirement that they consult with the USFWS before implementing programs. The idea that agencies that build one reservoir, or contemplate logging in one forest, must consult over the effect of that action on wildlife habitat but that the agencies that introduce tens of millions of people into the United States should never contemplate the inevitable effects of settling so many people into the country fails to protect vulnerable wildlife habitats and populations all over the country.

## Conclusion

Today, there is no government program or project with a greater impact on the environment of present and future generations of Americans that has become more disconnected and uninfluenced by the needs of everyday American citizens than immigration. The public should be given the opportunity to weigh in on the impact immigration has had on their communities through hearings across the nation under NEPA, and our agencies should be consulting with the USFWS before expanding our population. But due to their blind spot, federal agencies have not complied with their statutory obligations.

Because the CEQ and the USFWS have negligently (or deliberately?) allowed agencies to completely sidestep the environmental impacts of immigration, the result is that immigration is the government program whose environmental effects are singularly avoided in public debate. As a result, Americans remain woefully ignorant about the environmental implications of immigration-driven U.S. population growth. In order that NEPA may fulfill its mandate in promoting environmentally sensitive decision-making, the Trump administration should give due consideration to the environmental effects of immigration when it updates its regulations. The CEQ and USFWS should explicitly tell agencies to stop ignoring immigration in their environmental compliance procedures, and the public must receive the transparency it deserves on immigration at last, as Congress intended.

## End Notes

<sup>1</sup> See [Nepa.gov](http://Nepa.gov).

<sup>2</sup> See [“The Endangered Species Act: A Wild Success”](#), Center for Biological Diversity, undated.

<sup>3</sup> Notices regarding public comment periods are available on regulations.gov. See, e.g., [“Implementation of Procedural Provisions of National Environmental Policy Act”](#); [“Endangered and Threatened Species: Revision of Regulations for Prohibitions to Threatened Wildlife and Plants”](#); [“Endangered and Threatened Species: Interagency Cooperation”](#); and [“Endangered and Threatened Species: Listing Species and Designating Critical Habitat”](#).

<sup>4</sup> See [“Trump Infrastructure Plan Would Gut Environmental Reviews, Rubber Stamp Permits for Corporate Polluters”](#), Sierra Club press release, February 12, 2018.

<sup>5</sup> See [“Presidential Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure”](#), the White House, August 15, 2017.

<sup>6</sup> [“Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065: Views of Immigration’s Impact on U.S. Society Mixed”](#), Pew Research Center, September 28, 2015.

<sup>7</sup> Steven A. Camarota, “Projecting the Impact of Immigration On the U.S. Population”, Center for Immigration Studies *Background*, forthcoming.

<sup>8</sup> See 42 U.S.C. § 4331 (a).

<sup>9</sup> Pub. L. 91-213, §§ 1 to 9, Mar. 16, 1970, 84 Stat. 67-69.

<sup>10</sup> *Id.*

<sup>11</sup> [“Population and the American Future: The Report of the Commission on Population Growth and the American Future”](#), Center for Research on Population and Security, July 18, 1969.

<sup>12</sup> *Id.*, Chapter 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, Chapter 2.

<sup>15</sup> [“Towards a Sustainable America, Advancing Prosperity, Opportunity, and a Healthy Environment for the 21st Century”](#), The President’s Council on Sustainable Development, May 1999.

<sup>16</sup> *Id.* at 32.

<sup>17</sup> *Id.* at 2.

<sup>18</sup> [“Population and Consumption Task Force Report”](#), President’s Council on Sustainable Development, 1996.

<sup>19</sup> Biologist Paul Ehrlich famously lost a bet regarding the price of five metals to economist Julian Simon in 1990, showing that not all concerns about overpopulation do pan out, at least in the medium term. See David Kestenbaum, [“A Bet, Five Minerals, and the Future of the Planet”](#), NPR’s Morning Edition, January 2, 2014. The technological capacity to continually find new ways to exploit natural resources is certainly real, but also does not capture every impact on the human environment of increased population and increased population density.

- <sup>20</sup> See Leon Kolankiewicz, [“Immigration, Population Growth, and the Environment”](#), Center for Immigration Studies *Background*, April 2015.
- <sup>21</sup> See Philip Cafaro, [How Many Is Too Many? The Progressive Argument for Reducing Immigration Into the United States](#), Chicago: The University of Chicago Press, 2015, at 105-107.
- <sup>22</sup> Richard Boswell, *Essentials of Immigration Law, Second Edition*, Washington, D.C.: American Immigration Lawyers Association, 2009, at 1.
- <sup>23</sup> *Calvert Cliffs’ Coordinating Comm., Inc. v. U.S. Atomic Energy Comm’n*, 449 F. 2d 1109, 1114 (D.C. Cir. 1971).
- <sup>24</sup> *Anderson v. Evans*, 314 F. 3d 1006, 1016 (9th Cir. 2002).
- <sup>25</sup> *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).
- <sup>26</sup> *Sierra Club v. Watkins*, 808 F. Supp. 852, 858, (D.D.C. 2006).
- <sup>27</sup> *Id.*
- <sup>28</sup> *Id.*
- <sup>29</sup> *Environmental Defense Fund, Inc v. Corps of Engineers*, 325 F.Supp. 749, 759 (E.D.Ark. 1971).
- <sup>30</sup> *Id.*
- <sup>31</sup> [“Report on the Activities of the Committee on Natural Resources during the 114th Congress”](#), December 2, 2016, at p. 124.
- <sup>32</sup> Ric Oberlink, “Public Comment on Regulation CEQ-2018-0001”, on behalf of CAPS, submitted August 15, 2018.
- <sup>33</sup> Leon Klankiewicz, Roy Beck, and Anne Manetas, [“Vanishing Open Spaces in Florida, Population Growth and Sprawl in the Sunshine State”](#), NumbersUSA, March 2015.
- <sup>34</sup> Jack Oliver, “Public Comment on Regulation CEQ-2018-0001”, on behalf of Floridians for a Sustainable Population, August 20, 2018.
- <sup>35</sup> Ralph Pope, “Public Comment on Regulation CEQ-2018-0001”, submitted August 19, 2018.
- <sup>36</sup> [“Environmental Case Study: The Snail Darter versus Tellico Dam”](#), The McGraw-Hill Companies, undated.
- <sup>37</sup> Philip Cafaro, PhD, [“The Environmental Impact of Immigration into the United States”](#), undated.