



April 7, 2016

Public Comments Processing
Division of Policy, Performance, and Management Programs
U.S. Fish and Wildlife Service, MS: BPHC
5275 Leesburg Pike
Falls Church, VA 22041-3803.

Attn: FWS-R7-NWRS-2014-0005; Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska (proposed rule), 81 Fed. Reg. 887 (Jan. 8, 2016).

On behalf of the Congressional Sportsmen's Foundation (CSF), I write today to express significant concerns with the proposed rule "Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska," that was proposed and released for public comment on January 8, 2016 by the United States Fish and Wildlife Service (FWS). We urge FWS to give strong consideration to the wide array concerns raised by numerous government and non-government entities and elected officials over these proposed rules and to consider both extending the comment deadline to allow for additional public input and work with these same entities and others to address the concerns that motivated the FWS to propose the rule. If implemented, we feel these rules will represent a dangerous precedent for stripping state fish and wildlife agencies of their authority to manage non-federal trust species within their respective borders, and would be in direct conflict with Congressional directives concerning FWS's ability to regulate hunting and trapping in Alaska.

The effect and rationale for these proposed rules can be best summarized by the following passage from the "*Alaska Refuges Proposed Statewide Regulatory Change*" fact sheet published online by FWS in August of 2015, which states:

"The changes we are considering would: Codify existing Federal mandates for conserving the natural diversity, biological integrity, and environmental health on refuges in Alaska in relation to predator harvest. Predator control is not allowed on refuges in Alaska unless it is determined to be necessary to meet refuge purposes, federal laws, or policy and is consistent with our mandates to manage for natural and biological diversity and environmental health. The need for predator control must be based on sound science in response to a significant conservation concern. Demands for more wildlife to harvest cannot be the sole or primary basis for predator control on refuge in Alaska."

The Sportsmen's Link to Congress

While we are certainly supportive of any efforts to enact science-based wildlife management practices, FWS provides no data demonstrating that the proposed rules will do anything to enhance natural diversity, biological integrity, and environmental health on NWR lands in Alaska, nor that the traditional hunting and trapping management tools employed for decades by ADFG have ever threatened the viability of both game and non-game species on NWR lands. Instead, the rule directly undermines the work done by ADFG on NWR lands in the state to, in part, ensure the sustained harvest of wild, free-ranging game species that are critical to the subsistence-based lifestyle practiced by Alaskans.

Currently there are 14 duties assigned to the Secretary of the Interior (Secretary) in administering the National Wildlife Refuge System (System) under Section 9 of the National Wildlife Refuge System Improvement Act (NWRISA), which amended the National Wildlife Refuge System Administration Act. Among the duties enumerated in Sec. 668(dd)(4)B) of the NWRISA is the directive that FWS “ensure that the biological integrity, diversity and environmental health of the System are maintained for the benefit of present and future generations of Americans.” Under the proposed rule, FWS is effectively asserting that this particular charge to ensure biological integrity, diversity, etc., takes precedence over the other 13 duties assigned to the Secretary in administering the System, despite the fact that priority is not given to any of these 14 assigned duties. Further, the proposed rule would directly contradict Congressional direction given in the NWR System Improvement Act – 16 U.S.C. § 668dd (e)(1)(A)(iii) (2000) – to make certain that rules governing hunting and fishing with the NWR System comply, to the greatest extent possible, with state fish and wildlife rules and regulations, as it would make illegal common, effective and sustainable predator management practices carried out by ADFG. Article VIII, Sec. 4 of the Alaska Constitution provides the state of Alaska (via ADFG) with the authority to carry out management of game and non-game fish and wildlife in the state under the principle of sustained yield; this constitutional authority would be directly undermined by implementation of the proposed rules for hunting and trapping on NWR lands in the state. Primacy over state fish and wildlife management is further provided to Alaska in the federal Alaska Statehood Act (Executive Order 10857) that directs FWS at 43 CFR 24.4(e) to manage refuge units “to the extent practicable and compatible with the purposes for which they were established, in accordance with State laws and regulations, comprehensive plans for fish and wildlife developed by the states, and Regional Resource Plans developed by the Fish and Wildlife Service in cooperation with the States.” The rules being proposed for NWR lands in Alaska, however, quite clearly ignore this charge and instead would give FWS increased authority to promulgate fish and wildlife harvest and management regulations that ignore the scientific management principles developed by the State of Alaska and further undermine state fish and wildlife agency management authority FWS is mistakenly asserting that they have the authority to determine what constitutes “fair chase” and acceptable methods of take of resident wildlife (non-waterfowl), despite the fact that authority to make such determinations is not provided to FWS via ANILCA or the NWRISA, and is instead wholly under the purview of ADFG.

The proposed rules also represent a direct departure from the authority granted to FWS to manage fish and wildlife on NWR lands in Alaska under the Alaska National Interest Lands Conservation Act (ANILCA). ANILCA very clearly dictates which wildlife management techniques that can be carried out on NWR lands in Alaska in order to ensure healthy game populations for the state’s subsistence users. Among the techniques allowable under ANILCA is

predator control, as predation by certain predatory species has been known to constitute a statistically significant factor in the decline of critical big game populations like moose and caribou. As has been noted by Congress, the provisions provided in ANILCA for management on NWR lands directly supersede those granted to the Department of the Interior under the NWRSIA in instances where the two contradict one another.

ANILCA also speaks directly to the notion of “natural diversity” that FWS uses to justify the elimination of certain methods of predator control, by noting that humans are considered to be a natural part of the environment. This fact was stated more plainly by late U.S Senator Ted Stevens during final Congressional consideration of ANILCA, in which Stevens noted that the term “natural diversity” “is not intended to preclude predator control in appropriate instances as one of the many management tools that are appropriate on NWRs to help manage populations of wildlife of critical importance to Alaska’s subsistence users. 126 Cong. Rec. S15131 (daily ed. Dec. 1, 1980).” This statement from Stevens, given on the floor prior to the final vote on ANILCA, absolutely contradicts and supersedes justifications given by FWS to manage according to “natural diversity,” as FWS has asserted that their ability to do so is derived in part from statements given by Congressman Morris Udall nine days after ANILCA was signed into law. The mistaken authority asserted by FWS is further negated by examining a savings clause (Section 1314) in ANILCA which states “Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands...” Further, the proposed rules from FWS quite clearly run counter to ANILCA’s legislative history which, as noted in the Congressional record, states “[t]he phrase ‘the healthy populations of fish and wildlife’ is to mean the maintenance of fish and wildlife resources in their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem...” S. Rep. No. 96-413, at 233 (1979)”, making it very clear that humans are a natural part of the environment. FWS’s priority to manage according to “natural diversity” is further invalidated in NWRSIA, which serves as the organic act of the NWR System, the NWRSIA speaks plainly to the priority of wildlife-dependent recreational uses, particularly in Sec. 5(a), which states “With respect to the System, it is the policy of the United States that... (C) compatible wildlife-dependent recreational uses [defined in statute as hunting, fishing, wildlife observation and photography, or environmental education and interpretation] are the priority general public uses of the System and shall receive priority consideration in refuge planning and management; [and] (D) when the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity shall be facilitated, subject to such restrictions or regulations as may be necessary, reasonable and appropriate.” Finally, Section 8(k) within the NWRSIA further demonstrates the invalidity of the proposed rule, as, absent any conflict with ANILCA, the NWRSIA requires the FWS to utilize fish and wildlife management plans, game seasons, and bag limits developed by a state’s respective fish and wildlife management agency when developing rules and regulations concerning the take of wildlife on NWR lands. Based on our observation of the process by which the proposed rules were developed, this does not appear to have occurred, or if it did, was certainly not in the substantive manner by which such consultation would be expected to occur on such an incredibly complex issue. The NWRSIA, in Section 5(4)(E), directly states that the Secretary shall “ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the

States in which the units of the system are located,” and Section 5(4)(M) states that the Secretary shall “ensure timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies during the course of acquiring and managing refuges.” NWRSA notes that these directives for substantial coordination are non-discretionary.

We are also greatly concerned by the precedent that adoption of the proposed rule could set for future wildlife management decisions on NWR lands in Alaska and across the United States. By adhering only to the duty to manage according to “Biological Integrity, Diversity and Environmental Health Policy (601 FW 3)” (BIDEH) granted to NWF in the NWRSA, while ignoring the 13 other charges delegated to FWS in the NWRSA, FWS is in essence asserting that this single provision within the NWRSA actually takes primacy over both ANILCA and the other assigned duties within the NWRSA. As noted by the Association of Fish and Wildlife Agencies (AFWA), “...this action may result in litigation that seeks to apply the BIDEH to the entire NWR System under the argument that what is good for Alaskan refuges should be good for all refuges, given that it is a National System. NWRSA directs that all NWRs be managed to meet both the purposes of the refuge and those of the System. This potential causes great concern to all state agencies if this proposed rule were enacted as a regulation across all of USFWS Region 7 (Alaska) and subsequently applied to create parity across the entire NWR System. A recent public relations appeal by the Humane Society of the United States to support this proposed rule already refers to it as ‘applying to all NWRs.’” This means that while the proposed rule concerns only units of the NWR System in Alaska, there would be nothing stopping FWS from using the rule as a precedent for similar overreaching regulations applied to NWR lands in other states. State wildlife managers are bound by the principles of making management decisions using the best available science and managing their respective states’ fish and wildlife resources for the enjoyment of all members of the public, consumptive and non-consumptive users alike. FWS, by implementing the rule, could quite easily subvert this management ethic and in essence demonstrate that it is bound by no such requirements, free to negate decades-tested fish and wildlife management practices while instead pointing to only vague notions of ecological and biological diversity without providing any sort of scientific justification for their proposed actions. Setting such a low standard of justification for enactment of regulations poses a significant threat to the principles of scientific fish and wildlife management and to the traditional, sustainable hunting and angling opportunities enjoyed by the more than 38 million Americans who hunt and fish in the United States each year.

Finally, the CSF cannot support the Service assuming enhanced authority through the proposed closure procedure to severely restrict hunting and fishing contrary to the ANILCA and the NWRSA. The Service proposes to extend the length of emergency closure of NWRs from 30 days to 60 days and removes the requirement for a public hearing. From a functional perspective, two months could represent an entire hunting season in Alaska. The Service further proposes to eliminate the maximum extension of an emergency closure of 12 months, leaving it in effect interminably through a unilateral action that threatens the public’s fundamental right to petition

Government for a redress of grievances. CSF strongly urges that the 12 month maximum limit for a temporary closure be restored. The Service’s proposed rules grant the Service much greater latitude to close refuges to hunting for varying lengths of time, adding as specific justification the need to ensure natural diversity or BIDEH. This is contrary to the NWRSA which gives the

Secretary 14 equally weighted responsibilities, not just BIDEH. We expect all 14 of those responsibilities be fulfilled on all of the Alaska NWRs.

Science-based management is the cornerstone of the hugely successful North American Model of Wildlife Conservation (Model), wherein professional fish and wildlife managers manage fish and wildlife as public trust resources for the good of the public at large. This Model, adopted around the turn of the 20th century and championed by conservation luminaries such as Theodore Roosevelt, Aldo Leopold, and Gifford Pinchot, relies on trained scientific and wildlife experts who analyze fish and wildlife health, habitat, populations, and other factors in order to determine how best to sustain these species. Hunters and anglers were among the first to endorse this Model, and played a major role in the creation of state agencies charged with managing our nation's fish and wildlife, as well as the adoption of laws and programs to conserve these resources. The results of this management paradigm are made readily evident by the numerous game and fish populations in Alaska and across the U.S. that can be sustainably harvested without fear of depletion, largely because of scientifically developed and implemented rules and regulations established by ADFG and other state fish and wildlife agencies. Such management efforts are funded primarily by sportsmen and women through the purchase of licenses and tags, in addition to excise taxes paid on firearms, ammunition, archery equipment, fishing tackle, motorboat fuel, and other hunting and angling-related items. Collectively, this unique "user-pays, public-benefits" system is known as the American System of Conservation Funding.

The proposed rules put forth by USFWS for wildlife management techniques on NWR lands represent a marked departure from this successful Model. By stripping from the trained professionals within the ADFG their primary tools for managing both predators and game species for sustained yield, and favoring a "hands off" approach to wildlife management, these rules would almost assuredly result in the decline of game populations that are of critical importance to Alaskans. In order to maintain robust game populations and the wide array of benefits they provide for Alaskans, the federal government should do nothing to interfere with the state's ability to establish hunting seasons and bag limits and to regulate methods-of-take for non-migratory, resident predators and game animals. These species, in addition to providing sustenance to numerous Alaskans living subsistence-based lifestyles, also serve as immense economic drivers in the state. Each year, over 125,000 people hunt in Alaska, accounting for approximately \$439 million in economic activity and 5,950 Alaska jobs, as well as \$54 million in state and local tax revenues. In addition to the economic costs realized from reduced hunting opportunities and the likely subsequent drop in hunting participation, the state is also very likely to see reduced revenue from license sales and excise taxes on sporting equipment that fund both game and non-game management, negatively affecting both consumptive and non-consumptive users.

By moving forward with the proposed rules for wildlife management on NWR lands, state fish and wildlife management authority throughout much of Alaska will be effectively transferred from ADFG to the United States Department of the Interior, despite the fact that ADFG is the agency best-suited to manage the state's fish and wildlife resources. As expressed in this letter and in the aforementioned testimony from AFWA, we also feel that the proposed rule changes represent a breach of both the Alaska National Interest Lands Conservation Act (ANILCA) and the National Wildlife Refuge System Improvement Act of 1997 (NWRISA). Furthermore, the

proposed rules set a very dangerous precedent for even greater federal overreach into state fish and wildlife management primacy across the United States. It is for these reasons that we oppose the proposed rules in their current form, and strongly urge FWS to engage in a legitimately collaborative process with state fish and wildlife management agencies, sportsmen's groups, and other affected entities when both revising these particular rules and when developing future rules concerning wildlife management on federal public lands.

Sincerely,

A handwritten signature in black ink that reads "Jeff Crane". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Jeff Crane
President, Congressional Sportsmen's Foundation