



The voice of fish and wildlife agencies

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December 15, 2015

Hon. Lisa Murkowski, Chair
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

Hon. Maria Cantwell, Ranking Democrat
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairwoman Murkowski and Ranking Democrat Cantwell:

I write on behalf of the Association of Fish and Wildlife Agencies (Association) to submit comments for the public record on the December 3, 2015 Committee "Hearing to Receive Testimony on Implementation of the Alaska National Interest Lands Conservation Act of 1980, Including Perspectives on the Act's Impacts in Alaska and Suggestions for Improvements to the Act". Founded in 1902, all 50 state fish and wildlife agencies are members of the Association.

The Association is very concerned about the diminishment, by a soon to be published US Fish and Wildlife Service (USFWS) regulation regarding management of National Wildlife Refuges (NWR) in Alaska, of the Alaska Department of Fish and Game's management authority for fish and wildlife by federal actions that are contrary to the intent of ANILCA and the National Wildlife Refuge System Administration Act (NWRSA), as amended by the National Wildlife Refuge System Improvement Act (NWRZIA). State fish and wildlife agencies are the principle front-line managers with authority to manage fish and wildlife within their borders, including on most federal lands. The Association acknowledges that ANILCA affirms that authority, which is also affirmed in the respective organic acts for the National Wildlife Refuge System, National Forests, and Bureau of Land Management lands. Finally, the Association is concerned that the USFWS by administrative fiat, or as a result of litigation, will apply this draft regulation to all NWRs in the country, with the resulting usurpation of all state fish and wildlife agency authority on all NWRs.

When Congress passed ANILCA, it directed the Secretary of Agriculture and the Secretary of the Interior to manage natural resources to meet the needs of local communities that depend on these natural resources as well as "to provide for the maintenance of sound populations of and habitat for, wildlife species of inestimable value to the citizens of Alaska and the nation". In order to fulfill this statutory mandate, Congress further obligated the federal agencies to "cooperate with adjacent landowners and land managers including Native Corporations, appropriate state and federal agencies, and other nations". The soon to be published USFWS regulation clearly contravenes Congress' intent in enacting ANILCA.

The USFWS has developed a draft proposed regulations package which would have the effect of limiting hunting authorized under certain State of Alaska regulations on NWR lands. The package is currently under review by the Department of the Interior. Following that internal review the USFWS intends to release it for a public review and comment period.

The USFWS Proposal

The Association recognizes the preeminence of ANILCA in directing federal land management in Alaska, but observes that except for conflicts with ANILCA, the NWRSA as amended by the NWRSA in 1997, provides comprehensive Congressional direction to the Secretary of the Interior for managing NWRs. We believe that there is little conflict between ANILCA and the NWRSA, but Congress explicitly addressed that in the NWRSA.

Section 9 of NWRSA as enacted explicitly states “If any conflict arises between any provision of this Act and any provision of the Alaska National Interest Lands Conservation Act, then the provision in the Alaska National Interest Lands Conservation Act shall prevail”, providing primacy of ANILCA over NWRSA. Sect 668(dd) (f) of the Act with respect to Refuge conservation planning, states “except with respect to refuge lands in Alaska (which shall be governed by the refuge planning provisions of the Alaska National Interest Lands Conservation Act [ANILCA]), the Secretary shall ...”. This language was specifically drafted in NWRSA to ensure that with respect to conservation planning, ANILCA prevailed over NWRSA on Alaska refuges. The Association believes that much of the NWRSA applies to Alaska because it is not in conflict with ANILCA.

The NWRSA as amended by the NWRSA at Sect 668(dd)(a)(4), assigns the Secretary 14 responsibilities in administering the System. At Sect.668(dd)(4)(B) the Act directs the USFWS to “ensure that the biological integrity, diversity and environmental health of the System are maintained for the benefit of present and future generations of Americans.” The USFWS draft proposal would codify in regulation for Alaska NWRs, USFWS policy 601 FW 3 regarding Biological Integrity, Diversity, and Environmental Health (BIDEH) and make it the principle objective for Alaska refuges. The Association concerns are:

- a. There are 13 other statutory responsibilities given to the Secretary, and the Act does not prioritize those responsibilities but simply lists them. Likewise, House Committee Report 105-106 (NWRSA) does not assign a priority to these 14 responsibilities. The USFWS is assigning priority to this aspect of administering refuges over all other mandated responsibilities.
- b. The adoption of this one aspect of the Act as regulation clearly usurps and undermines the authority, responsibility, and objectives of the Alaska Department of Fish and Game regarding the conservation (including take) of fish and resident wildlife in Alaska under the sustained yield principle. This authority is grounded in Article VIII of the Alaska Constitution.
- c. Sect 668(dd)(m) states in part “Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations and management plans.” The current proposal by the USFWS clearly is not consistent with this Congressional direction.

- d. While the proposal is currently intended to apply only to Alaska refuges, there is nothing preventing the USFWS from subsequently applying these regulations to all refuges in the System, resulting in usurpation and undermining of state fish and wildlife authority to manage fish and resident wildlife on all refuges in the System.
- e. The USFWS is directed 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". Instituting a region-wide rule outside of the Comprehensive Conservation Planning (CCP) process for the individual refuge and in conflict with state wildlife management plans is contrary to this intent.

The Association identifies five significant changes that would result from the proposed rule, as articulated below.

- The proposed rule would introduce undefined and subjective reasons for closing NWRs to hunting under state regulations, including "particularly efficient" methods and means of take and "conserving the natural diversity, biological integrity, and environmental health of the refuge," absent decision criteria to guide refuge managers or the public in its implementation.
- It would prohibit methods and means for the take of species under state management authority, seeking to "Prohibit the following particularly efficient methods and means for non-subsistence take of predators", including prohibiting the use of bait for the harvest of brown bears. If the use of bait is "particularly efficient" for brown bears, what would prevent application of this criteria to other species (black bear) in Alaska or in the Lower 48 States where it is currently allowed under state authorization in some states. In many large states, baiting is necessary as a wildlife management tool to ensure the achievement of desired bear population numbers that remain within social tolerance for bears.
- The USFWS intends to "manage populations for natural densities and levels of variation throughout the Refuge System", and that "These proposed regulatory changes are aimed at ensuring that natural ecological processes and functions are maintained and wildlife populations and habitats are conserved and managed to function in their natural diversity on Alaska refuges." This intent lacks criteria for implementation or consistency with state fish and wildlife agency planning and could easily be applied to all NWRs in the system.
- Proposed changes to the USFWS closure process includes an allowance that would essentially permit "temporary regulations" to extend indefinitely, avoiding both the full regulatory process and the CCP process allowing for public comment.

The Association is concerned that movement of the BIDEH policy into regulation will diminish the ability of the states to manage fish and wildlife on NWRs. While the current proposed rule only targets Alaska and the management of predators, there is the distinct potential that it would be applied to the NWRs nationally by administrative fiat or as a result of litigation, and that other refuges would be required to passively manage for the extreme end of BIDEH for all species (predators and prey). For example, a state may manage ungulate populations for bull:cow ratios of 30:100, which allows for sustainable harvest opportunities and subsistence use. This is not a "natural population," but a reasonable objective for state management goals under sustained yield management.

The USFWS has not differentiated the need to manage Alaska refuges at the extreme end of the BIDEH spectrum, other than to mention the ANILCA purpose of “natural diversity,” which is not equivalent to BIDEH. Therefore, application of this policy could conceivably extend to other refuges as well, superseding refuge purposes and influencing management of areas such as Waterfowl Production Areas by requiring that the USFWS to apply “natural ecological processes,” significantly limiting opportunities for compatible wildlife-dependent public uses. The regulations proposed by the USFWS do not address any conservation concerns for any species and appear to be derived by concerns regarding ethical behavior as determined by USFWS staff.

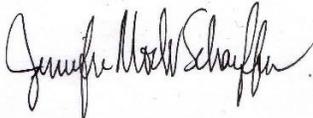
Links to the USFWS generated documents to this proposal are below:

http://www.fws.gov/alaska/nwr/ak_nwr_pr.htm

<http://www.fws.gov/alaska/nwr/pdf/NWRS-Statewide-Regs-Proposal-FAQ-06-23-15.pdf>

The Association sincerely appreciates the opportunity to submit testimony for the record.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Mock Schaeffer". The signature is written in a cursive, flowing style.

Jennifer Mock Schaeffer
Government Affairs Director