



State of Utah

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Department of Natural Resources

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March 4, 2024

Submitted via <https://www.regulations>

Shannon Estenoz
Assistant Secretary for Fish and Wildlife and Parks
U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041-3803

RE: **National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health**
FWS-HQ-NWRS-2022-0106

Dear Assistant Secretary Estenoz:

The State of Utah (“State”), through the Public Lands Policy Coordinating Office, in coordination with the Utah Division of Wildlife Resources (“DWR”), has reviewed the U.S. Fish and Wildlife Service’s (“Service”) proposed new regulations regarding the National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health (“Proposed Rule”). The State provides the following specific comments regarding the Proposed Rule:

First, the State appreciates the Proposed Rule’s recognition of the need for coordination with State fish and wildlife agencies when evaluating the biological integrity, diversity, and environmental health (“BIDEH”) of the National Wildlife Refuge System (“refuge system”). The State maintains jurisdiction over wildlife within its borders that are not subject to the Endangered Species Act and numerous wildlife species subject to the State’s jurisdiction reside on National Wildlife Refuges within the State. It is therefore imperative that the Service coordinate wildlife management with DWR and ensure management decisions are based on the best available local science provided by the DWR. The State requests express recognition of this jurisdictional authority throughout the Proposed Rule, especially where refuge managers are afforded discretion to make determinations related to mitigation and adaptation strategies for wildlife.

Second, the State appreciates the Service’s recognition in the Supplementary Information section that “historical conditions may need to serve as a reference point, rather than an end goal.” However, the State is concerned that the proposed regulatory language does not fully reflect this intent. For instance, the definition of “historical conditions,” wherein reference to this intent

National Wildlife Refuge System – Biological Integrity, Diversity and Environmental Health Rule

March 4, 2024

Page 2

would be most appropriate, does not include any mention of using historical conditions as a reference point. The State suggests including clear statements in the regulatory language to ensure historical conditions are utilized in a manner consistent with the Service’s stated intent.

Third, the State provides the following more specific comments regarding the proposed regulatory language:

Section 29.3(a) – Ensure biological integrity, diversity, and environmental health:

The final sentence of this paragraph suggests the Service will use “sound professional judgment, informed by the best available scientific information” to inform management within refuges. Along with the best available science, the Service’s “professional judgment” should be informed by local information and science provided through DWR. The Service recognized in the Supplementary Information section that ensuring BIDEH of the refuge system “necessitates a landscape-level perspective for managing an interconnected network of land and waters.” The State has jurisdictional authority over many of the resources inside and outside of the refuge system that will be affected by specific management decisions. Accordingly, to facilitate a “landscape-level perspective,” there must be explicit reference here to utilizing state-specific information to inform the Service’s judgment.

Section 29.3(b) – Definitions:

Biological Integrity: The final sentence in this definition is a statement regarding the Service’s method for evaluating biological integrity. To ensure clarity of definition, this sentence should be removed and placed in the “management directives” section of the Proposed Rule.

Climate change mitigation: This definition focuses solely on methods to address climate change itself, not to address the effects of climate change on the refuge systems and/or the BIDEH objectives. The State is concerned that the inclusion of such a definition renders the Proposed Rule overly broad and shifts focus from the BIDEH issues the Proposed Rule is meant to address. Mitigation in this context should refer to management actions that address identified effects of climate change.

Diversity: The final sentence in this definition is a statement regarding the Service’s method for evaluating diversity. To ensure clarity of definition, this sentence should be removed and placed in the “management directives” section of the Proposed Rule.

Environmental change: The reference here to “alteration or disturbance of the environment caused by humans” causes significant confusion between this definition and the proffered definition for “anthropogenic change.” The State suggests the removal of the phrase “caused by humans or natural processes.” Alternatively, the State suggests the removal of the “human processes” language to avoid confusion with the definition of anthropogenic change.

National Wildlife Refuge System – Biological Integrity, Diversity and Environmental Health Rule

March 4, 2024

Page 3

Environmental health: The final sentence in this definition is a statement regarding the Service’s method for evaluating environmental health. To ensure clarity of definition, this sentence should be removed and placed in the “management directives” section of the Proposed Rule.

Historical conditions: As discussed above, the Service should consider including a clear statement that “historical conditions” may be utilized as a reference point rather than an end goal. Without this additional clarity in the regulatory language, the Service’s intent of utilizing “historical conditions” in this fashion may not be implemented.

Native: The term “native” is used in many contexts outside of wildlife management. As such, for purposes of clarity, the State recommends this sentence be revised to define the phrase “native species.” This will ensure the definition is limited appropriately.

Section 29.3(c) – Management directives for ensuring biological integrity, diversity, and environmental health:

29.3(c)(1) – The language outlined for addressing climate change references “using climate change mitigation and adaptation strategies.” However, as discussed above, the definition of “climate change mitigation” refers solely to measures designed to address climate change generally, rather than measures designed to address the effects of climate change on BIDEH. At a minimum, the definition should be revised. However, the State also recommends additional clarity in this section to ensure management designed to address the effects of climate change are directed to the refuge system.

29.3(c)(2) – The language here suggests the Service will “avoid and minimize habitat fragmentation.” However, avoiding and minimizing are different management approaches, that should be addressed separately. The State suggests a revision of this language to provide clarity for when habitat fragmentation will be avoided, as opposed to minimized.

29.3(c)(5) – This section refers to addressing threats through management actions, “including when such threats to refuge resources arise outside refuge boundaries.” This suggests the Service can act on threats outside the refuge system entirely. While this may be necessary in certain circumstances, there should be limits on the discretion afforded to refuge managers to develop management actions outside of the refuge system boundaries.

Section 29.3(d) – Management activities and uses with the potential to ensure biological integrity, diversity, and environmental health.

29.3(d)(1) – The State is concerned that the prohibition on predator control inside the refuge system could have effects beyond the Service’s jurisdiction. Predators within the refuge system can, and often will, move outside of the refuge system. Prohibiting predator control, without consultation with the State and/or DWR, may therefore result in unintended consequences outside of the boundaries of the refuge system. The State suggests the Service consider creating

National Wildlife Refuge System – Biological Integrity, Diversity and Environmental Health Rule

March 4, 2024

Page 4

comprehensive predator control plans for the refuge system and the landscapes surrounding those systems that are affected by excessive predation. At a minimum, there must be consultation with the State before including an outright prohibition on predator control within the refuge systems.

29.3(d)(2) – The State is concerned about an allowance for the introduction of species outside their current range. At a minimum, there should be a reference here to the best available science for such an introduction, particularly as it relates to the suitability of habitat for such an introduction. Additionally, the State requests explicit reference here to the need for consultation with DWR before allowing introductions outside a species' range. This will ensure that any future environmental analyses will consider how such an introduction will affect the existing environment and any species currently residing within that environment.

The State appreciates the cooperative relationship it has with the Service and the consideration of the concerns outlined herein. Please direct any written correspondence to the Public Lands Policy Coordinating Office at the address below or call to discuss any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Redge B. Johnson', written over a horizontal line.

Redge B. Johnson
Director