

**THE NATIONAL WILDLIFE REFUGE
SYSTEM AT RISK: IMPACTS OF THE
U.S. FISH AND WILDLIFE SERVICE'S
PROPOSED BIDEH RULE**

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON WATER, WILDLIFE AND
FISHERIES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

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**OVERSIGHT HEARING ON THE NATIONAL
WILDLIFE REFUGE SYSTEM AT RISK:
IMPACTS OF THE U.S. FISH AND WILDLIFE
SERVICE'S PROPOSED BIDEH RULE**

**Wednesday, April 10, 2024
U.S. House of Representatives
Subcommittee on Water, Wildlife and Fisheries
Committee on Natural Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 10:50 a.m. in Room 1334, Longworth House Office Building, Hon. Cliff Bentz [Chairman of the Subcommittee] presiding.

Present: Representatives Bentz, Wittman, Graves, LaMalfa, Carl, Hageman, Westerman; Huffman, Peltola, Mullin, Hoyle, and Dingell.

Mr. BENTZ. The Subcommittee on Water, Wildlife and Fisheries will come to order.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

Good morning, everyone. I want to welcome our witnesses, Members, and our guests in the audience to today's hearing.

The Subcommittee is meeting today to hear testimony on a hearing entitled, "The National Wildlife Refuge System at Risk: Impacts of the U.S. Fish and Wildlife Service's Proposed BIDEH Rule."

I ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with Committee Rule 3(o).

I also ask unanimous consent that the gentleman from Tennessee, Mr. Kustoff, be allowed to participate in today's hearing.

Without objection, so ordered.

I now recognize myself for an opening statement.

**STATEMENT OF THE HON. CLIFF BENTZ, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF OREGON**

Mr. BENTZ. Again, I want to thank the witnesses for being here today and our Members for their interest in the issues we will be discussing.

Today, the Subcommittee on Water, Wildlife and Fisheries examines the recently proposed rule by the U.S. Fish and Wildlife Service entitled, "The Biological Integrity, Diversity, and Environmental Health Rule," otherwise known as the BIDEH Rule. While this rulemaking is in the public comment phase, given the concern expressed by those affected by this rule, this Committee is holding this oversight hearing.

Our witnesses today will discuss many of the concerns associated with this drastic and dramatic change in the rules designed to govern management of our refuge system. I will highlight some of these.

First, and perhaps most egregiously, the rule creates a default position prohibiting use of management tools essential to protect the use of our refuge system. For example, management tools including normal refuge and historical agricultural practices and native predator controls are prohibited unless a full NEPA process and/or other bureaucratic nightmares, such as completing a scientific peer review, are completed. The Service, under this rule, is instantly prohibiting practices and means of working on and around refuges, restricting the discretion of refuge managers and putting at risk the very purpose of individual refuges.

My district in Oregon is home to 12 National Wildlife Refuges, including those located on the Oregon side of the Klamath Basin. According to the authorizing law, these refuges, "shall be administered by the Secretary of the Interior for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith." Of course, when they were established this was an important part of the negotiations leading to their existence. The proposed rule absolutely undermines these efforts and is an open invitation for more litigation.

It should come as no surprise that some of the most vocal supporters of this rule are anti-farming and ranching organizations, including groups who have advocated phasing out farming on the 22,000 acres of refuge lands in the Klamath Basin, not to mention tens of thousands of acres of other refuge land located around and across our nation.

Agriculture, whether by grazing or planting crops, is an effective tool for managing refuge lands that also benefits wildlife. These relationships not only deliver meaningful conservation benefits to the species, but also provide valuable recreational opportunities for hunters and those who visit our refuges to view wildlife. Instituting this default restrictive position prohibiting these practices will seriously damage, if not destroy, the relationship between the agricultural community and the refuge system.

The prohibition on native predator control included in this rule is equally troubling. As I previously mentioned, many refuges around the country have wildlife-specific purposes, such as areas for waterfowl and sea turtles to nest. Unfortunately, this proposed rule dramatically undermines the ability for managers to capture wild predators, such as raccoons, skunks, and ghost crabs who feed on the nests of turtles and waterfowl. Unfortunately, the rule does not define what constitutes a "native predator," and ignores the fact that predators don't just stay inside the refuge system. As we will hear from our witnesses today, this approach places the refuge system management squarely in conflict with state game and fish agencies, who are primarily responsible for managing predators within their state's borders.

Lastly, the rule contains vague and concerning language, allowing the Service to address any supposed threats to refuge resources that may arise from outside refuge boundaries. This gives the Service enormous discretion to determine what constitutes a

“threat,” and how far outside refuge boundaries this authority may extend, and what appropriate actions could be taken to address such supposed threats.

If you are thinking that what I have described is a drastic approach to managing our refuge system, well, you are right, it is. Yet, the Service claims it is simply codifying and updating their decades-old BIDEH policy. In essence, “Nothing to see here.” I, for one, am highly skeptical of that narrative, and I look forward to the witnesses’ testimony regarding this proposed, politically-driven change to our refuge system.

With that, I yield.

I also ask unanimous consent to enter into the record a letter on the proposed rule from the Klamath Drainage District, the Klamath Water Users Association, and the Tulelake Irrigation District to the U.S. Fish and Wildlife Service.

Without objection, so ordered.

[The information follows:]

**Klamath Drainage District • Klamath Water Users Association •
Tulelake Irrigation District**

April 4, 2024

Public Comments Processing
U.S. Fish and Wildlife Service

Subject: Docket No. FWS-HQ-NWRS-2022-0106: Comments on Proposed Rule and Policy Updates Regarding National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health

Dear U.S. Fish and Wildlife Service:

On February 2, 2024, the United States Fish and Wildlife Service (Service) published the subject proposed rule and policy updates¹ (proposed rule/policies). 89 Fed. Reg. 7345 (Feb. 2, 2024). We urge that the Service not adopt the proposed rule/policies.

First, and of specific local concern, application of the proposed rule/policies to agricultural activities on land covered by the Kuchel Act, Pub. L. No. 88-567, 78 Stat. 850 (codified at 16 U.S.C. §§ 695k-695r) would be contrary to that statute and the congressional design for continuation of commercial agricultural production on that extremely valuable cropland.

Second, and more generally, the proposed rule/policies would impermissibly establish a presumption against allowing certain activities on refuge lands nationwide rather than following the requirements of the National Wildlife Refuge System Improvement Act of 1997, Pub. L. No. 105-57, 111 Stat. 1252 (codified as 16 U.S.C. §§ 668dd-668ee) (Improvement Act), which provides that the Service may allow activities that are not specific refuge purposes, on a case-by-case basis, for each refuge, if the activity is determined to be a compatible use.

Third, various aspects of the proposed rule/policies are highly subjective or vague. The proposed rule thus proposes sweeping, self-granted power that is undefined and would invite conflict and litigation that would not serve the public interest. It is not good policy or appropriate to promulgate these broad statements and objectives as rules with legal effect.

Fourth, while the proposed rule discusses important global concerns regarding impacts to species and ecosystems, there is no clear logic explaining why the specific elements of proposed rule would address or resolve these issues or improve the conditions of concern.

Finally, we provide comments below on other, specific issues including unanalyzed impacts that must be considered.

¹These comments focus primarily on the proposed rule.

The undersigned commenters are directly interested in these issues due to their roles in, and association with, the Klamath Project (Project), a Bureau of Reclamation (Reclamation) project authorized in 1905 under the terms of the Reclamation Act of 1902. The Project (see map at Attachment A) provides or facilitates diversion and delivery of water to approximately 210,000 acres of high-quality irrigated land in Klamath County, Oregon, and Siskiyou and Modoc Counties, California. Of this irrigated farmland, roughly 30,000 acres lies within Tule Lake National Wildlife Refuge (NWR) and Lower Klamath NWR, and there is additionally controlled grazing on land around Clear Lake, a Project reservoir, in Clear Lake NWR.

Tulelake Irrigation District (TID) delivers water to approximately 65,000 acres of land, including 15,000-16,000 acres in Tule Lake NWR that is leased for commercial agriculture. TID also operates Sumps 1A and 1B within Tule Lake NWR (which comprise 13,000 acres) and operates D Pumping Plant, which moves water from Sump 1A to P Canal and Lower Klamath NWR.

Klamath Drainage District (KDD) delivers water to approximately 27,000 acres of irrigated land in Klamath County, Oregon. This includes 6000 acres that are within Lower Klamath NWR and KDD, commonly known as Area K. The KDD-owned and operated Ady Canal is the sole means of direct diversion and delivery of water from the Klamath River to Lower Klamath NWR.

Klamath Water Users Association (KWUA) is a non-profit corporation, formed in 1953. KWUA's members are public agencies such as TID and KDD who deliver water to irrigated land served by the Project. KWUA's mission is "to preserve and enhance the viability of irrigated agriculture for our membership in the Klamath Basin, for the benefit of current and future generations."

Kuchel Act Lands

A proposed new 50 C.F.R. § 29.3(d)(6) would state: "We *prohibit* the use of agricultural practices unless they are determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health, and where we cannot achieve a refuge management objective through natural processes." (Emphasis added.) Other paragraphs would similarly establish prohibitions for essential agricultural management tools and technologies such as pesticide use, predator control, and use of genetically modified organisms. The agricultural and other prohibitions include vague terms and matters subject to interpretation or the vicissitudes of future management objectives.

Fundamentally, however, these proposals do not reflect an awareness or understanding of the agricultural lands subject to the Kuchel Act.

The agricultural lease lands have been farmed since the time that they were uncovered from marsh and lake bottom and became productive land. The United States received and accepted title to the lands from the States of Oregon and California for that purpose and that purpose only. These lands are integral to family farm operations, regional economies, and, by contractual and statutory compromise, provide a direct source of revenue to local public agencies including irrigation districts and counties. They are within and are served by TID and KDD and share in the ongoing costs of operation and maintenance of the Project's infrastructure.

These lands also exist in areas of abundant waterfowl and wildlife. For decades, farmers planted crops, flooded fields, and created food and habitat for migrating waterfowl along the Pacific Flyway. Birds thrive on waste grain and green browse fields.

Over time, ceded and uncovered lands that were originally leased by the federal government to growers were homesteaded and transitioned into private ownership. That process continued until the early 1950s, as veterans of World War II became the last homesteaders on ceded lease lands. In the meantime, due to intense hunting pressure, executive orders established bird refuges on ceded lands, subject to continued reclamation development.

In the 1950s, there was a public debate regarding the completion of the original homesteading design. The "homesteading versus continued leasing" debate ended in 1964, with the enactment of the Kuchel Act, which prohibited homesteading and instead directed the continued leasing of specific land units within Tule Lake NWR and Lower Klamath NWR. That direction was critical to honor other legal commitments to TID, to maintain consistency with the underlying authorizations for the Project, and to ensure continued delivery of Project water.

The Kuchel Act deals with the entirety of four NWRs in the Klamath Basin covering over 146,000 acres of public lands.² The Act dedicates these four NWRs to “wildlife conservation” to be “administered by the Secretary of the Interior for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith.” 16 U.S.C. § 695l. The Act also provides specific directions with respect to the lease lands, constituting approximately 15,000 of the 39,000 acres within the Tule Lake NWR, and 6,000 of the 51,000 acres within the Lower Klamath NWR. See CCP/EIS at 1-25 and Federal Register Vol. 81, No. 237, 89138. Specifically, the “Secretary shall, consistent with proper waterfowl management, continue the present pattern of leasing [the lease lands].” 16 U.S.C. § 695n. Congress chose continued leasing, rather than homesteading, as the land management strategy that would be consistent with waterfowl management goals.

After passage of the Kuchel Act, Congress enacted statutes governing the management of refuge lands generally within the National Wildlife Refuge System, including the National Wildlife Refuge System Administration Act of 1966, Pub. L. No. 89-669, 80 Stat. 926 (Administration Act), as amended by the Improvement Act. Acting under those laws in December 2016, the Service issued the Final Comprehensive Conservation Plan/ Environmental Impact Statement for the Lower Klamath, Clear Lake, Tule Lake, Upper Klamath, and Bear Valley NWRs. Subsequently, on January 13, 2017, the Regional Director for the Pacific Southwest Region of the Service signed the Record of Decision.

The CCP incorporated consistency determinations for continued agricultural practices on the lease lands. These determinations were subject to four legal challenges, in which the Service prevailed on all issues.³

Soils on the lease lands are among the best in the world for crop production. Agricultural production on irrigated lease lands produces \$30 million in crop value annually, and supports hundreds of jobs, local businesses, and local governments, all while providing food, cover, water, and open space for waterfowl and other wildlife. In addition, lease land farming incorporates innovative management strategies such as the successful “walking wetlands” program and other actions that have become models for other areas; these activities are possible only if the agricultural operations are economically viable. Finally, parts of Lower Klamath NWR and Clear Lake NWR are managed for grazing under the Kuchel Act. Ranching on Clear Lake NWR lands dates to the latter 18th century.

Any alteration in management of the Kuchel Act lands would result in negative economic, socioeconomic, and environmental impacts.

Attachment B to this letter provides a more comprehensive discussion of the history and management of the so-called “lease lands” on Project-related refuges, including under the Kuchel Act and Improvement Act.

In recent informal discussions, Service personnel have indicated that they do not believe the proposed rule/policies would apply to the lease lands or would not lead to management changes. We support that the proposed rule/policies should be irrelevant to Kuchel Act lands specifically. However, agriculture is treated as a “use” of Kuchel Act lands that must be considered and approved in compatibility or consistency determinations. Accordingly, and for additional reasons discussed later, the proposed rule/policies should not and cannot be adopted for the Kuchel Act lands.

Presumptions Inconsistent with Improvement Act

The Improvement Act establishes a comprehensive, defined, and consistent process that controls the Service’s decisions to allow or disallow a use on a refuge. In general, the Service may allow a use if it is determined to be compatible with refuge purposes. 16 U.S.C. § “Compatible” means that a use “that, in the sound professional judgment of the Director, will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.” 16 U.S.C. § 668ee; 50 C.F.R. § 25.12(a). The Improvement Act directed the Service to publish regulations establishing the process for determining whether a use of a refuge is a compatible use, and identified ten specific requirements related to the regulations

²See Notice of availability, Fish and Wildlife Service issued CCP EIS—Federal Register Vol. 81, No. 237, 89138 (Dec. 9, 2016); U.S. Fish and Wildlife Service, Lower Klamath, Clear Lake, Tule Lake, Upper Klamath, and Bear Valley National Wildlife Refuges—Final Comprehensive Conservation Plan/Environmental Impact Statement (Dec. 2016) (hereinafter referred to “CCP/EIS”) at 1-25, *id.* at 4-31 & 4-37.

³*Tulelake Irrigation Dist. v. United States Fish & Wildlife Serv.*, 40 F.4th 930 (9th Cir. 2022); *Audubon Soc’y of Portland v. Haaland*, 40 F.4th 917 (9th Cir. 2022); *Audubon Soc’y of Portland v. Haaland*, 40 F.4th 967 (9th Cir. 2022).

that were to be promulgated. 16 U.S.C. § 668dd(d)(3)(B). Those regulations exist, and since their publication in 2000, have been relied upon to make required compatibility determinations, commonly in concert with the development of CCPs.

The proposed rule/policies would bypass the Improvement Act's required process. Based on a general directive to "ensure the biological integrity, diversity, and environmental health of the [refuge] System are maintained, 16 U.S.C. § 668dd(a)(4)(B), the Service would establish prohibitions on certain activities that would apply *unless* (for example) the activity was "determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health, and where we cannot achieve a refuge management objective through natural processes."

In other words, instead of allowing a use that meets the criteria for compatibility, the proposed rule/policies would disallow uses unless the activity meets a completely different set of criteria than those that are applicable to compatibility determinations. This would be improper.

Lack of Specificity or Relationship Between Stated Objectives and the Proposed Rule/Policies

The "management objectives" in the proposed new Code of Federal Regulations, title 50, section 29.3(c) are broad statements of policy or management philosophies that are proposed for codification as legal requirements. In these general, subjective narratives, the Service appears to confer unbounded authority and discretion on itself. These provisions would foster conflict and almost certainly trigger litigation by parties who contend that specific actions or inactions by the Service fail to carry out the legal mandates. Congress did not establish the stated commitments and it is not good policy or in the public interest to promulgate regulations of this sort.

The "management activities and uses" in the proposed new Code of Federal Regulations, title 50 section 29.3(d) are similarly broad in some respects but consist of prohibitions. The Service has not provided any explanation of *how* these prohibitions would accomplish stated purposes of the proposed rule.

Other Specific Comments

Pesticides, Predator Control

Refuges in our region are subject to formally adopted plans for integrated pest management (IPM), under which chemical controls (including organic pesticides) are allowed only under a strictly applied pesticide use proposal process. The proposed rule would seemingly overlay that time-tested, effective process with a new prohibition that would serve no identifiable purpose other than the expression of policy preferences that do not relate to real-world land and water management.

There is a history of negative impacts resulting from failure or inability to employ timely and effective weed and pest management prevention or controls on the refuges in our area. We have witnessed ditch banks and dikes becoming carpeted with noxious weeds, and damage to crops and wildlife due to inadequate pest prevention and control. These conditions are not only detrimental on the refuges, but they also make a bad neighbor of the Service as seeds and pests move from the refuges to private lands.

In the summer of 2023, astounding numbers of grasshoppers hatched on Lower Klamath NWR and invaded private lands in the region, doing severe crop damage with lost revenue estimates being as high as \$100 million or more. The Service was unable to take any management action to control the outbreak. We are hopeful that spraying will be possible to combat the anticipated grasshopper surge in 2024.

We support IPM. We are extremely concerned that there not be a new, uncertain bar that must be cleared in order to implement IPM in a timely and effective manner.

Genetically Engineered Organisms

The proposed ban on use of genetically engineered organisms is not based on science.

It would, to our knowledge, be inconsistent with other federal agencies' consideration and approval of this tool. We anticipate, and support, comments by the American Farm Bureau Association.

Thank you for your consideration of these comments.

Sincerely,

Bill Walker
Board President
Klamath Drainage District

Tracey Liskey
Board President
Klamath Water Users Association

John Crawford
Board President
Tulelake Irrigation District

The complete letter with attachments is available for viewing at:
<https://docs.house.gov/meetings/II/II13/20240410/117029/HHRG-118-II13-20240410-SD004.PDF>

Mr. BENTZ. With that, I yield to the Ranking Member for his opening statement.

STATEMENT OF THE HON. JARED HUFFMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HUFFMAN. Thank you, Mr. Chairman. Good morning, everyone. Today, we are discussing a proposed rule by the Fish and Wildlife Service on biological integrity, diversity, and environmental health, the acronym we refer to as BIDEH.

And I think as we consider biodiversity in the National Refuge System, it is important to understand this is the world's largest network of lands and waters with an explicit mission of wildlife conservation. It is one of the crown jewels of American natural resources. It was specifically created to protect biodiversity and expand wildlife-dependent opportunities across 850 million acres of land and sea.

Now, we have a global biodiversity crisis. Scientists have told us about that. Our refuge system is not immune to it. In 1997, Congress issued a mandate in the Refuge Improvement Act to the Fish and Wildlife Service to ensure the system's biological integrity, diversity, and environmental health. That is what this is all about.

The rule that is being proposed uses best science. It clarifies refuge management guidelines to reflect this long-standing biodiversity mandate, and it would consider things like climate change, increasing habitat connectivity, managing fish and wildlife populations, upholding water rights, and promoting healthy air, water, and soil. It establishes standards for ensuring BIDEH, while also allowing flexibility to use tailored tools and strategies that can achieve specific wildlife conservation goals.

Now, it may come as a surprise to some of you that have heard the claims coming from across the aisle, but nothing in this proposed BIDEH rule affects existing cooperative agriculture, water rights, hunting, fishing, or wildlife viewing. It just doesn't, if you

actually read the rule. I can only assume that Team Extreme saw the rule abbreviated as BIDEH, and mistakenly thought it was referring to Biden, and partisan hysteria must have set in at that point. There is no other explanation I can find for why a non-controversial rule, a rule that simply strengthens America's refuge system against climate change and promotes healthy air and water without impacting agriculture, water rights, hunting, or fishing would be sensationalized the way it is being in this hearing and by my friends across the aisle.

Now, it is good that a year-and-a-half into this dysfunctional hot mess of a Congress we are finally having a hearing that talks about the National Wildlife Refuge System. But having a hearing to sensationalize and undermine a pending rulemaking is not good stewardship of our refuges. It is political theater.

The Fish and Wildlife Service is here today, but their testimony is constrained by the fact that they are in the middle of a public comment process. We should let that process play out instead of attempting to score cheap political points.

There is an important hearing, if we really cared about the refuge system, that we should be having in this Committee. It would start with a conversation about the refuge system's budget. The budget system for our National Refuge System has seen virtually no change since 2010. Add in inflation, and its funding capacity is less today than it was 15 years ago. Congress should care about that.

We should be talking about how our refuges have seen a 36 percent increase in visitation since 2010, but during that same time period the full-time refuge staff has decreased by 16 percent. This hinders their ability to manage this incredible system. Only half of the 500 refuge field stations are staffed right now, so we are able to monitor less than a third of the over 1,300 threatened and endangered species found in refuges. Congress should care about that if it is serious about refuges.

Sixty-seven million visitors a year, but our refuge staff has decreased by 25 percent over the last 15 years, resulting in millions of people being turned away from visitor centers each year. We should care about that, and we should be talking about that.

How about public safety? We hear a lot about that from across the aisle. We know how many public safety officers we need in this system to meet our standards, and we are providing just 20 percent of that number. I wish all the rhetoric that we hear from Team Extreme about public safety carried over to our concern about public safety for the tens of millions of visitors in our refuge system complex.

We know that the current need is four times the current funding level for our National Refuge System. The more we neglect it, the more expensive it gets in the future to catch up. So, we should care if we are fiscally conservative and care about serving the taxpayers about beginning to step up to that challenge, rather than pushing it off on future congresses and future generations.

So, a lot we should be talking about refuges; this hearing does not cover it.

I yield back, Mr. Chairman.

Mr. BENTZ. I now recognize the Full Committee Chairman, Mr. Westerman, for his opening statement.

STATEMENT OF THE HON. BRUCE WESTERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. WESTERMAN. Thank you, Chairman Bentz. Thank you to the witnesses for being here today. This is a subject that is very near and dear to me, and members of this Committee often hear me talk about how I believe true conservation means that we have an unchosen obligation to leave the world in better condition than we found it.

As a lifelong outdoorsman, as a hunter and a fisherman, and a representative with a prolific agriculture industry, I know firsthand that sportsmen and women, farmers, and ranchers are, I believe, the world's best conservationists. The National Wildlife Refuge System is an integral part of my district, as it is home to four refuges. And I have worked with the U.S. Fish and Wildlife Service and my constituents for years to foster cooperative relationships for the betterment of these refuges and the wildlife that depend on them.

The best example of that is the Holla Bend National Wildlife Refuge in Yell County. I visited Holla Bend 2 years ago after constituents expressed concerns with its condition and the lack of waterfowl using it as a resting area, which is actually the stated purpose of the refuge. When I visited, it was obvious that the refuge had fallen into disrepair, and there was only one full-time employee for the entire 7,000-acre refuge. So, to Mr. Huffman's point, these refuges are vastly understaffed. And my hat is off to this lady who was answering the phone, mowing the yard, hiring the contractors. If it got done on that refuge, it was her doing it. And it is unfair to put someone in a position like that.

But to remedy the situation, I have met with Fish and Wildlife and others, and the Service agreed to enter into a cooperative farming agreement with local farmers to grow rice and Japanese millet in the refuge. This relationship has been a great success, resulting in more than 1 million waterfowl energy days in 2023 for wintering waterfowl.

And for those of you unfamiliar with the term "waterfowl energy days," that is the amount of energy that is needed to sustain one duck for 1 day and 1 million, well, that is a lot of ducks. And we love ducks coming to Arkansas. And I have said this many times about habitat: If you build it, they will come.

The No. 1 thing we can do for all species is to provide them with good habitat, whether they are endangered species, whether something like ducks or turkeys that I like to hunt, if we want more species, we create better habitat.

The success at Holla Bend mirrors many other refuges that utilize cooperative agriculture as a management tool. In fact, data collected from refuges across the southeast region show that 47 percent of waterfowl energy days, a key metric to assess the health of wetland ecosystems, come from agricultural practices. I will also say there has been a lot of research being done on moist soil units,

and even using native vegetation to create mass crop for wintering waterfowl.

There are a lot of different ways to approach this. But Mr. Chairman, I would ask that the report outlining the success of cooperative agriculture in the Holla Bend National Wildlife Refuge be submitted into the hearing record.

Mr. BENTZ. Without objection.

[The information follows:]

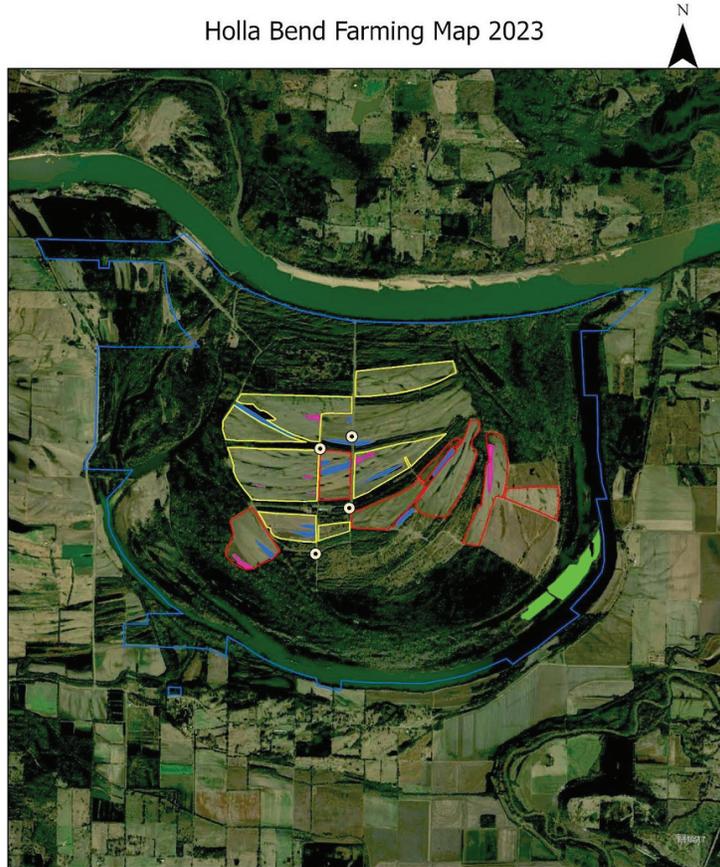
Cooperative Farming Report at Holla Bend NWR

Refuge staff and cooperative farmers started meeting throughout April/May to determine how to provide better habitat for wintering waterfowl on the refuge. Once the meetings concluded, there was a consensus to try planting rice in some of the impoundments that could be inundated from wells. Most of the soil is sandy/silt loam, which is not ideal for growing rice because it does not hold water well. Cooperative farmers and refuge staff experimented with test rice plots in the waterfowl impoundments to increase our wintering waterfowl foraging objectives. With adequate rainfall coming throughout the growing season and help from pumping out of the wells, over 30 acres of rice was successfully grown across the refuge impoundments with a high density of sizable seed heads. These plots were managed intensely and monitored weekly to check for undesirable species. The rice was fertilized with Urea and sprayed with herbicide throughout the summer to keep broadleaf plants, such as sesbania, from outcompeting the rice. Most plots had favorable moist-soil plants mixed throughout the rice, which will provide another excellent food source for wintering waterfowl.

Other impoundments consisted of a diversity of favorable moist soil plants. Slow drawdowns were conducted in April on these impoundments, promoting the growth of Pennsylvania smartweed, barnyard grass, fall panicum, bearded sprangletop, and toothcup. These units were also monitored throughout the summer for unfavorable moist soil plants, but the stands got established early and there was little undesirable species present. There is over 20 acres of moist soil spread throughout the refuge. These natural stands of vegetation will provide a vital food source to waterfowl and create excellent invertebrate habitat for waterfowl.

Fifty acres of Japanese millet was also planted in the low-lying areas of the refuge that will be inundated when the Arkansas River floods. The millet was also monitored throughout the summer, fertilized with urea, and sprayed with broadleaf control herbicide targeting sesbania. With essential rains coming late in the summer, the millet has produced a high density of large seedheads throughout the stand. Unharvested corn was left in/around the impoundments to serve as a visual buffer and another food source for wintering waterfowl. The refuge kept around 20-30 acres of corn as part of the crop share from the cooperative farming program. All these different habitat types will benefit waterfowl diets daily throughout the entire wintering period (November to February), especially with how much weather patterns vary in Arkansas. The efforts from the refuge staff and cooperative farmers resulted in over 1,000,000 WEDs across the refuge that will serve as excellent foraging habitat for wintering waterfowl.

Holla Bend Farming Map 2023



Legend

- ⊙ Ag Wells
- HBNWR_Boundary
- ▭ Soybeans
- ▭ Corn
- ▭ Moist Soil Units
- ▭ Rice
- ▭ Millet



Field Name	Acres	Crop type	WEDs
HB 1	10.1	Rice	186,651.10
HB 2	0.62	MS	366.5
HB 3	3.3	Harvested beans	800
HB 4	3.25	Harvested beans	800
HB 5	4.7	Rice, MS, Corn	123,733
HB 6	0.5	MS	340
HB 7	0.8	MS	217.4
HB 8	2.3	MS	156.3
HB 9	0.7	rice	4286
HB 10	2.3	rice	36,905.60
HB 11	1.4	bare dirt	0
HB 12	6.3	rice	159,617
HB 13	2.4	rice	24,520
HB 14	3.4	MS	1668
HB 15	4.1	MS/Corn/rice	44,389
HB 16	3.1	rice	31,652
HB 17	4.7	MS	1,300
HB 18	8	MS	1,362
HB 19	12.8	Millet	89,600
HB 20	37.4	Millet	299,200
		Total WEDs	1,007,563.90

Table showing Waterfowl Energy Days for each impoundment.



Moist soil unit with a dense stand of Pennsylvania Smartweed



Unharvested rice surrounded by willow trees will provide a great food source and a visual barrier for waterfowl.



Rice growing within rows of unharvested corn.



Rice with moist soil plants mixed in the stand such as barnyard grass and fall panicum.



Dense stand of Japanese millet.

Mr. WESTERMAN. Unfortunately, the rule we are examining today will jeopardize this innovative success and other tools utilized across the country by prohibiting management tools such as agricultural practices, native predator control, and the use of genetically modified crops in the refuge system unless each practice goes through onerous and unnecessary red tape for approval. It sounds just like the Federal Government.

To make matters worse, the Service hasn't produced a shred of scientific evidence to show that these practices should be prohibited, or that they are harmful to species or the refuge system.

I am glad we are conducting this essential oversight of the proposed rule today. I hope we can have a productive dialogue on how to move forward with simultaneously stewarding our resources and allowing for active management of the refuge system.

I want to again thank each of the witnesses for joining us to share your experience, and I look forward to hearing your testimony.

I yield back.

Mr. BENTZ. Thank you, Mr. Chairman. I will now introduce our witnesses: Mr. Steve Guertin, Deputy Director for Program Management and Policy with the U.S. Fish and Wildlife Service in Washington, DC; Mr. Mark Staunton, owner of Staunton Farms in Malin, Oregon; Mr. David Wielicki, CEO of the South Carolina Waterfowl Association in Pinewood, South Carolina; Mr. Jeffrey Haskett, President of the National Wildlife Refuge Association in Washington, DC; and Mr. Gordon Batcheller, Executive Secretary of the Northeast Association of Fish and Wildlife Agencies, testifying on behalf of the Association of Fish and Wildlife Agencies in Washington, DC.

Let remind the witnesses that under Committee Rules, you must limit your oral statements to 5 minutes, but your entire statement will appear in the hearing record.

To begin your testimony, please press the "talk" button on the microphone.

We use timing lights. When you begin, the light will turn green. When you have 1 minute remaining, the light will turn yellow. And at the end of the 5 minutes, the light will turn red, and I will ask you to complete your statement.

I will also allow all witnesses to testify before Member questioning.

And I would remind you, although it is hardly necessary, that the microphone system in this room is challenged, so please speak directly into the microphone. And if we can't hear you, I will say so.

I now recognize Mr. Guertin for 5 minutes.

STATEMENT OF STEVE GUERTIN, DEPUTY DIRECTOR FOR PROGRAM MANAGEMENT AND POLICY, U.S. FISH AND WILDLIFE SERVICE, WASHINGTON, DC

Mr. GUERTIN. Good morning, Chairman Westerman, Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee. I appreciate the opportunity to testify before you today on our proposed biological integrity, diversity, and environmental health regulations and policy updates, or our BIDEH proposal.

For the purposes of my testimony, I will refer to the concept of biological integrity, diversity, and environmental health as ecological integrity. Maintaining ecological integrity is a statutory mandate that has been a focus of national wildlife refuge management for over 25 years. This mandate stems from the National Wildlife Refuge System Improvement Act, an organic charter for the

National Wildlife Refuge System that passed Congress with near unanimous support in 1997.

Under the Improvement Act, we manage refuges to maintain biodiversity across multiple scales and develop strategies to address conservation threats using the latest science. Our first policy to provide internal direction on this mandate was in 2001, and over the 20 years since that policy, the threats to the ecological integrity of the refuge system have changed. Refuges have begun to experience climate change impacts while facing other stressors like habitat loss, disease, and invasive species. These threats are making it harder for the refuge system to achieve its conservation mission.

At the same time, the refuge system and the healthy ecosystems it protects are increasingly vital to addressing climate change and biodiversity loss. Meeting these modern conservation challenges requires a modern approach. This includes ensuring the refuge system has the capacity it needs to conserve our shared natural resources now and into the future. To that end, our Fiscal Year 2025 budget request includes \$602 million for the refuge system, which will increase our capacity to conserve species and habitats and connect visitors with nature.

With our BIDEH proposal we are also striving to equip refuge managers with improved tools and guidance for achieving the refuge system mission. Through this proposal, we would provide a more consistent, transparent, and science-based approach for maintaining the ecological integrity of the refuge system.

The proposal does this in several ways. It includes management directives that create a science-based framework that refuge managers can use to evaluate and implement management actions. This will help our refuge managers connect habitats, protect species, sustain ecological function, incorporate Indigenous knowledge, and increase resilience.

The proposal has updated definitions that include the impacts of climate change on refuge ecosystems, unlike our 2001 policy. Under that previous policy, we asked our refuge managers to seek to manage to historic conditions. While our BIDEH proposal acknowledges the importance of historic conditions as a reference point, it also recognizes that sustaining historic conditions to achieve ecological integrity is not possible in many places.

In addition, the proposal provides guidance for certain management activities and uses that have a propensity to affect ecological integrity, activities like agriculture, native predator control, pesticide use. While the proposal directs a default position for each of these specific management activities, it does not ban these activities. Rather, it provides refuge managers with the flexibility to use these practices when necessary to meet statutory requirements, fulfill refuge purposes, and ensure ecological integrity.

We believe the proposal does not require brand new processes for decision-making. Instead, it codifies and standardizes the processes that many refuge managers already follow in making management decisions. It also does not supersede any of our other statutory obligations, including the Improvement Act's many other directives.

Our BIDEH proposal is open for public comment through May 6, and we appreciate the strong public interest in the proposal to date. In response to several requests for an extension of the com-

ment period, including from leadership of this Committee, we extended the initial 30-day public comment period by 60 days to ensure all interested parties have an opportunity to share their feedback during this extended comment period. We are also continuing to explore additional opportunities for public engagement.

Thank you again for the opportunity to testify before you today. We appreciate your support for the refuge system, and look forward to answering your questions about our BIDEH proposal. Thank you.

[The prepared statement of Mr. Guertin follows:]

PREPARED STATEMENT OF STEPHEN GUERTIN, DEPUTY DIRECTOR FOR POLICY,
UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Introduction

Good morning, Chairman Bentz, Ranking Member Huffman, and Members of the Subcommittee. I am Stephen Guertin, Deputy Director for Policy at the U.S. Fish and Wildlife Service (Service) within the Department of the Interior (Department). I appreciate the opportunity to testify before you today on the Service's proposed Biological Integrity, Diversity, and Environmental Health (BIDEH) regulations and policy updates. For the purposes of this testimony, we will refer to the management objective to ensure biological integrity, diversity, and environmental health as "ecological integrity" and the proposed regulation and policy update as the "BIDEH proposal."

Ensuring ecological integrity on the National Wildlife Refuge System (Refuge System) is a statutory mandate that has been a focus of national wildlife refuge management for over 25 years. The Service's BIDEH proposal provides updated approaches for refuge managers to meet current challenges in maintaining ecological integrity on national wildlife refuges. The proposal would support conservation throughout the Refuge System by equipping refuge managers with tools to better address the threats of climate change and biodiversity loss to fish, wildlife, plants, and their habitats. This advances the Service's mission to work with others to conserve, protect, and enhance fish, wildlife, and plant populations and their habitats for the continuing benefit of the American people.

Last month, Department and Service leadership visited the nation's first wildlife refuge—Pelican Island National Wildlife Refuge—to commemorate the Refuge System's 121st birthday. To add to the celebration of more than a century of conservation success, the Department also announced a new addition to the Refuge System, the Everglades to Gulf Conservation Area. The establishment of this new wildlife refuge, the System's 571st unit, will catalyze conservation within a 4.05-million-acre area in southwest Florida, one of the most biodiverse regions in the world. Working hand-in-hand with willing landowners, the Service will protect habitat for species like the Florida panther, Everglade snail kite, Florida black bear, and more than 100 threatened or endangered species.

Despite being in its infancy, the Everglades to Gulf Conservation Area embodies all the qualities that make the Refuge System such a special network of public lands. It was established, first and foremost, to conserve fish, wildlife, plants, and their habitats. It is the product of years of collaboration between the Service and diverse partners and stakeholders to address a shared conservation concern. It will support local communities, who benefit from healthy fish and wildlife populations, by providing opportunities for outdoor recreation, stimulating local economies, and keeping working lands working. Finally, it will contribute to broader efforts across the landscape to protect wildlife corridors and enhance climate resilience for wildlife and communities, amplifying its conservation impact.

This concept of individual refuges supporting healthy ecosystems at both the local- and landscape-level is what the BIDEH proposal is all about. The National Wildlife Refuge System Improvement Act (Improvement Act), which was championed by stakeholders across the ideological spectrum, and enacted by Congress with near unanimous support in 1997, directed the Secretary of the Interior (Secretary) to "ensure that the biological integrity, diversity, and environmental health of the Refuge System are maintained." This important management directive (BIDEH mandate) has shaped the Service's administration of the Refuge System over the past two decades, considered along with individual refuge purposes and the Refuge System's broader mission.

At the same time, the threats facing the Refuge System have evolved significantly over the past 20 years. National wildlife refuges are experiencing the unavoidable negative effects of climate change while continuing to face other stressors, such as invasive species and disease. The evidence of these impacts can be seen at refuges in your districts and across the country. These threats erode the Service's ability to achieve the Refuge System's conservation mission. Simultaneously, the Refuge System and the healthy ecosystems it protects, are increasingly vital to addressing climate change, biodiversity loss, and boosting climate resilience. By restoring and conserving wildlife habitat across the country, the Refuge System reduces vulnerability to coastal flooding, erosion, drought, and catastrophic wildfire.

Supporting refuge managers in addressing these contemporary conservation challenges requires modern tools and guidance. Updating our implementation of the BIDEH mandate through new regulations and policy revisions is one way that we are working to support conservation throughout the Refuge System. The Service's BIDEH proposal will provide a more consistent, science-based, and transparent approach for upholding ecological integrity across the Refuge System. Through the proposal, we seek to ensure that units of the Refuge System meet their individual purposes and collective mission. This will ensure that national wildlife refuges remain strongholds of biodiversity and lynchpins to conserving America's wildlife heritage for future generations.

Building the Refuge System

To understand the why the Service is updating its implementation of the BIDEH mandate, it is important to understand why the Refuge System was established and what forces over the past century have shaped it into the system it is today.

This vast network of public lands and waters got its start on a tiny spit of land in the brackish waters along Florida's Atlantic coast, where, at the turn of the twentieth century, poaching was driving steep declines in populations of pelicans, herons, egrets, and other birds. The demand for feathers was so high that they were reportedly worth more than gold. Concerned citizens, researchers, and conservation organizations sought to address this conservation crisis by advocating for the protection of Pelican Island—a five-acre mangrove island that served as one of the last remaining breeding grounds for brown pelicans on Florida's east coast.

Working together, these conservation advocates persuaded President Theodore Roosevelt to take executive action designating Pelican Island as a federal bird reservation in 1903. The protection of this tiny bird reserve—a precursor to today's national wildlife refuge—marked the first time that the federal government set aside land for the sake of wildlife.

This idea of designating public lands as places where wildlife comes first caught on, catalyzing the growth of similar wildlife reserves across the country. By the end of his administration in 1909, President Roosevelt had established more than 50 wildlife reserves. Congress also took action to expand this loose network of protected wildlife habitats.

Through the mid-1900s, this network of conservation lands continued to grow as landmark conservation laws like the 1934 Migratory Bird Hunting and Conservation Stamp Act, championed by hunters, and the Fish and Wildlife Act of 1956 gave the Service the authority and funding to acquire lands for national wildlife refuges. In response to growing recreational pressures, the 1962 Refuge Recreation Act required that any recreational use of a national wildlife refuge be compatible with the primary conservation purpose for which the refuge was established.

In 1966, Congress took action to formally establish the Refuge System. The National Wildlife Refuge System Administration Act of 1966 (Administration Act) laid the groundwork for the Service's administration of the Refuge System and recognized the need for disparate wildlife refuges to be administered under a unified umbrella. While the Administration Act provided an overarching framework for management of the Refuge System, it failed to unify its units under a single mission or provide clear guidance as to *how* the Refuge System should be administered as a national conservation network.

In the decades to follow, this lack of clear guidance resulted in the growth of major management challenges across the system. The conservation purpose of many national wildlife refuges was compromised as they came under increased pressures for uses that were incompatible with wildlife conservation.

By the 1990s, activities that were incompatible with the wildlife conservation purposes had become common across the Refuge System. Various studies, reports, and lawsuits highlighted the widespread growth of the incompatible uses on the Refuge System, with a 1989 Government Accountability Office Report finding that at least one incompatible use was occurring on nearly 60 percent of the nation's wildlife refuges. These reports emphasized that without stronger legal mandates to shield

national wildlife refuges from external pressures, the integrity of the entire Refuge System was at risk.

In response to these challenges, a bipartisan coalition that included Members of Congress, the executive branch, and conservation and sportsmen's organizations worked together to draft and pass the National Wildlife Refuge System Improvement Act—a visionary organic charter for the Refuge System.

The Improvement Act dramatically reformed and built upon the Administration Act. It established a statutory mission for the Refuge System to “administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources within the United States for the benefit of present and future generations of Americans.” It directed the Secretary, acting through the Service, to manage each refuge to fulfill the mission of the system, as well as individual refuge purposes. The Improvement Act also established a process for determining compatible uses of national wildlife refuges; recognized and gave priority to the “big six” wildlife-dependent recreational uses including hunting, fishing, wildlife observation, photography, environmental education, and interpretation; and provided guidance for refuge planning and strategic growth of the Refuge System. Notably, it also included directives for the Secretary's administration of the Refuge System, including the BIDEH mandate.

Under the leadership of the late Congressman Don Young of Alaska and Congressman John Dingell of Michigan, the Improvement Act passed the House by a vote of 419-1 and the Senate by unanimous consent. It was signed into law by President Clinton in 1997. Even today, nearly 30 years later, the Improvement Act remains one of the strongest legislative charters for the guidance of nature reserves.

The Refuge System Today

The idea of designating public lands and waters where wildlife comes first has resulted in the growth of what is now the largest and most diverse network of conservation lands and waters in the world: the Refuge System.

Since 1903, the Refuge System has grown to include 571 national wildlife refuges, 38 wetland management districts, and 5 marine national monuments, the latter of which the Service co-manages with the National Oceanic and Atmospheric Administration. Encompassing more than 96 million land acres and 760 million acres of ocean and submerged land, the Refuge System spans 12 time zones as it stretches from the U.S. Virgin Islands to Guam, with at least one unit in every U.S. state and territory.

This vast network of public lands and waters is home to more than 800 species of birds, 220 species of mammals, 250 species of reptiles and amphibians, and 1,100 species of fish, supporting incredible biodiversity. The Refuge System's protected landscapes are especially important for imperiled species. National wildlife refuges are home to more than 380 threatened and endangered species, some of which cannot be found anywhere else in the world.

We need look no further than our own backyards to appreciate the incredible array of species and landscapes that the Refuge System protects. The Hart Mountain National Antelope Refuge in Oregon, which was established to protect the pronghorn antelope, conserves extensive sagebrush habitats and is home to iconic species like the pronghorn, bighorn sheep, and greater sage-grouse. Just a stone's throw away, the Humboldt Bay National Wildlife Refuge in northern California protects a mosaic of mudflats, eelgrass beds, salt marsh, and other habitats. This diverse, connected landscape provides vital habitat to hundreds of species of shorebirds, mammals, fish, and marine invertebrates. Across the country, Virginia's Chincoteague National Wildlife Refuge has been designated a Globally Important Bird Area for the variety of migratory waterfowl, shorebirds, and other birds it supports.

It's not only fish and wildlife that seek refuge in these special places: so too do people. With more than 100 wildlife refuges within an hour's drive of major cities, the Refuge System provides access to nature for the more than 80 percent of Americans who live in and around cities. For those looking to hunt, fish, hike, bird, or simply enjoy the solitude of nature, the Refuge System provides abundant, high-quality opportunities for all Americans to get outside. National wildlife refuges also play an important role in supporting local communities. It is estimated that annual visits to the Refuge System generate more than \$3.2 billion for local economies and support 41,000 jobs. Further, by protecting and restoring wildlife habitat, national wildlife refuges help protect coastal communities from storms, reduce wildfire risk, improve air and water quality, protect cultural resources, and more.

The bottom line: protecting public lands and waters where fish and wildlife can thrive helps people thrive too.

Addressing Conservation Threats

As the scale of the Refuge System has evolved over the past century, so too have the threats facing our nation's fish and wildlife.

Climate change poses a profound and growing threat to America's fish, wildlife, plants, and their habitats. Climate change impacts, including increasing land and water temperatures, rising seas, increasingly frequent and severe storms, catastrophic wildfires, and extended droughts, are occurring more often, and causing more damage than any time in recorded human history. These impacts are driving transformational changes in ecosystems, impacting when and where food, water, and shelter are available to wildlife. Plants and animals vary in their ability to respond to these impacts, with many already facing increased risk of extinction as ecosystems change faster than species can adapt.

Over the past few decades, national wildlife refuges have begun to experience the effects of climate change while also continuing to contend with other stressors like habitat loss, disease, and invasive species. At Kenai National Wildlife Refuge in Alaska, warmer and drier conditions have brought more beetle infestation and fire disturbance to spruce forests, which can no longer regenerate. A savannah grassland is replacing these forests, altering the region's historic ecosystem. At Colorado's Arapaho National Wildlife Refuge, small mammals like the pika are moving higher and higher up the mountains to beat the heat. Rising seas are eroding important nesting habitat for the endangered loggerhead sea turtle at Cape Romain National Wildlife Refuge in South Carolina and for nesting birds at Breton National Wildlife Refuge in Louisiana.

Taken together, these stressors are driving major losses in biodiversity and making it harder for the Refuge System to achieve its conservation mission. At the same time, the Refuge System is becoming an integral component for addressing those very threats. As fish, wildlife, and plant populations shift to contend with the climate change and other stressors, the Refuge System's healthy, interconnected ecosystems are vital for building and supporting species resilience.

Addressing these contemporary challenges and seizing on the opportunity to increase the resilience of wildlife and ecosystems to conservation threats requires a modern approach.

Over the past decade, the Refuge System's responsibilities have grown, reflecting the importance of these public lands and their unique conservation mission to Americans. The Refuge System has added multiple new refuge units, millions of acres of marine national monuments, and new initiatives like the Urban Wildlife Conservation Program. Visitation to national wildlife refuges has grown almost 47 percent since Fiscal Year (FY) 2011, with the Refuge System hosting a record-breaking 68 million visits in FY 2023.

At the same time, funding to support the Service's stewardship of these important conservation lands and the services that they provide for the public has lagged. When adjusted for inflation, annual budgets coupled with rising fixed costs have resulted in a dramatic decrease in the Refuge System's operational capacity. This erosion of human capacity greatly reduces the Refuge System's ability to achieve its conservation mission at a time when conserving and restoring America's fish, wildlife, and plant resources is more important than ever. The Service's FY 2025 budget request includes \$602.3 million in funding for the Refuge System, which would help rebuild capacity to conserve species and habitats and to connect visitors with nature.

Another way that the Service seeks to address modern-day conservation challenges and opportunities is to equip refuge managers with improved tools and guidance for achieving the Refuge System's conservation mission in a changing world. The Service's BIDEH proposal is one such tool.

BIDEH

Over the course of the Refuge System's history, Congress has given the Service many tools to respond to the conservation challenges of the moment. The BIDEH mandate is perhaps the most innovative of these tools.

The BIDEH mandate borrows key terminology from conservation biology and emphasizes the need for the Service to consider how best to maintain the ecological integrity of the Refuge System in administering its individual units. This includes protecting the broad array of fish, wildlife, and habitat resources found on refuges and associated ecosystems. It brings a management focus to maintaining biodiversity across multiple scales and recognizes the need to identify and develop comprehensive strategies to address threats. The BIDEH mandate also demonstrates clear congressional intent that the Service should apply the latest science to maintain the ecological integrity of individual refuges and the System. The inclusion of

this ecological mandate remains one of the most unique and distinctive features of the Improvement Act.

In 2001, the Service issued a policy (601 FW 3) that provided internal direction for agency implementation of the BIDEH mandate. The policy defined key terms and described the relationship between individual refuge purposes, the Refuge System mission, and maintaining ecological integrity. It provided refuge managers with guidance for maintaining existing levels of ecological integrity and determining when and how to restore ecological integrity, as well as guidance for addressing external threats to refuge ecosystems.

When we adopted this policy in 2001, we did not anticipate the extent of climate change impacts on national wildlife refuge ecosystems or the need to clarify in regulation our interpretation of, and authority to implement, the BIDEH mandate. More than two decades later, we have a need to provide guidance that assists refuge managers in better addressing these threats through the improved implementation of the BIDEH mandate.

BIDEH Proposal

On February 2, 2024, the Service published a proposal in the Federal Register to revise the existing BIDEH policy and implement a new rule that continues to guide the management of national wildlife refuges to maintain ecological integrity, as envisioned by Congress almost three decades ago. The BIDEH proposal codifies and standardizes the processes that many refuge managers already follow in making management decisions related to ecological integrity, and it provides critical clarification for balancing the many existing considerations and legal requirements affecting refuges.

With this proposal, the Service seeks to provide a more consistent, transparent, and science-based approach for upholding ecological integrity at individual refuges and across the Refuge System. We seek to codify our continued commitment to managing refuge ecosystems as components of larger landscapes and seascapes, particularly in the face of a changing climate. We also seek to emphasize that managing the Refuge System through a landscape-scale lens necessitates strong collaboration and coordination with partners and stakeholders at all levels. This proposal does not depart from managing refuges to achieve their individual conservation purposes; rather, it reinforces our commitment to protecting and enhancing biodiversity to support individual refuge purposes and the system's broader mission.

Our BIDEH proposal endeavors to achieve these goals by providing refuge managers with a framework that they can use to evaluate and implement management actions to connect habitats, protect vulnerable and migratory species, sustain ecological functions, increase resilience, incorporate Indigenous knowledge, and adapt to climate change. The updated policy and new regulations accomplish these objectives in several ways.

Regulatory Standard

The BIDEH proposal provides, for the first time, a clear regulatory standard directing refuge managers to ensure ecological integrity. This proposed standard promotes management of the Refuge System as an ecologically interconnected network of lands and waters, supporting the Refuge System mission and individual refuge purposes. The proposal empowers refuge managers to holistically conserve refuge ecosystems; promote natural processes; and address the contemporary threats of climate change and other stressors.

It also instructs refuge managers to use their professional judgment and the best available science to ensure that management actions benefit wildlife conservation by contributing to ecological integrity. This mandate reinforces the importance of using the latest science to inform refuge management, with the intent of bolstering science-based management actions to combat climate change and biodiversity loss and promote ecological integrity.

Definitions

Both the proposed regulations and policy revisions include updated definitions for “biological integrity”, “diversity”, and “environmental health” that reflect the climate reality facing national wildlife refuges. In the 2001 BIDEH policy, the definitions for “biological integrity” and “environmental health” both reference “historic conditions.” Under that policy, historic conditions serve as a benchmark for maintaining and restoring ecological integrity, guiding refuge managers to tailor management activities on refuges to meet that historic condition.

While the new BIDEH proposal acknowledges the importance of historic conditions as a reference point, the revised definitions for each of these three key terms explicitly recognize the impacts of climate change and other stressors on refuge

ecosystems. This change acknowledges that in many cases, sustaining historic conditions to maintain ecological integrity on national wildlife refuges may no longer be possible.

Management Directives

The proposal also features several key management directives for maintaining ecological integrity across the Refuge System, providing a framework through which refuge managers can determine and implement management actions in a consistent way to meet refuge purposes, ensure ecological integrity, and fulfill the Refuge System mission. These directives are based on five key principles for managing refuges and ecosystems and they emphasize the key themes of addressing climate change, using the best available science, and empowering refuge managers:

1. The proposed regulations empower refuge managers to address climate change impacts on wildlife and habitats using climate mitigation and adaptation strategies. This directive provides refuge managers with the flexibility to use different strategies to address climate impacts on species and habitats at their individual refuge that meet the proposed regulatory standard.
2. The proposed regulations direct refuge managers to conserve and connect habitats, emphasizing the importance of maintaining ecological connectivity to support biodiversity. In doing so, this directive prioritizes the use of natural processes to meet refuge habitat management and planning goals, but recognizes that in some cases, other strategies may be necessary to meet these goals.
3. The proposed regulations codify the Service's ability to supplement natural processes to achieve wildlife management goals when habitat conditions and natural processes are insufficient. While the proposal prioritizes the use of natural processes to manage wildlife populations, this directive and the accompanying policy update clearly provide refuge managers with the flexibility to use additional management tools to meet conservation goals.
4. The proposed regulations integrate another mandate of the Improvement Act, one that can be a key component to ensuring the ecological integrity of some refuges: that the Service uphold and, where necessary, acquire water rights, in accordance with all relevant local, state, and federal laws. The inclusion of this directive in the BIDEH proposal emphasizes the importance of exercising refuge water rights, in accordance with federal and state water laws, to meet refuge purposes and uphold ecological integrity. Securing water resources for wildlife refuges is especially important today, as climate change drives changes in water availability for wildlife.
5. The proposed regulations direct refuge managers to promote and maintain healthy soil, air, and water, recognizing the fundamental importance of non-living components of an ecosystem.

Impacts to Certain Management Activities

The BIDEH proposal also provides guidance for certain management activities and uses that have a particular propensity to affect ecological integrity. Specifically, the proposal addresses agricultural uses, predator control, conservation translocations, use of genetically engineered organisms (GEOs), invasive species management, pesticide use, and mosquito control.

We have heard concerns about this section of the proposal, including from Members of Congress. We recognize that some of our partners and stakeholders are concerned about how the guidance we provide for these management practices could limit public uses of the Refuge System. It is important to emphasize that this proposed rule does not supersede any of our other statutory obligations under the Improvement Act related to public uses and coordination with partners.

The proposal does not supersede the Improvement Act's requirement that the Service provide opportunities for wildlife-dependent recreational uses of the Refuge System. Hunting, fishing, wildlife observation, photography, environmental education, and interpretation remain the priority public uses of the Refuge System, and this proposal would not reduce opportunities for those uses.

The proposal does not supersede the requirements that the Service cooperate and collaborate with Federal agencies and State fish and wildlife agencies in managing national wildlife refuges, nor does it undermine the requirement that the Service coordinate with adjacent landowners.

The proposal does not alter the Improvement Act's statutory construct with respect to Alaska, which defers to the Alaska National Interest Lands Conservation Act (ANILCA) in times of conflict between the two laws.

Further, the proposal does not ban the use of any of the management practices discussed above on national wildlife refuges. As we state throughout the BIDEH proposal, we recognize that relying on natural processes alone may not always be sufficient to address the challenges facing national wildlife refuges. In some cases, refuge managers may deem it necessary to use tools like cooperative agriculture or native predator control to fulfill refuge purposes, meet the Refuge System's mission, and ensure ecological integrity. We appreciate that each refuge is different and recognize that the judicious application of each of these management tools can, in certain cases, reap benefits for wildlife and refuge neighbors and visitors.

However, given the threats facing refuge ecosystems and the potential for these management activities to further impact those ecosystems, it is important to provide increased clarity and guidance for when, why, and how we apply these management practices. In all cases, we seek to emphasize the importance of using the best available science to inform decision-making and to ensure that ecological integrity remains a key consideration, along with individual refuge purposes, in making management decisions.

The core tenets of this guidance are not new. The proposal requires that these management activities are implemented consistent with the proposed management directives, meaning that they are subject to the principle that the Service defers to natural processes and favors management that mimics natural processes. This requirement is consistent with existing Service policy on Cooperative Agriculture and other refuge policies. For instance, the Service's policy on Cooperative Agricultural Use (620 FW 2) states that cooperative agriculture is only used as a habitat management tool where wildlife refuges cannot meet management objectives through natural processes.

Although we direct a default position for each of these management practices, these positions are largely consistent with existing Service policies and with the Refuge System's approach to permitting uses of national wildlife refuges. The regulatory standard provides refuge managers significant flexibility to implement these management activities as conservation tools on their refuge on a case-by-case basis, in accordance with the best available science. This flexibility will be increasingly important to support climate resilience in our land management practices.

The proposal also reiterates existing requirements to evaluate the necessity for and potential impacts of these proposed management activities on ecological integrity, in accordance with the National Environmental Policy Act (NEPA). Refuge managers already conduct NEPA, compatibility determinations, and refuge planning when deciding which management tools to use, and they should already be incorporating ecological integrity considerations into those procedures. This proposal does not change those processes or require a brand-new process for decision-making.

Ultimately, we believe that standardizing and clarifying the existing processes that refuge managers are required to follow in making decisions regarding best management practices and their influence on ecological integrity, will decrease workload, provide consistency, improve transparency to the public, and facilitate science-based decision-making.

Coordination with Partners and Stakeholders

Finally, the proposal emphasizes the need to collaborate with State and Tribal partners, adjacent landowners, and other stakeholders to ensure ecological integrity. National wildlife refuges are part of a larger tapestry of lands and waters, and achieving landscape-scale conservation necessitates close partnerships and coordination with partners and stakeholders. This proposal underscores our commitment to cooperate and coordinate with States, Tribes, and private landowners, all of whom are critical partners in our shared efforts to secure our nation's wildlife heritage.

Next Steps

The Service's BIDEH proposal is available for public comment through May 6, 2024, and we appreciate the robust public engagement in the proposal to date. The public comment period provides an important forum for the Service to solicit feedback from our partners, stakeholders, and the public on our proposed actions, and we are actively working to ensure that all interested parties have an opportunity to share their feedback on this important proposal.

In response to several requests for an extension of the public comment period, including from members of this Committee, the Service extended the initial 30-day public comment period by 60 days. During this extended public comment period, we are continuing to explore additional opportunities to share information and answer questions about the proposal with any interested parties, including Tribes, States, sportspeople's organizations, and conservation organizations. We look forward to

reviewing all comments once the comment period closes and using that input to guide our path forward.

Conclusion

Mr. Chairman, the Service appreciates the subcommittee holding this oversight hearing and your interest in the Refuge System. We look forward to continuing to work with you to achieve the Refuge System's mission and secure a future that is prosperous for fish and wildlife for the continuing benefit of the American people who we serve. Thank you again for the opportunity to appear before you today, and I would be happy to respond to any questions that you or other Members of the Subcommittee may have.

QUESTIONS SUBMITTED FOR THE RECORD TO DEPUTY DIRECTOR GUERTIN, U.S. FISH AND WILDLIFE SERVICE

Mr. Guertin did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Bentz

Question 1. Mr. Guertin: In your testimony, you indicated that none of the activities, including agriculture and predator control, that are occurring now would end under the proposed BIDEH rule. Basically, nothing will change. That is encouraging. Can the Service commit that all of those activities that are not at risk now, will also continue to be allowed at those refuges into the future under the "new lens" that you referenced in response to the Committee's questions? In other words, if agriculture, predator control, and trapping are happening now, will those activities still be occurring under this proposed rule 5 or 10 years down the road?

Question 2. Mr. Guertin: Your testimony on behalf of the Service suggested that nothing will change under this BIDEH rule. If that is in fact true, and it is simply business as usual, why is the Service advancing this rule that has generated such significant concern from your most strident conservation partners and advocates, and on the flip side, generated praise from a number of organizations that openly oppose predator management, GMOs, and active habitat management?

Question 3. Mr. Guertin: With this rule, the Service is attempting to manage refuges to an established baseline of "historic conditions"—an entirely subjective term—which in this case references conditions "prior to substantial anthropogenic change."

3a) How far back into history will the Service be looking to establish this baseline?

3b) What constitutes a substantial anthropogenic change?

3c) What will the new historic baseline condition be to evaluate change on the refuges?

Question 4. Mr. Guertin: In the Service's opinion who has the primary management responsibility for fish and wildlife species that have not been placed under federal protection? Would the Service take actions to moderate methods or means of take on refuges if the federal government decides that state regulations related to hunting or trapping threaten BIDEH?

Question 5. Mr. Guertin: The Service's definition of predator control—"actions or programs with the intent or potential to alter predator-prey population dynamics on a refuge by reducing a population of native predators through lethal or nonlethal methods . . ."—appears to describe the very essence of species management. What are some of the specific activities that the Service would restrict?

Question 6. Mr. Guertin: According to your testimony, "In some cases, refuge managers may deem it necessary to use tools like cooperative agriculture or native predator control to fulfill refuge purposes, meet the Refuge System's mission, and ensure ecological integrity." Does the Service believe that these tools are currently being used in cases where they are not necessary? "For instance, the Service's policy on Cooperative Agricultural Use (620 FW 2) states that cooperative agriculture is only used as a habitat management tool where wildlife refuges cannot meet management objectives through natural processes." So why does the Service, in this rule, feel the need to explicitly prohibit these practices unless conditions are met?

Question 7. Mr. Guertin: how many biologists does each refuge have? Does every refuge have a biologist? How many refuges do not have a biologist on staff? I've heard countless times that the Service is a science driven agency, so given the paucity of biologists within each refuge, how can the refuge system possibly implement the BIDEH policy?

Question 8. Mr. Guertin, what partners or specific individuals were consulted—in the Director's office, Assistant Director of Refuge's office, and staff who drafted—in the thought process and ultimate development of the draft rule and proposed refuge manual chapter changes?

Question 9. Mr. Guertin, as you know, a number of refuges were purchased in large part with federal duck stamp revenue. Were leading waterfowl hunting organizations consulted in the development of this proposal?

Question 10. Regulations often take the form of "prohibited unless allowed" or "allowed unless prohibited". That is a choice every administration and agency make; the former sends a strong message that an activity is viewed unfavorably and thus that activity requires more justification. Would you say that agriculture and farming are widely accepted and valuable practice and livelihood? Would you also agree that cooperative farming is a valuable wildlife management tool that has been practiced successfully for over a century in this country? Assuming you agree with both of these sentiments, why then would you draft a rule that prohibits such a widely utilized and effect tool, requiring refuge managers to expend the extra effort and time to justify it? You are sending a clear message to your staff with this rule when you state that certain activities are prohibited.

Questions Submitted by Representative Carl

Question 1. Mr. Guertin are you familiar with the US Fish and Wildlife Service Programmatic Environmental Assessment, that was published in 2020, for use of genetically engineered agricultural crops for natural resource management on national wildlife refuges in the southeastern United States? How does the Fish and Wildlife Service reconcile the ultimate finding of the EA, along with the countless scientific citations used to support said findings, that GECs are a helpful management tool in refuges, with the direction the Service is trying to take the refuge system a mere four years later?

Link here: <https://ecos.fws.gov/ServCat/downloadfile/171732>

Questions Submitted by Representative Kustoff

Question 1. We have heard from countless conservation groups, the farming community, refuge managers and the states, that they do not support this rule as drafted. Who exactly is advocating for this rule and why have you decided to choose their interests over those partners in conservation that have long stood beside the refuges in support of collaborative, active conservation?

Mr. BENTZ. Thank you. And it is my pleasure to recognize Mr. Staunton from my district.

I am happy you are here, and you are recognized for 5 minutes.

STATEMENT OF MARC STAUNTON, OWNER, STAUNTON FARMS, MALIN, OREGON

Mr. STAUNTON. Full Committee Chair Westerman, Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee, thank you for convening this critical hearing and allowing me to present my testimony.

My name is Marc Staunton. I am a fourth-generation farmer from the Klamath Basin, specifically residing near Malin, Oregon. My family has been involved in the Klamath Reclamation Project since 1929, cultivating a diverse array of crops including potatoes, onions, garlic, small grains, and alfalfa hay. Additionally, I serve

as the President of the Board of Directors of the Klamath Project Drought Response Agency, on the Board of Directors of the Water Users Association, and the Klamath County School Board.

My focus today centers on the apprehensions regarding the negative consequences of the proposed rule and policy update regarding the National Wildlife System biological integrity, diversity, and environmental health, as published by the U.S. Fish and Wildlife Service on February 2, 2024, commonly referred to as the BIDEH rule.

I strongly believe that done correctly, conservation and agriculture go hand in hand, and that belief is based on life experiences that follow.

In the late 1990s through the 2000s, leased land farming was under continuous attack by environmental groups wanting to remove agricultural activities from the refuge complex. To create more durable and productive wildlife habitat, an idea to return farming units back to the natural wetlands for a period was developed by local university staff, the Tule Lake Refuge Team, and innovative farmers, members of my family specifically, who were willing to try new concepts.

After 2 years of flooding, the wetland was drained and the farming began to cultivate the soil for crop production. There was noticeable improvements in soil tilth and overall health. Testing conducted by the university had shown that the multi-year wetlands had significantly decreased the populations of nematode in the field.

Additionally, other soil-borne diseases detrimental to crop production, such as alien white rot or potato verticillium wilt, had been greatly reduced.

The practice of walking wetland had become a cornerstone of our family's business strategy, particularly in producing and packing premium organic and conventional potatoes from the leased lands. This approach involved a rotation between natural wetlands and working lands, which we continue whenever possible. Recognizing the value of this method, we expanded our rotation onto hundreds of acres of private land near Tule Lake Refuge Complex.

We have managed to compete against much larger businesses by prioritizing the development of production processes that are genuinely sustainable, measurable, and repeatable. This strategy has provided us with distinct advantages in delivering truly healthy produce to our customers. More recently, we have begun exploring multi-species management as a means to ensure more consistent water availability for our walking wetlands.

The current draft of the BIDEH rule may have numerous unforeseen and negative consequences, both today and in the future. Elimination of agriculture on refuge lands in our basin would severely impact local government, irrigation districts, communities, and farm balance sheets. Even though the Kuchel Act authorizes agriculture in the Klamath Refuge System, the vague nature of the BIDEH language opens the door for legal and judicial interpretation.

Moreover, the proposed rule undermines the principles of local control and inhibits innovation by enforcing top-down mandates that neglect regional nuances and challenges. By coming from a

place of “no, unless,” the rule impedes the ingenuity of creative minds and the experience of agriculture as a purpose within the ecosystem.

Agriculture has and will continue to play a critical role in the idea, adoption, and implementation of projects that meet statutory requirements, fulfill refuge purpose, and ensure biological integrity, diversity, and environmental health. The heavy hand of government and looming threat of more litigation will not create a healthier, holistic ecosystem for our refuge.

We are a community of local people embracing our role in the ecosystem, understanding the distinct challenges, and developing the solutions as unique as our landscape. That is a working lands approach, and that is what I believe will continue to bring real, lasting benefits to our refuge, our wildlife, our food supply, our community, and our country.

Thank you for your attention, and I am available for any questions.

[The prepared statement of Mr. Staunton follows:]

PREPARED STATEMENT OF MARC STAUNTON, STAUNTON FARMS

Chairman Bentz, Ranking Member Huffman, and Members of the Subcommittee, thank you for this important hearing and for allowing me the honor of testifying before this Subcommittee. My testimony today focuses on my concerns about negative impacts of the Proposed Rule and Policy Updates Regarding National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health published by the U.S. Fish and Wildlife Service (USFWS) on February 2, 2024 (Proposed BIDEH Rule).

My Background

My name is Marc Staunton. I am a fourth generation Klamath Basin farmer. More specifically, since 1928, my family has lived on and farmed land served by the Klamath Reclamation Project (Project), a U.S. Bureau of Reclamation (Reclamation) project authorized in 1905. My wife and I and our four children live in Klamath County, Oregon, near the town of Malin, close to the Oregon-California border. I am the President of the Board of Directors of the Klamath Project Drought Response Agency, an intergovernmental agency that designs and administers programs to align water supply and demand in the Project area, and a board alternate member of the Klamath Water Users Association (KWUA). I am also the current Chair of the Klamath County School Board.

After receiving my bachelor’s degree in business marketing from Azusa Pacific University, and following my great-grandfather’s career path, I settled back into our farming operation with my grandfather, two uncles, and my father. Since then, our family has worked to transition the business toward the future. Currently, my uncle, three other family members, and I make up the farming partnership that oversees and manages Staunton Farms. We grow a wide variety of potatoes, onions, garlic, small grains, and alfalfa hay, and have produced other crops through time. I was raised outside Tulelake, California, near the property homesteaded by my great-grandfather and great-grandmother. We continue to farm that land, and other property that we either own or lease.

Historic and Current Agricultural Operations on Project Refuges

Land that we lease includes some of the so-called “lease lands” located in Tule Lake National Wildlife Refuge (NWR). This land is also within Tulelake Irrigation District (TID) and part of the Project. The lease lands are ancient lake bottom, covered in a natural wetland habitat and duck manure, resulting in extremely high-quality, productive farm ground. My perspective regarding farming on national wildlife refuge land is based on this experience, but I believe my experience and our operation have much in common with farming on other refuges across the country.

The Project lease lands occupy land that was ceded to the United States for purposes of reclamation through irrigation legislation enacted by California and Oregon in 1905. Over time, land was reclaimed and developed for irrigation. Reclaimed land was initially leased to producers as the irrigation infrastructure was

developed. The next step was that the land would be opened to homesteading under public land laws. Preferences in the homesteading program were given to veterans of World Wars I and II. My great-grandfather, Edward Staunton, was one of these homesteaders.

In the 1950s and early 1960s, there was a public policy debate over whether then-remaining leased lands would be opened for homesteading versus continuing to be leased. This was resolved in the Kuchel Act, which disallowed further homesteading while providing for continued leasing of these reclaimed lands for commercial agriculture.

The lease land program today is operated by Reclamation, with administrative control remaining with USFWS. Generally speaking, the leasing of these lands for commercial farming is based on a bidding process, where farmers bid for a parcel consisting of individual units in sealed bids. Leases are awarded based on the highest offer per acre. A lessee receives a one-year lease with the right to renew for four additional years, making for a maximum five-year term. However, in recent years, the right to renew may be longer; for example, when a grower is operating with organic certification.

The Upper Klamath Basin is the most important migratory area for waterfowl in North America. The Klamath Basin represents the bottleneck through which the entire Pacific Flyway must pass. Birds from Alaska, the Yukon, the Canadian Prairies, and Boreal Forest all filter down through the Klamath Basin and then disperse south to the Pacific Ocean, Mexico, and U.S. Southwest, only to return the following spring, headed back north. Eighty percent of the waterfowl in the Pacific Flyway have historically used the Klamath Basin at some point during their annual migrations.

Moreover, nine-tenths of the waterfowl that travel through the Klamath Basin concentrate on Tule Lake and Lower Klamath NWRs, the two principal wildlife refuges in the Refuge Complex, some of which have also historically been farmed, while most is reserved for year-round waterfowl habitat and storage. Established by executive orders in 1908 and 1928, respectively, and later confirmed in the Kuchel Act, the Refuges are reserved for the “major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith.” The Kuchel Act limits the acreage of row crops produced on the Project. Traditional lease land farming in the Tule Lake NWR would consist of a maximum allotment of 33 percent of a farm unit be in “row crop” and 66 percent in grains. No matter how large or small a farm operation is, the ratio of grain to row crop cannot increase above that threshold. Even with Kuchel Act management throughout the 1990s, lease land farmers were under continuous attack by environmental groups wanting to remove agricultural activities from the Refuge Complex. To create more durable and productive wildlife habitat and to deal with the spread of nematode populations along USFWS-operated cooperative farming units, an idea to return farm units back to natural wetlands for a period of time was developed by local university staff, the Tule Lake Refuge team, and innovative farmers—and members of my family specifically—who were willing to try new concepts. After two years of flooding, the wetland was drained and the farmer began to cultivate the soil for crop production. Testing done by the university revealed the multiyear wetland had dramatically reduced the populations of nematode in the field. Along with that, other soil diseases harmful to crop production had also been radically reduced as well as dramatically improving soil tilth and health.

This practice is known as “walking wetlands” and we actively continue that practice where possible, and subject to water availability. I have also pursued walking wetlands on private land, and overall walking wetlands have gained notoriety outside the Project and the Klamath Basin. More broadly, lease land farming has been a model of innovative farm management and operations in partnership with wildlife that provides lessons for other areas.

In 2008, in recognition of the growing competing needs for water in the Klamath Basin, refuge managers partnered with Ducks Unlimited to come up with a strategic, biologically-sound, scientific approach to meeting refuge purposes. That 2008 plan—as further reconfirmed in the refuges’ 2016 Comprehensive Conservation Plan or CCP—is based on the fundamental premise that food—not habitat—is the limiting resource for migrating ducks, geese, swans, and other waterfowl. To achieve the goals identified in that plan, there was a need for more food associated with both wetlands and farmed areas within the refuge. As refuge managers quickly recognized, farmers were the answer to both these problems.

Through the period of 2006 to 2016, the walking wetlands program and flooding continued with tremendous sustainability, repeatedly resulting in suppressed populations of soil pathogens to crops, enhanced soil fertility and tilth, reduced farming inputs, and boosted quantity and quality of yields. For the refuge, continual rotation

of wetlands and cropland provided vibrant healthy habitat which supported 90 percent of some waterborne species total refuge populations but impacting only 4 percent of total refuge wetlands.

Recently, the walking wetlands program has experienced major setbacks due to extremely low water deliveries to TID, but when water delivery has been allowed, we continue to see the same positive outcomes. The value continues to be reflected in the approximate doubling of lease revenues which followed flooding cycles in the commercial lease lands. According to the USFWS's website, as of 2007, 21 percent of Tule Lake NWR agricultural lease lands had undergone a wetland cycle. These lands accounted for 37 percent of the total lease revenues to the government.

A similar situation occurred on portions of the refuges that were then being farmed by refuge staff—that is, lands outside the 22,000 acres reserved for leasing under the Kuchel Act. Despite intentionally being managed for agricultural purposes to grow food for birds, these areas were not producing enough of that food to meet refuge objectives. Plantings of barley and other grains often failed to mature or produced low yields.

To make sure these lands grew the food necessary to support the flyway, refuge management started entering into cooperative agreements, whereby a farmer provides all the seed, fertilizer, equipment, fuel, and labor in exchange for access to the land. The farmer is allowed to harvest three-quarters of the crop, the remaining one-fourth being left standing in the field for the benefit of wildlife. Not only has crop rotation, modern equipment, and access to market made a huge impact of bioenergetics but more so, the expertise of legitimate farmers who have a good understanding of raising crops has dramatically improved the volume of feed available to wildlife. To illustrate, in 2023, Staunton Farms left unharvested 123 acres of organic barley and 190 acres of organic cereal rye as part of our cooperative lease is USFWS. Taking the approximate 2.5 ton per acre yield we recorded on the harvested portions of those fields, the crop that was left equates to just over 1,500,000 pounds of grain left wholly for bird food and habitat, solely from a small portion of ours and neighbors' waste grain in the basin.

This is another win-win solution that helped federal managers meet the refuges' authorized purposes.

My Family's Experience on the Refuge

I strongly believe that, done correctly, conservation and agriculture go hand in hand, and that belief is based on life experience. For example, it always fascinates me to watch as a freshly harvested field of potatoes is flooded. Waterfowl glean the nutrient-dense crops left behind by the harvester, and the leftover nutrients in the soil help stimulate the growth of native tule plants resulting in the potato field becoming a vibrant wetland in less than a year. Any time that our goal of feeding 330 million Americans has a symbiotic relationship with the local ecosystem, I believe we are headed in the right direction.

And, for my family and others, lease land farming is an integral part of our overall business and farm planning. It has provided an opportunity for new farmers to pick up their first field, business ventures to expand when markets require, and in our case build a customer base that relies on the extremely high-quality products the lease land soil grows.

In addition, as mentioned above, for our family, the practice of walking wetlands has also become an integral part of our business strategy of producing and packaging premium organic potatoes on lease lands. We felt there was so much value in this approach of natural wetland and working land rotation that we developed hundreds of acres of private land off the Tule Lake Refuge Complex within Tule Lake Basin to expand this rotation. We were able to compete with much larger, low-cost producers because of our undeniable quality and market performance. Furthermore, it was important to us to focus on production that was truly sustainable, measurable, and repeatable and felt it gave us an edge in delivering truly healthy produce to our customers.

Our farming community has experienced the benefit and satisfaction of farming these uniquely situated lands, but we have also experienced many difficulties along the way. Multiple legal challenges, intense pesticide scrutiny, and operational changes have made it not for the faint of heart to continue to invest in leasing this land. Additionally, producers in the Klamath Basin annually contribute uncalculated economic value in the form of losses of production to the wildlife of the Pacific Flyway who cannot see the lines between private land and refuge lands; the birds feed and reside in all lands of the basin, whether publicly or privately owned. The grains, alfalfa, and crops and habitat that contribute to migratory bird feed and rest is a major continuation to the success of the flyway.

The Proposed Rule as Drafted Is Unworkable

This brings me to the potential crippling effect of the Proposed BIDEH Rule if it is implemented as proposed. At the outset of this part of the discussion, I will note that I am aware of the comment letter dated April 4, 2024, submitted to USFWS by TID, KWUA, and Klamath Drainage District on the Proposed BIDEH Rule (KWUA Letter). The KWUA Letter discusses the history and regulatory structure related to the lease lands. I understand that the KWUA Letter has been offered for the record of this hearing and refer you to the KWUA Letter for more detail on the issues it discusses.

The Proposed BIDEH Rule states: “We prohibit the use of agricultural practices unless they are determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health, and where we cannot achieve refuge management objectives through natural processes.” There is a similar limitation for use of chemical pest controls.

I am very concerned about the impacts of this rule on our refuge lease lands. If agricultural use were prohibited on lease lands, there would be very major negative impacts on my family, my community, and the environment. The KWUA Letter refers to the \$30 million in crop value provided on Project lease lands and hundreds of jobs that are supported. The economic multiplier for agricultural crop value identified by Oregon State University is approximately two (dollars for each dollar of crop value). A more concerning economic factor would be the dramatic alteration of competitive private land in the basin. Eliminating 22,000 acres of current crop production would advance the all-to-common threat of consolidation to small or beginning farmers who have difficulty competing for access to land.

There would also be new costs for the federal government. TID’s contract with Reclamation provides for diversion and delivery of water to the lease lands and requires Reclamation to pay for the cost of irrigation water delivery and drainage. Currently, in the lease contracts, Reclamation passes these costs through to lease land growers. Also, lease land growers pay rent, known as “lease revenues,” to the government. The more valuable the lease lands are for farming, the higher the amount of lease revenues farmers are willing to pay. Net lease revenues (gross lease revenues less the cost of administering the leasing program) provide money for various purposes. TID is entitled to 10 percent of net lease revenues. Counties are entitled to up to 25 percent of net lease revenues. The remaining net lease revenues go to the federal treasury and are accounted for in the Reclamation Fund. If the value of lease lands for farming is diminished or eliminated, there would be a reduction in the number of payments to all of these current recipients.

Even though the case can be made that the Kuchel Act mandates agriculture in our Klamath refuge system, the vague nature of the BIDEH language opens the door for legal and judicial interpretation. I do not know if every individual in the USFWS would conclude farming to meet criteria required by the proposed regulation, particularly if USFWS does not consider agriculture to be a purpose of our local refuges. I do know that lease land farming, and various practices associated with lease land farming, have been targeted in litigation brought by groups that are opposed to agriculture. I am concerned about how the Proposed BIDEH Rule would be used by those parties in the next lawsuit.

The BIDEH language would remove local control and innovation. I cannot stress enough how devastating this would be. With all due respect, folks in Washington, D.C., do not—nor could they be expected to—understand how and what I do in my part of the country.

Thinking about our relationship with our local USFWS office, we have built an understanding of each other’s needs, what resources each can bring to the table, and challenges each of us must deal with. By creating a presumption that agriculture is prohibited on refuges—unless determined to be “necessary” to achieve four separate, vague criteria—the Proposed BIDEH Rule proposes to fundamentally alter the historical relationship between farmers and wildlife in the Tule Lake and Lower Klamath NWRs, and in so doing, fundamentally undermine the natural capacity of these areas. As a result, agriculture would always be coming from a defensive position, which internally will change our ability to freely create and innovate for the best outcomes of our collective environment.

This cannot be allowed to happen. Beyond all the concerns I have discussed above, recent events speak for themselves: there have been three years in the history of Tule Lake lease land operations when producers were not allowed to farm the Tule Lake Refuge Complex because of water curtailments. In each of those years, the refuge “bioenergetics” model dropped radically. Fields lay bare or weeds infested fields and there was little to no wildlife or agricultural benefit throughout the

system. This could be the same for the Lower Klamath Refuge Complex that became a wasteland of noxious weeds and invasive insects due to lack of irrigation water.

Conclusion

My personal opinion is that agriculture has played a critical role in the idea, adoption, and implementation of projects that meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health. The heavy hand of government and new fodder for more litigation will not create a healthier, holistic ecosystem for your refuge systems. A community of local people, living with the land and ecosystem, understanding the unique challenges, developing the solutions as unique as the landscape are what a working land approach looks like and what I believe will continue to bring real, lasting benefits to our wildlife, our refuges, our food supply, our community, and our country.

Thank you for the opportunity to testify before you today, and I am happy to answer any questions you may have.

Mr. BENTZ. Thank you, Mr. Staunton. I now recognize Mr. Wielicki for 5 minutes.

**STATEMENT OF DAVID WIELICKI, CHIEF EXECUTIVE OFFICER,
SOUTH CAROLINA WATERFOWL ASSOCIATION, PINEWOOD,
SOUTH CAROLINA**

Mr. WIELICKI. Good morning, Chairman Westerman, Chairman Bentz, Ranking Member Huffman, and distinguished members of the Subcommittee. My name is David Wielicki, and I am the CEO of the South Carolina Waterfowl Association, an organization I founded in 1986 with a mission to enhance and perpetuate South Carolina's wildlife heritage through education and wildlife habitat conservation.

My career as a waterfowl biologist spans 40 years working on waterfowl and their habitats. My management experience includes the design, construction, and management of over 10,000 acres of waterfowl impoundments in eight different states.

I have the utmost respect for the U.S. Fish and Wildlife Service refuge employees who have dedicated their careers to conservation.

Additionally, I have vigorously avoided testifying before Congress during my entire 40-year career.

That said, I am extremely concerned about the draft BIDEH rule, that it will remove authority from the on-the-ground managers who are best positioned to make management decisions on our refuges. If that occurs, it will result in extraordinarily negative consequences for habitat species like waterfowl, other migratory birds, and species of greatest conservation need.

My testimony is focused on the need to retain the ability for refuge managers to utilize active management approaches to meet the needs of waterfowl, shorebirds, and other species. To highlight that need, I would like to quote from an excerpt from the June 2020 U.S. Fish and Wildlife Service Programmatic Environmental Assessment for Use of Genetically Engineered Agricultural Crops for Natural Resource Management on National Wildlife Refuges in the Southeastern United States.

On Page 15, under the "Climate Change" heading, it reads, in part: "Loss of physical wetland area and degradation due to exotic species expansions resulting from climate changes will likely require increased management intensity, such as increased agricultural production on the remaining refuges to meet the needs of

wildlife at their current levels.” This excerpt perfectly captures the range of issues facing migratory birds and the challenge of managing in a context of habitat loss and climate change.

The landscapes upon which waterfowl and other wildlife depend are trending toward continued loss of habitat, with remaining habitat lacking necessary requisites for sustained populations. Many habitats found on refuges today are the result of direct and very intentional manipulation of nature. To the general public, that wetland on a refuge is just that, a wetland. But in reality there are miles of dikes, water control structures, and pumps all installed to harness and manage nature for the benefit of waterfowl and other migratory birds.

National Wildlife Refuges are not national parks. Their purposes, management, and founding goals are very different, and more often require active management. Refuges have historically benefited from active and intentional management to ensure they meet the stated refuge purpose. In numerous cases, this necessitates the use of cooperative agriculture to provide an efficient means to supply ducks with the critical, carbohydrate-rich food resources they need during the migration and wintering period.

Duck biologists use the term “duck energy days” when quantifying available food resources. Because of reduced U.S. rice acreage, more efficient harvesting technology, and less post-harvest flooding in the Mississippi alluvial valley, there are far fewer duck energy days available on the broader landscape. This means that refuges must shoulder more of the load to provide these resources. While moist soil management is of critical importance to ducks, the reality is at current staffing and infrastructure levels it is very difficult, if not impossible, to fully implement a robust moist soil management program to meet all the foraging needs of ducks.

In these cases, cooperative farming can provide managers with the opportunity to provide ample foraging resources with far less staff-managed acres and resources. As an example, research conducted by waterfowl scientists in Mississippi demonstrated that 1 acre of unharvested flooded rice provides the same number of duck energy days as 21 acres of flooded, moist soil vegetation.

In closing, it is critical that these refuges continue to be managed consistent with the needs of ducks, geese, and migratory birds, first and foremost. That was their founding purpose. I say this also not meaning to diminish the great deal of other wildlife management objectives that can and should be accomplished at the same time.

Thank you for your time.

[The prepared statement of Mr. Wielicki follows:]

PREPARED STATEMENT OF DAVID J. WIELICKI, CHIEF EXECUTIVE OFFICER, SOUTH CAROLINA WATERFOWL ASSOCIATION

Good afternoon Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee. My name is David Wielicki and I am the Chief Executive Officer of the South Carolina Waterfowl Association, an organization that I founded in 1986 with the mission to enhance and perpetuate South Carolina’s wildlife heritage through education and wildlife habitat conservation.

My career as a waterfowl biologist spans forty years, working on waterfowl and their habitat across North America. My career has allowed me to foster and pass on my passion for ducks, their habitat and the rich tradition of waterfowl hunting through the establishment of the nation’s leading wildlife education center and the creation and annual management of thousands of acres of waterfowl habitat. Ducks

and duck hunting have dominated my professional career and are an important part of my family heritage.

I come before the committee today with my professional and personal observations about the needs of ducks in a changing world as it relates to the proposed rule and policy updates commonly known as the biological, integrity, diversity, and environmental health (BIDEH). The BIDEH proposal represents a marked shift in how the National Wildlife Refuge System (NWRS) has managed these important lands and waters over the last century. I am concerned the prohibitions that would be established by BIDEH unless an undefined and unclear allowance criteria is met, have the potential to undermine nearly a century of work to promote biodiversity and wildlife populations. More specifically, I am concerned that the BIDEH proposal restricts the tools of refuge managers at a time when we should be seeking new and innovative ways to address today's conservation challenges and changing ecosystems.

Today's world is one where habitat is ever changing and where sustaining abundant waterfowl and wildlife populations we all desire is an ever-increasing challenge. There are myriad indications that the landscapes upon which waterfowl depend is trending towards continued loss of habitat and the remaining habitat lacking the necessary requisites for sustained population growth.

One need only look at the changes in important landscapes for waterfowl, shorebirds, and waterbirds. For example, agricultural practices along the Louisiana gulf coast have changed, much to the detriment of waterfowl and wildlife. Where rice once dominated and provided significant food resources for wintering waterfowl, shorebirds, and waterbirds, sugar cane now is the dominant crop providing nominal value. Post harvest flooding of agricultural fields in the Mississippi Alluvial Valley once provided very substantial habitat for foraging waterfowl but the practice is far less common today as producers pursue higher agronomic performance. Water scarcity in the west has also had consequences on refuges in the Central Valley of California and critical habitats like Lower Klamath National Wildlife Refuge along with other wetland areas of the intermountain west. Finally, all waterfowl biologists understand the ongoing and persistent loss of wetlands and upland nesting cover in the Prairie Pothole Region—the breadbasket of North American breeding duck populations.

I point these examples out as I believe it is important to understand and recognize both the scale and magnitude of habitat concerns across the whole of the annual cycle of waterfowl, shorebird, and waterbird populations. From north to south, and east to west, there are key stressors on the habitat which we should be conscious of. While the relatively recent published scientific paper dubbed the “3 billion” bird report documented waterfowl and other wetland dependent wildlife faring far better than other bird groups, there are clear indications that those populations face some significant headwinds over ongoing habitat loss and degradation.

As this is the case, our job as waterfowl managers gets more difficult. As habitat is lost or its functions and values are degraded, how do we manage to ensure waterfowl, migratory birds and other species can continue to flourish?

My experience in South Carolina and beyond has often wrestled with this challenge. Santee National Wildlife Refuge, a jewel of Atlantic Flyway refuges, was acquired and managed for the benefit of waterfowl, migratory birds and other wildlife in 1942. Back in the 1970s the refuge annually wintered more than 150,000 ducks. This number declined to less than 5,000 ducks by 1998. Now to be fair, migrations have changed the Service staff complement has been drastically reduced (from 11 to 4 full time staff at Santee NWR), infrastructure is failing and operations and management capacity has declined drastically due to regular staff turnover. It is important to be mindful of the regular staff turnover given the reliance on refuge staff to implement the many requirements found in the draft BIDEH policy.

As a waterfowl association that works closely with private landowners to secure and deliver on-the-ground conservation, I am proud of the work that we have done to restore and enhance habitat for waterfowl, shorebirds, and an abundance of other species near Santee NWR. However, private landowners cannot do this work in a vacuum. Put simply, SCWA and our private landowner partners cannot conduct conservation efforts at the scale that is necessary to meet modern day conservation challenges without a well functioning refuge system. With this in mind, it is critical that refuge managers have the tools and flexibility necessary to complement the efforts of SCWA, private landowners, and our other conservation partners.

The current refuges within the National Wildlife Refuge system require more capacity simply to achieve the directives they now have. Is it wise to place additional requirements, as found in the draft BIDEH policy, on refuge staff? Especially in the changing world described earlier, managers should have the greatest amount

of flexibility and tools at their disposal to manage habitat, especially for waterfowl and other migratory birds.

I recognize that there has been ongoing debate and even litigation over the use of agriculture on refuges and that this is one of the central issues contained in the Service's BIDEH proposed rule. I am sure that many people imagine refuges as parcels of nature and that agriculture may be antithetical to what they perceive as nature. The reality is agricultural practices have occurred on refuges since the 1930's.

I think it is important to note that, at least for refuges in the lower 48, the overwhelming majority of refuges are found in the context of significant landscape change. Hydrology has been drastically altered and invasive species are present. With the exception of wilderness areas in the NWRS, many habitats found on refuges today are the result of direct and very intentional manipulation of nature. Extensive networks of impoundments, dams, reservoirs, dikes, water control infrastructure and the like. To the general public, that wetland on a refuge is just that—a wetland. But in reality, there are miles of dikes, numerous water control structures and pumps all installed to harness and manage nature for the benefit of waterfowl and other migratory birds. National Wildlife Refuges are not National Parks. There is a reason the organic acts for these national treasures differ.

Refuges have historically benefited from active and intentional management to ensure they meet the stated refuge purpose. In numerous cases, this necessitates the use of cooperative agriculture to provide an efficient means to supply ducks with the critical food resources they need. Duck biologists have frequently used the term “duck energy days” or “duck use days” to identify foraging resources both on a site-specific basis or at larger regional scales. As noted earlier, because of less rice in places like Louisiana and Texas and less post-harvest flooding in the Mississippi Alluvial Valley, there are far fewer “duck energy days” available on the broader landscape. This means that refuges must shoulder more of the load to provide these resources. Many of these resources are efficiently provided by certain agricultural crops that supply the carbohydrate-rich diet necessary to fuel much needed energy to survive winter months and to accumulate fat reserves for their long and arduous migrations.

While natural moist soil management is often the best scenario for impoundment management and is of critical importance to ducks, the reality is, at current staffing levels and with existing infrastructure, it is very difficult, if not impossible, to fully implement a robust moist soil management program to meet all the foraging needs of ducks. In these cases, cooperative farming can provide managers with the opportunity to provide ample foraging resources with far less staff and resources. While perhaps not “natural” as some in the general public perceive, it is a necessary and vital tool to sustaining staging and wintering ducks and to fulfill the primary purposes of many refuges. As an example, research from waterfowl researchers in Mississippi, one acre of unharvested rice provides the same number of “duck energy days” as 21 acres of moist soil vegetation.

I think it is also important to remember that the majority of refuges across the country were acquired with Migratory Bird Conservation Fund dollars. The primary revenue source of the Fund is the sale of duck stamps, with the majority of duck stamp buyers being duck hunters. These refuges were acquired using, at least in part, funding from duck hunters and were chartered by Congress to be managed for the benefit of waterfowl and other migratory birds. That being the case, I think it is critical that these refuges continue to be managed consistent with the needs of ducks, geese and migratory birds, first and foremost. That was their founding purpose. While there are a great deal of other objectives that can and should be realized on refuges, our priority should be to ensure the promise is kept to waterfowl hunters, to the original charter by Congress by doing what is best to maximize the waterfowl and migratory bird habitat on refuges. As any wildlife biologist recognizes, the wetland and upland habitat conservation work focused on waterfowl enhances biodiversity through improving habitat for a myriad of other fish, plant, and wildlife species while simultaneously bolstering climate resiliency.

Thank you for the opportunity to provide this perspective on this important issue related to the future management of our National Wildlife Refuges.

Citations

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Farming for Waterfowl on National Wildlife Refuge in the Southeast Region (fws.gov)

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Mr. BENTZ. Thank you, Mr. Wielicki. I now recognize Mr. Haskett for 5 minutes.

STATEMENT OF GEOFFREY HASKETT, PRESIDENT, NATIONAL WILDLIFE REFUGE ASSOCIATION, WASHINGTON, DC

Mr. HASKETT. Good morning, Chairman Bentz, Chairman Westerman, Ranking Member Huffman, and members of the Subcommittee. I am Geoffrey Haskett, President of the National Wildlife Refuge Association.

I would like to point out that, although the refuge association is in Washington, DC, I actually live in Grants Pass, Oregon. So, I am also one of your constituents, as well.

And to Ranking Member Huffman, I want to let you know that I didn't grow up in your district, but I did grow up in San Mateo, which is a district over. So, some significant connections there, as well.

The Refuge Association is a non-profit exclusively focused on protecting, promoting, and enhancing the National Wildlife Refuge System. We are pleased to see the U.S. Fish and Wildlife Service proposed regulatory and policy revisions to maintain and improve the refuge system's biological integrity, diversity, and environmental health.

This proposal largely codifies existing processes that the Service has followed since the implementation of the National Wildlife Refuge System Improvement Act of 1997, which mandated that the BIDEH of the refuge system be maintained.

Codifying and updating the decades-old BIDEH policy to reflect modern conservation challenges, including climate change, is timely and essential. The Refuge Association strongly supports this proposal and the efforts of the Service to address the dual threats

of climate change and biodiversity loss by codifying and clarifying existing processes and legal requirements for ensuring the ecological integrity of the refuge system.

We also note that this proposal is still open for public comment, and there are many diverse stakeholders who are currently providing input. We believe it is important to allow the Service to complete its public comment period and have the opportunity to make adjustments accordingly before considering any next steps.

It is important to recognize that implementing BIDEH successfully has been stymied by over a decade of a severe lack of funding and resources for the refuge system. Any discussion about the refuge system must consider the reality that steadily increasing funding needs, paired with insufficient budgets, has led to a refuge system that is quickly eroding in habitat management and an ability even to keep our refuges open.

The refuge system's limited staffing capacity has several negative impacts on the health of the refuge system. For example, only 27 percent of the threatened and endangered populations occurring on refuges are monitored due to limited capacity. The Service these days can only successfully control 7 percent of the lands infested with non-native species, which has increased 30 percent since 2005; 60 percent of the refuge units require a new comprehensive conservation plan or revision, many of which were finalized before the issuance of the original BIDEH policy in 2001.

The refuge system saw its highest funding way back in 2010, with an appropriation at that time of \$503 million. Today, that number is worth approximately \$765 million, yet current funding has only increased by 4.7 percent to \$527 million, which is only \$5.50 per land acre. When accounting for total land and water acres, the refuge system budgets a mere \$0.62 an acre.

Considering the level of inflation, fixed costs, and increased needs of refuge systems since 2010, the refuge system has been forced to do more with less every year. The failure to offset the impacts of inflation and account for fixed costs has resulted in a refuge system that has long been strained under the weight of critically low staffing levels and lost capacity. This situation is completely unsustainable.

The number of full-time employees, or FTEs, already a fraction of the other comparable Federal land agencies, is approximately 2,500 FTEs and has decreased by 16 percent since 2010. No refuges are fully staffed, and more than half of refuges have zero staff on site. Multiple refuges are closed to the public and are completely unmanaged. Staff must manage multiple wildlife refuge units, often traveling over vast distances, sometimes over 100 miles per day.

Refuges should not have to make hard decisions every year about how to operate under this long-standing funding crisis. The insufficient funding capacity impacts are felt system-wide, impacting conservation planning, wildlife and habitat management, visitor services, law enforcement, and maintenance. Details of those impacts are included in my written testimony.

The Association believes the system needs at least \$2.2 billion in annual appropriations to effectively fulfill its conservation mission. The President's 2025 budget request of \$602 million is an impor-

tant step towards that goal. We also support the permanent authorization in the Great American Outdoors Act, and increasing the allocation of legacy restoration funds.

While we are only representing the interests and perspectives of the Refuge Association before the Committee today, we also chair the Cooperative Alliance for Refuge Enhancement, or CARE, since its founding in 1995. CARE is a national coalition of 24 wildlife, sporting, scientific, and conservation organizations that span the political spectrum that came together for one shared goal: adequate funding for the National Wildlife Refuge System.

The Refuge Association urges Congress to prioritize the refuge system and address these over-arching funding challenges to ensure that the Service is equipped to effectively manage the wildlife, habitat, programs, and visitorship that rely on the health and integrity of the refuge system. Strong investments must be made today so these protected areas are available tomorrow for shifting conservation needs.

I would like to submit a supporting document for the record from the Coalition of Record Friends and Advocates.

Thank you again for the opportunity to discuss the issues impacting the National Wildlife Refuge System before this Subcommittee.

[The prepared statement of Mr. Haskett follows:]

PREPARED STATEMENT OF GEOFFREY L. HASKETT, PRESIDENT, NATIONAL WILDLIFE
REFUGE ASSOCIATION

Good afternoon, Chairman Bentz, Ranking Member Huffman, and members of the Committee. I am Geoffrey Haskett, President of the National Wildlife Refuge Association (Refuge Association). Thank you for the opportunity to appear before you to discuss the National Wildlife Refuge System (Refuge System).

The Refuge Association is a non-profit exclusively focused on protecting, promoting, and enhancing the National Wildlife Refuge System. As the nation's only set of federal lands dedicated to the conservation and management of America's native wildlife, it is the world's largest and most diverse network of conservation lands and waters, encompassing more than 850 million acres of unique habitats that our native wildlife species depend on. Our national wildlife refuges are essential for protecting biodiversity and climate-resilient habitats, providing community-driven conservation, and expanding wildlife-dependent recreational opportunities nationwide.

We are pleased to see the U.S. Fish and Wildlife Service (USFWS) propose regulatory and policy revisions to maintain and improve the Refuge System's Biological Integrity, Diversity, and Environmental Health (BIDEH). This proposal largely codifies existing BIDEH processes that the USFWS has followed since the implementation of the National Wildlife Refuge System Improvement Act of 1997, which mandated that the BIDEH of the Refuge System be maintained. The BIDEH mandate is an important and unique directive and is an essential element of the Refuge System mission itself.

The goal of the proposal is to provide an updated, consistent framework for how BIDEH should be considered in management decisions, and untether this framework from achieving historical conditions as the end goal for refuge management. This proposal recognizes the cascading and often irreversible effects of climate change and other human activities (anthropogenic stressors) on wildlife and their habitats, and the complex, contemporary challenges facing refuge managers as a result. Codifying and updating the decades-old BIDEH policy to reflect these modern conservation challenges is timely and essential.

The Refuge Association strongly supports the BIDEH proposal and the efforts of the USFWS to address the dual threats of climate change and biodiversity loss by codifying and clarifying existing processes and legal requirements for ensuring the BIDEH of the Refuge System—the best tool we have to combat the worsening climate and biodiversity crises on a national scale. This proposal will support the USFWS' ability to conserve imperiled species and diverse wildlife populations on

national wildlife refuges across the country and continue this good work that they are already doing into the future for the benefit of the American public.

We also note that this proposal is still open for public comment, and many diverse stakeholders are currently providing input. While we appreciate the opportunity to provide our perspective before the Committee today, we believe it is important to allow the USFWS to complete its public comment period and have the opportunity to make adjustments accordingly before considering any next steps.

In considering the mandate to ensure BIDEH under the Improvement Act, it is important to recognize that the ability to implement management activities to ensure BIDEH successfully has been stymied by over a decade of a severe lack of funding and resources. Any discussion about the Refuge System must consider the reality that steadily increasing funding needs paired with insufficient budgets has led to a Refuge System that is quickly eroding in habitat management and an ability even to keep refuges open. Understanding these impacts is necessary to begin addressing the significant challenges facing our native wildlife and ensure the health and integrity of the Refuge System well into the future.

USFWS' limited staffing capacity has several negative impacts on the ecological health of the Refuge System. For example, only 27% of the threatened and endangered populations occurring on refuges are monitored due to limited capacity. This leads to compromised adaptive management capability, inability to manage invasive species, the destruction of native habitat, and the potential loss of more species. With its current resources, USFWS can only successfully control 7% of the lands infested with non-native species, which has increased 30% since 2005. Importantly, 60% of refuge units require a new Comprehensive Conservation Plan or revision, many of which were finalized before the issuance of the original BIDEH policy in 2001. Limited capacity is hampering these efforts and severely limits landscape-level planning and adaptability to changing conditions.

Significant investments must be made today to begin working towards better outcomes for our native wildlife. USFWS has done excellent work to deploy creative solutions and new partnerships to manage the Refuge System as well as possible with their existing resources. But USFWS should not have to make hard decisions every year about how to operate under this long-standing funding crisis. The insufficient funding and capacity impacts are felt System-wide, impacting not just conservation planning and wildlife and habitat management, but also visitor services, law enforcement, and maintenance. Congress must provide adequate resources to effectively administer the Refuge System.

The \$503 million appropriated to the Refuge System in fiscal year (FY) 2010, when the Refuge System relatively saw its highest funding and staffing levels, is worth approximately \$765 million today. Yet current funding sits at \$527 million, or \$0.62 per acre. Considering the level of inflation and increased needs of the Refuge System since FY2010, the Refuge System budget has effectively decreased, and USFWS has been forced to do more with less every single year. The failure to offset the impacts of inflation has resulted in a Refuge System that has long been strained under the weight of critically low staffing levels and lost capacity. Rising fixed costs are also eating into any increases in appropriations. It costs the Refuge System an estimated \$3 million for every one percent raise in payroll costs. Without base increases in the budget to cover these fixed costs, several much-needed positions are eliminated every year. This situation is completely unsustainable.

National wildlife refuges are important recreational and tourism destinations in communities across the United States, providing families and everyday Americans access to some of the nation's best opportunities for wildlife observation, sustainable hunting and fishing, photography, and environmental education for people of all ages and backgrounds. Since 2010 the Refuge System has added 21 new refuge units, hundreds of millions of acres of marine national monuments, opened 6 million acres for hunting and fishing, and visitation has grown to over 67 million annual visitors—an increase of 36% since FY2010. This generates over 41,000 jobs and provides more than \$3.2 billion in economic output each year. It has also added new services, such as the Urban Wildlife Conservation Program, which was launched in 2012 and seeks to address inequalities in recreational access and conservation participation. While these additions have enhanced the Refuge System and benefited the communities around these refuges, this growth has also put more pressure on the already stressed and underfunded Refuge System.

The number of full-time employees (FTEs)—already a fraction of the other comparable federal land agencies—has decreased by 16% since FY2010. This has made it difficult for the Refuge System to manage its vast network of lands and waters and to fulfill its mission of conserving wildlife and habitats. No refuges are fully staffed, and more than half of refuges have zero staff on site. While not all refuges need on-site staffing, many refuges and refuge complexes have been de-staffed or

understaffed significantly. Multiple refuges are closed to the public and are completely unmanaged. Many employees must manage multiple wildlife refuge units, sometimes traveling over vast distances, hundreds of miles per day.

Visitor Services staff has decreased by 25% since FY10, yet the number of visits has steadily increased by an average of 3.8% annually. Sadly, nearly all of the Refuge System's 125 visitor facilities operate on limited hours, with some centers completely closed, and none would function without volunteers. However, many volunteer programs have been cut back or eliminated due to a lack of supervision from professional FTEs or necessary infrastructure. In 2023, there were 48% fewer volunteers than in 2016. As an example of visitor center impacts, Bosque del Apache National Wildlife Refuge in New Mexico, renowned for its birding opportunities, receives 142,000 visitors annually but can only serve fewer than 1% due to curtailed visitor center hours.

A nationwide study conducted by the International Association of Chiefs of Police in 2005 indicated that the Refuge System only has 20% of the recommended 1,074 Federal Wildlife Officers (FWOs) needed to provide adequate public safety and resource protection. As of February 2024, the Refuge System has the lowest number of FWOs in over 10 years with 221 officers, while simultaneously seeing its highest visitation and crime rates in its history. Currently, seven states have no officers stationed within their boundaries (CT, DE, IA, MI, NH, OH, VT), and nine states have just one officer (GA, Guam, HI, IN, KY, PA, PR, RI, WY).

In 2022 alone, officers responded to a total of 10,854 criminal incidents on Refuge System lands. There have been 1,384 significant incidents in the last four years—an average of 1 per day. There have been 1,605 arson or vandalism cases since 2019. Since 2016, the USFWS has sustained \$1.7 million dollars in property loss due to theft or damage. However, USFWS does not currently have the authority to collect civil damages for repairs and restoration. We applaud the bipartisan Refuge System Protection Act, introduced by Congressmen Mike Thompson (D-CA) and Rob Wittman (R-VA), which would help address these issues and grant authority to the USFWS to collect civil damages to repair and restore damaged wildlife refuges.

The Refuge System also has a large deferred maintenance backlog of \$2.65 billion, with most structures near or past the end of their maximum useful life spans, such as buildings, roads, bridges, and trails. Under current appropriations, supplemented by the Great American Outdoors Act (GAOA), deferred maintenance costs are projected to reach \$28 billion by FY2050. Additional funding is necessary to address this backlog, or assets will continue to degrade well beyond their recommended life spans. This could jeopardize visitor access, safety, climate resilience, and wildlife conservation efforts, as well as double or triple long-term maintenance costs over the next 20 years. We support the permanent authorization of GAOA and increasing the allocation of GAOA funds to USFWS from 5% to at least 15% so it can begin to address its deferred maintenance backlog.

Congress must recognize and understand the Refuge System's budget realities to begin addressing the significant challenges facing our native wildlife and habitats and ensure the health and integrity of the Refuge System for future generations. To achieve a healthy and adequately staffed Refuge System, the Refuge Association believes it needs at least \$2.2 billion in annual appropriations to effectively fulfill its conservation mission, provide opportunities for wildlife-dependent recreation, and connect communities to nature. The President's FY2025 Budget Request of \$602 million is an important step towards that goal.

While we are only representing the interests and perspectives of the Refuge Association before the Committee today, we would like to highlight that we have chaired the Cooperative Alliance for Refuge Enhancement, or CARE, since its founding in 1995. CARE is a national coalition of 24 wildlife, sporting, scientific, and conservation organizations that span the political spectrum. Our organizations came together for one shared goal: adequate funding for the National Wildlife Refuge System. While every member of CARE has a different interest in the Refuge System, each organization understands the value of the habitat and wildlife that make the Refuge System unique. CARE brings together these disparate groups around shared values and their love of wildlife to advocate for increased funding for the Refuge System—lands where wildlife and humans can thrive. We hope the CARE coalition illustrates that sufficient funding for the Refuge System is and should be a shared bipartisan goal.

The Refuge Association urges Congress to prioritize the Refuge System and address these overarching funding challenges to ensure that the USFWS is equipped to effectively manage the wildlife, habitat, programs, and visitorship that rely on the health and integrity of the Refuge System. Strong investments must be made today so these protected areas are available tomorrow for shifting conservation needs.

Thank you again for the opportunity to discuss the issues impacting the National Wildlife Refuge System before the Committee.

The following document was submitted as a supplement to Mr. Haskett's testimony.



Summary Report-Sharing Sessions 2023

Executive Summary

For more than a century, Congress has established a network of public lands dedicated to the conservation, protection and enhancement of fish and wildlife and their habitats for the benefit of present and future generations of Americans. These lands and water that are essential for threatened and endangered species are under the responsibility of the US Fish and Wildlife Service. This agency provides outdoor space for Americans to learn, experience and support conservation of its natural resources for generations to come. Americans support the protection of their public lands and feel it is important to protect lands for their conservation and economic values they provide to local communities ([Defenders of Wildlife Factsheet, 2022](#))

The over 500 refuges, and 70 fish hatcheries support public environmental education for youth programs, provide a place for outdoor recreational activities (e.g., hunting, fishing, hiking, bird watching, and nature photography) and encourage overall health benefits by the outdoor experience. Since 2010 the US Fish and Wildlife Service has seen a significant reduction in funding and loss of over 800 staff positions ([NWRA, 2023 Fact Sheet, "Funding Challenges of the National Wildlife Refuge System"](#)). This detrimental loss in staff positions has also resulted in critical loss of operations and maintenance funding tied to each position. Thus, this loss also results in the loss of operation capabilities in addition to loss of positions. Over the past decade, reduced staffing and funding erosion have contributed to significant impacts experienced across the refuges and hatcheries by the American public.

This report reports on the current impacts shared by many Friends organizations across the country felt because of the current reduced staffing crisis. From the 3 sharing sessions attended by Friends organizations across the country 4 general categories of impacts were discovered:

1. law enforcement,
2. visitor services,
3. biological, and
4. maintenance and facilities.

In general, refuges have experienced increased crimes (i.e., poaching, litter, immigration issues, illicit sex and drug activities), increased safety risks for visitors, increased closure of

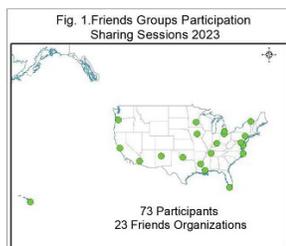
visitor centers and reduced operations of environmental education programs for youth and adults, reduction of volunteer opportunities, increased invasion of non-native species, lack of habitat management for wildlife and endangered species, loss of biodiversity, and increased concern over erosion of infrastructure including buildings, water control structures, fences, trails, roads and equipment in the absence of maintenance funds and positions.

Friends Sharing Sessions – Shared Stories Across the Country

The primary purpose of Friends organizations is to bring non-governmental assistance to the Service through volunteer efforts, private contributions, community outreach, and other activities. (FWS Manual Chapter 633.1)

The goal of the recently held “Sharing Sessions” was to bring Refuge and Hatchery Friends organizations together virtually to share information regarding the impacts of inadequate funding and reduced staffing. Friends organizations were invited to share their observations, examples and stories about impacts seen on refuges and hatcheries across the nation. Following the three virtual sessions, information obtained was compiled based on the comments of the participants. General themes were developed and used to help Friends organizations build messages to local, regional, and national representatives to make them aware of the need for adequate funding and staffing for U.S. Fish and Wildlife Service programs.

Virtual sessions were held January 25th, Feb 2nd, and Feb 9th. While scheduled for one hour, sessions generally lasted nearly 90 minutes to allow participants a chance to share.



73 Participants attended the three-sharing sessions. Participants included representatives from across the country from west (Hawaii, Tualatin River) east (Missisquoi, Virginia) and north (Detroit Lakes, Ottawa) to south (Southeast Louisiana, Keys) (Fig. 1).

For each session, participants were asked to describe the challenges Friends Organizations are facing locally due to reduced funding and staffing.

Law Enforcement Impacts - Public Safety Concerns

Among the biggest issues described by Friends organizations is the concern for reductions in the law enforcement program. Friends reported that chronic understaffing of law

enforcement staff has resulted in increased illegal and illicit activities on public refuge lands and increased safety risk to the public visiting their public lands. Activities described included increased dumping, poaching, destruction of property, illicit sex and drug activities, border issues, increased risk to public visitors, including youth and closure of public areas (e.g., wildlife drives). As a result, increased pressure is put on local law enforcement authorities. In some cases, one refuge law enforcement officer is assigned for an entire state or for many refuges 5 hours or more apart. Not only does this discourage visitors but also discourages a succession of new officers joining the Service.

Visitor Services Impacts - Loss of Conservation Education for Americans

Like the lack of law enforcement capabilities, Friends described detrimental impacts to visitor services programs, public events, and visitor center operations across the country. These detrimental impacts occur when visitation has dramatically increased. This loss or drastic reduction in visitor services staffing results in erosion of public engagement with local communities. Friends described loss of education programs, especially youth programs, and public events (e.g., youth fishing rodeos, wildlife-oriented festivals, refuge week celebrations, ranger programs, etc.). Visitor centers are reducing hours of operations or altogether closing, resulting in a drastic loss of connection with local communities and negatively impacting Friends ability to generate revenue to support the site. With no professional staff available to provide the necessary training, coordination and organization of volunteer support, programs are reduced or eliminated due to a deficiency of volunteers. In addition, hatcheries have no funding for Visitor Services Programs despite the interest in public education. To make up for the lack of professional staffing, some programs have relied on inexperienced interns to carry out the duties of full-time professional staff.

Wildlife and Habitat Management - Loss of Biodiversity and Endangered Species

During the sharing sessions Friends described serious concerns about the capabilities of wildlife and habitat management. Specifically, reduced staffing has led to the inability to maintain habitats for wildlife populations as more and more invasive species are seen taking over natural habitats. This is occurring from the loss of staffing to adequately monitor and manage wildlife populations and their habitats. There is a lack of resources available to conduct scientific work in support of wildlife management in the absence of professional biologist staff. 2023 is the 50th anniversary of the Endangered Species Act and it is especially concerning that there is there is a decrease in funding to monitor trust species that the Refuge System is held accountable for.

Maintenance and Facilities - Higher Safety Risks to Public and Staff

Per the FWS website "Keeping infrastructure safe, accessible, and cost-effective is a top priority for the U.S. Fish and Wildlife Service. (FWS Infrastructure website page, April 6, 2023). The responsibility to maintain facilities and infrastructure on refuges and hatcheries is solely the responsibility of the Fish and Wildlife Service. Reduced funding of positions and operations dollars has resulted in the erosion of facilities due to a huge, deferred maintenance backlog.

In the sharing sessions it has been made clear that reductions in maintenance staff and inability to keep up with deferred maintenance projects at the current levels has produced significant safety concerns for both service staff and the public visiting refuges and hatcheries. While it is the responsibility of the Fish and Wildlife Service to adequately maintain a safe environment for the visiting public and its employees, Friends and volunteers are heavily relied upon to complete maintenance repairs in the staff shortfall. This is not acceptable, and Friends should not be held responsible for these repairs. Emergency efforts underway are addressed to reduce the chance of mishaps or worse for the visiting public and employees. Examples of Friends stepping up to fill in the gaps include paying for necessary roofing repairs to keep a visitor center open, emergency boardwalk repairs to avoid public injury, paying tens of thousands of dollars for routine maintenance work, and paying for routine cleaning services. Friends funds are being diverted to cover routine maintenance costs. Other impacts observed are closures of facilities, wildlife drives and portions of refuges due to maintenance backlogs, inefficiencies with contracting, lack of supervision of volunteers, eroded facilities, poor equipment conditions, inability to coordinate and organize volunteers to complete maintenance projects.

General Staffing Comments - Complexing Produces Loss of Efficiency.

From the sharing sessions, it was made clear that the systematic complexing of refuges across the country has contributed to increased workloads on an already taxed staff. Refuges hundreds of miles apart (some up to 5 hours apart) have been complexed with minimum or no staffing resulting in less capability across the entire complex. This is especially true in maintenance, biology, law enforcement and visitor services programs. Staffing has been cut in many complexes by 50 %. The existing staffing levels cannot sustain the amount of work required by 4 or 5 or in some cases 9 refuges spread out across hundreds of miles with one biologist, or one law enforcement officer, for example. Friends believe an evaluation of the refuge complexing initiative recommended by H. Dale Hall, Director, U.S. Fish and Wildlife Service in 2006 is in order. The efficiency desired has been lost due to over complexing and reducing staff.

Friends noted in the sharing sessions that there is a significant decrease in the number of staff by 25 to 50% at most refuges which impacts the volunteer and outreach programs.

This shortfall has been due to loss of staff from funding positions, lack of incentives to keep highly qualified staff, retirements with no replacements or replacements with lower grade positions resulting in less qualified personnel, hiring freezes and expansion of refuges in absence of increased staffing. It is noted that the loss of staff positions also produces less operational funding for maintenance and other refuge operations.

Conclusion

We thank Friends organizations for sharing the impacts of underfunding on refuges and hatcheries across the nation. Friends will continue to share their stories and messages advocating for increase funding for these very special places that are committed to *the conservation, management, and where appropriate, restoration of the fish, wildlife and plant resources and their habitats with the United States for the benefit of present and future generations of Americans.*

Joan Patterson
Coalition of Refuge Friends and Advocates

Mr. BENTZ. Thank you, Mr. Haskett, and a belated welcome from my district.

Mr. HASKETT. You didn't know, so thank you.

Mr. BENTZ. I now recognize Mr. Batcheller for 5 minutes.

STATEMENT OF GORDON R. BATCHELLER, EXECUTIVE SECRETARY, NORTHEAST ASSOCIATION OF FISH & WILDLIFE AGENCIES, REPRESENTING THE ASSOCIATION OF FISH & WILDLIFE AGENCIES, WASHINGTON, DC

Mr. BATCHELLER. Good morning, Chairman Bentz, Ranking Member Huffman, and members of the Subcommittee. I am very honored to be here this morning. My name is Gordon Batcheller, I am a certified wildlife biologist. Today, I am representing the Association of Fish and Wildlife Agencies, the voice of state fish and wildlife agencies.

The states exercise primary authority for management of fish and wildlife within their borders, including on national wildlife refuges. We do appreciate the work of the Service to update policies relating to biological integrity, but we are deeply concerned about much of the proposal.

We worked with the Service on the review of drafts. Regrettably, most of our input is not reflected in the official proposals being considered today. The Service did not address our primary concerns, which are the inclusion of the concept of "predator control," which infringes on state jurisdiction and threatens the conservation of wildlife; restrictions on widely-accepted wildlife management tools such as conservation-based farming; a lack of consideration for state fish and wildlife agencies' roles and authorities; rigid rules that threaten to overburden refuge managers, delaying timely conservation measures; vague definitions. While our written testimony covers these issues in great detail, I focus today on the flawed proposals related to predation.

Predation is a behavior, not a taxonomic term. Thus, the restrictions in the proposal could apply to wildlife that employs predation as part of their life history, which is most species. The management of predation helps rare wildlife and other animals of management concern.

Consider the following examples: on the Archie Carr Refuge in Florida, removal of raccoons is vital to protecting rare nesting sea turtles; on Maine's coastal islands, removal of mink, river otter, and common ravens is essential to protecting nesting seabirds like the Atlantic puffin; conserving big game populations in Alaska by managing predation is central to subsistence lifestyles and food security; the lethal removal of mountain lions on the Hart Mountain National Wildlife Refuge in Oregon is required to restore bighorn sheep. There are countless other examples within the refuge system in all parts of the country that underscore the importance of active wildlife management, including predator control, for the conservation of many species.

The Service also proposes to unilaterally regulate hunting and trapping on refuges if it labels an activity inconsistent with biological integrity, regardless of existing approvals or refuge purpose. This flies in the face of state authority.

The Service proposes to prohibit widely accepted wildlife conservation practices unless managers produce mountains of paperwork. These changes are administratively onerous at best, and a disaster for the well-being of wildlife at worst. Instead, the Service should flip the script and allow those practices to continue unless there is some ecological and scientific basis not to do so, and with

the concurrence of the state fish and wildlife agency. By requiring managers to determine that there are no feasible methods to address specific and urgent conservation needs prior to predator control, the proposed rule would severely hamper timely actions and jeopardize the conservation of wildlife.

Finally, those who recall the highly contentious 2016 predator control rule in Alaska observed that this proposed rule attempts to reinstate virtually the same rule, which was rejected by Congress under the Congressional Review Act. However, rather than just reinstate this rule for Alaska, it enacts similar provisions across all 50 states and applies it, therefore, even more broadly.

I must stress that we are very concerned that the requirements to justify widely accepted conservation measures will be insurmountable and jeopardize wildlife populations, including rare species. When coupled with the equally onerous restrictions targeting conservation farming practices, which are vitally important to wildlife, the BIDEH proposals under consideration today are unacceptable to state fish and wildlife agencies.

Thank you for the opportunity to testify today. The Association does look forward to continuing to work with the Service and other conservation partners to ensure that sensible conservation practices are in place throughout the refuge system. Thank you very much.

[The prepared statement of Mr. Batcheller follows:]

PREPARED STATEMENT OF GORDON R. BATCHELLER, EXECUTIVE SECRETARY,
NORTHEAST ASSOCIATION OF FISH & WILDLIFE AGENCIES, INC.

REPRESENTING

THE ASSOCIATION OF FISH & WILDLIFE AGENCIES, WASHINGTON, DC

Good morning, Chairman Bentz, Ranking Member Huffman, and members of the Committee. Thank you for the opportunity to testify before you today.

I am Gordon Batcheller, a Certified Wildlife Biologist. I am here today to represent the Association of Fish and Wildlife Agencies (AFWA); all 50 states are members as well as Guam, U.S. Virgin Islands, Puerto Rico, and the District of Columbia. AFWA is the voice of state fish and wildlife agencies. Prior to my current position, I was Chief of Wildlife for New York State.

Our mission is to protect state agency authority to conserve and manage fish and wildlife within their borders. These agencies exercise primary statutory authority for management of fish and wildlife as public trust resources within their borders, including on lands and waters in the National Wildlife Refuge System (NWRS).

We appreciate the efforts of the Service to modernize regulations and policy relating to ecological health within the NWRS, but we are deeply concerned by the justification and substance of key parts of the proposed rule and accompanying policy updates. Due to the importance and impact of this proposed rule on management of fish and wildlife species across the NWRS and adjacent habitats, its failure to account for the judicially and statutorily established primacy of state authority to manage wildlife, the increased administrative burden and limited flexibility with which it would restrict managers, and the fundamental lack of scientific basis for various aspects of the proposal, we offer the following testimony for your urgent consideration. We hope the result will be significant revisions that transform the proposed rule into one that allows refuge managers to use the well-established and successful wildlife and habitat management tools to secure the health of habitats and abundant species across the NWRS.

While the Association made the most of the opportunity to engage with the Service on the review of the draft policy and rule, the vast majority of our substantive input was ignored. As a result, we feel that the proposed rule requires significant revisions if the Department and the Service intend to proceed with this rulemaking. In our view the changes made based on our initial input were minimal, and did not address the most concerning elements of the proposed rule, specifically:

- Inclusion of the concept of “predator control”, which infringes on state jurisdiction and suffers from the lack of any workable scientific definition for “predators”
- Restrictions on commonly used and widely accepted wildlife management tools such as cooperative agricultural practices
- A pervasive lack of consideration for state fish and wildlife agencies’ roles and authorities
- Rigid processes that threaten to overburden refuge managers, erode cooperative conservation efforts, and delay timely decisions
- Vague, ambiguous definitions that could be applied inconsistently or leveraged to restrict compatible and priority uses of NWRS lands and waters

The National Wildlife Refuge System Administration Act (NWRSA) as amended by the National Wildlife Refuge System Improvement Act (NWRZIA) at Section 668(dd)(a)(4) assigns the Secretary 14 responsibilities in administering the System. Among these, at Section 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.” However, there are 13 other statutory responsibilities assigned to the Secretary and the Act does not prioritize those responsibilities but simply lists them.¹ The Association supports the concept of BIDEH within the system, just as we support the 13 other priorities. With this rule it appears that the USFWS is elevating this single aspect of administering refuges over all others, and if this is the case, we do not believe it is in the best interest of the management and goals of the NWRS.

Predator Control

As we shared repeatedly with the Service, inclusion of restrictions on “predator control” is fundamentally flawed on multiple levels and as such should be stricken from future iterations of the rule. Because “predator” is not a scientific classification (and the Service wisely does not attempt to define “predator” in the proposed rule), this proposed restriction could ensnare any native species that employs predation as part of their life history (which is most species), creating a jurisdictional conflict over the management, method, and means of take for species that state fish and wildlife agencies hold in trust for the benefit of the public. State agencies exercise primary statutory authority for management of species within their borders across all types of land, including those within the NWRS. Indeed, 43 CFR 24.4(e) states:

“ . . . in recognition of the existing jurisdictional relationship between the States and the Federal Government, Congress, in the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd), has explicitly stated that nothing therein shall be construed as affecting the authority of the several States to manage fish and resident wildlife found on units of the system. Thus, Congress has directed that, to the maximum extent practicable, such public uses shall be consistent with State laws and regulations. Units of the National Wildlife Refuge System, therefore, shall be managed, 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.”

This conflict is exacerbated by the proposed exceptions to predator control, which include “[c]ompatible, refuge-approved recreational hunting and fishing opportunities that do not compromise maintaining biological integrity, diversity and environmental health [(BIDEH)] on the refuge.” By including this as an exception to predator control, the Service is explicitly stating its assumed authority to regulate methods and means of take on refuges at any time if it categorizes an activity as predator control, regardless of existing approval or the purpose for which a refuge or unit was established. The National Wildlife Improvement Act of 1997 clearly and plainly requires that when conflict arises between the NWRS mission and the established refuge purpose, the purpose of the unit itself should take precedence over the NWRS mission.

The proposed definition of predator control—“. . . actions or programs with the intent or potential to alter predator-prey population dynamics on a refuge by reducing a population of native predators through lethal or nonlethal methods

¹Likewise, House Committee Report 105-106 (NWRZIA) does not assign a priority to these 14 responsibilities.

. . .”—appears to describe a substantial portion of management for harvested and non-harvested species alike. Claiming authority to potentially influence the management of countless species will create conflicts with state authorities and disregard individual refuge purposes by subordinating those purposes secondary to the overarching principles of BIDEH.

Additionally, refuge managers are already entrusted with the responsibility to maintain population levels based on what the best available science demonstrates is necessary for the health and abundance of the full range of species that rely upon a refuge for habitat, subject to the specific purposes of that refuge. Under these existing rules and guidance, BIDEH is already being considered and served. By requiring managers to determine that there is no other feasible method to address specific species or habitat issues prior to utilizing “predator control,” the proposed rule would severely hamper timely management decisions and open a broad window for wasteful litigation. State agency concerns are by no means limited to the prohibitions on “predator control”, as various aspects of these principles apply to several potentially harmful policy proposals.

Consider just a few specific case studies that demonstrate the importance of active management “predator control” to enhance the conservation status of wildlife:

The trapping of raccoons on Archie Carr National Wildlife Refuge in Florida is vitally important to reduce predation of sea turtle eggs and hatchlings.²

Conserving big game populations in Alaska by managing predation is central to subsistence lifestyles, and food security.³

At the Don Edwards San Francisco Bay National Wildlife Refuge, predation on western snowy plovers and California clapper rails by red foxes prompted the initiation of a predator management program targeting red foxes, skunks, and raccoons, resulting in improved nesting success.⁴

Radiotelemetry at Malheur National Wildlife Refuge in Oregon showed predators, primarily coyotes, were severely limiting the survival of sandhill crane young or “colts,” leading to initiation of a predator control program. With the exception of a drought year, crane productivity improved during the first 4 years of the control program.⁵ Similarly, on the Mississippi Sandhill Crane National Wildlife Refuge, removal of coyotes is critical to improving the nesting success of highly vulnerable and rare Mississippi Sandhill Cranes.⁶

The lethal removal of mink and river otter within the Maine Coastal Islands National Wildlife Refuge Complex is vitally important to protecting nesting seabirds.⁷

The lethal removal of Mountain lions on the Hart Mountain National Wildlife Refuge in Oregon is required to improve the conservation status of big horn sheep.⁸

There are countless other examples within the Refuge System, in all parts of the Country, that underscore the importance of active management, “predator control,” for the conservation of many species.

Finally, those who recall the highly contentious 2016 predator control rule in Alaska, observe that this proposed rule appears to be an attempt to reinstate that same rule, which was rejected by Congress under the Congressional Review Act due to the leadership of Alaska’s Congressman Don Young.⁹

However, rather than just reinstate this rule for Alaska, it enacts similar provisions across all 50 states, and applies it more broadly with the proposed definition including “potential to alter predator/prey dynamics[.]”

Restrictions on Agricultural Use and Practices

As drafted, the rule also prohibits certain well established and widely accepted wildlife and habitat management practices, unless the refuge manager takes a

² https://www.fws.gov/sites/default/files/documents/Archie_Carr_CCP.pdf

³ https://www.adfg.alaska.gov/static/research/programs/intensivemanagement/pdfs/intensive_management_protocol.pdf

⁴ <https://westernsnowyplover.org/pdfs/WSP%20Final%20RP%2010-1-07.pdf>

⁵ <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1217&context=nacwgproc>

⁶ https://www.fws.gov/sites/default/files/documents/Mississippi_Sandhill_Crane_NWR_CCP.pdf

⁷ <https://www.fws.gov/sites/default/files/documents/REFUGES%20ISLANDS%20March%202022.pdf>

⁸ <https://www.regulations.gov/document/APHIS-2022-0002-0003>

⁹ https://naturalresources.house.gov/uploadedfiles/hj_res_69_one_pager_final.pdf

series of laborious steps. The proposed restrictions on agricultural practices are contrary to the very purpose for which many refuges were established: to manage habitat to benefit migratory birds, particularly waterfowl. As such, we are aware that farming is effectively used throughout the NWRS where needed and recognized in the North American Waterfowl Management Plan. We are concerned that, under the proposed revisions agricultural uses, waterfowl production, and a variety of other cooperative habitat management activities may be unavailable on refuges that are managed for waterfowl hunting opportunities and other refuge-specific purposes. We strongly recommend that upon revision, this proposed rule should not place excessive burdens on managers and Refuges that have successfully employed these practices.

Roles and Authorities of State Fish and Wildlife Agencies

State fish and wildlife agency management allows for the practical and efficient use of resources to manage the broad diversity of species and habitats across the country, many of which require geographic or species-specific solutions that could not be fulfilled by a one-size fits all approach. While we respect the USFWS's responsibilities to manage refuges in coordination with the states, we strongly disagree with the approach of this proposed rule and the problems it will create for the individual state-USFWS partnerships within the refuge system as well as research and management of wildlife and habitat on refuges as a whole. Denying or curtailing the ability of state agency resource managers to use these tools (agriculture, hunting seasons and regulations, etc.) would not only undermine state management authority, but it would also severely limit federal agencies' pursuit of cooperative management strategies.

While a complete review of well-established state authority is unnecessary, a long line of case law that began in the nineteenth century and created the jurisdictional backdrop for federal legislation from the Lacey Act to the Migratory Bird Treaty Act and beyond, has consistently held that, absent a clear exercise and/or delegation of congressional power through the Supremacy, Property, or Commerce Clauses of the U.S. Constitution, states retain control over wildlife to manage in trust for the benefit of the people of the states. The primacy that the proposed rule places on BIDEH would diminish all other refuge purposes and infringe on states' authority to manage the methods and means of take for species within their borders that have not been placed under federal protection. If finalized, the proposed rule would enable drastic federal overreach by establishing a flawed basis through which USFWS could attempt to eliminate methods and means of hunting that the USFWS determines are not compatible with BIDEH.

Even though the proposed rule is silent regarding trapping on refuges, it is clear that unnecessarily restrictive or duplicative regulations on methods and means of take may be imposed should the USFWS decide it is necessary to maintain BIDEH. Regulated trapping of furbearers for a variety of purposes is necessary and provides numerous societal benefits, ranging from damage and population control, protection of endangered species, reintroductions and necessary supporting research, and protection of sensitive habitats. Further, trapping is a unique activity that deepens Americans' connection with nature and understanding of the outdoors and its flora and fauna. In many rural communities, self-sufficiency is core to the public's activities, of which trapping is included with complementary, sustainable uses of natural resources such as angling, hunting, gardening, and other uses. State and federal wildlife agencies, including the USFWS, use trapping as a cost-effective method (compared to hunting or chemical control) to manage wildlife. Trapping helps protect endangered species and migratory birds, restore species in decline, prevent and reduce property damage, and control destructive invasive species.

Under this co-management structure, trapping regulations in the NWRS usually reflect those made by the state agency with management authority over the relevant species, meaning any lawful trapper on refuge lands must adhere to applicable state regulations and permit stipulations, as well as possess the applicable licenses. The BIDEH rule should not provide any vehicle by which the USFWS may attempt to impose restrictions on trapping or any methods and means of take for state managed species.

Another area of consideration relates to "conservation translocations" as defined in 29.3(b). We strongly recommend USFWS clarify that these translocations must comply with state regulations such as those relating to the health of the individual or disease quarantining for transport across state lines, or even transport within the state.

In 3.10(c)(3) the proposed rule states that USFWS "conserve[s] and manage[s] fish and wildlife populations to meet refuge population objectives, sustain ecosystems, and, where appropriate, restore or recover imperiled species." We strongly

recommend inclusion of language to recognize state authority in species management decisions. Under management activities and uses, the proposed rule states that “Proposed activities and uses will be evaluated in compliance with the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) and other legal requirements, as applicable.” We strongly suggest including references to 43 CFR § 24.4(e) and the Fish and Wildlife Coordination Act to document the importance of state coordination.

Administrative Burden

As we have touched on previously, but further stress here, the proposed rule would establish overly rigid processes that will overburden refuge managers, restrict use of widely accepted wildlife management practices, and delay timely decisions. We are concerned that the desire to create a “high bar” to justify widely accepted wildlife and habitat management practices may create unnecessary barriers, generate more opportunities for procedural inconsistencies between refuges and regions, and hamper NWRS staff that are already stretched thin. We encourage the Service to recognize and continue to employ well-founded, supported, and justified management actions and activities currently employed on the NWRS. Further, decision making at the local level will be difficult for individual refuge managers if they must consider factors that are outside of their control.

For example, the proposed policy for conservation translocations in 601 FW 3.13B(2)(a) includes the requirement for translocations to undergo scientific peer review, and refers to 3.14C for the criteria of “us[ing] novel, precedent-setting methods or models,” or being “of high ecological risk or controversy . . . likely to change prevailing practices, or . . . likely to affect policy decisions of significant environmental impact.” This opens up significant room for interpretation. It is not clear how the carve-out for activities that have undergone peer review within the past 10 years with no substantial changes in scientific knowledge or relevant circumstances will be applied, whether refuge by refuge or programmatically.

The rule also establishes prohibitions on several commonly administered, widely accepted and successful wildlife management practices, such as the use of agriculture, unless specifically approved. For these activities, that are already successfully utilized by its managers, we suggest the rule should instead take the approach of “allowed until prohibited” vs. “prohibited unless justified” as currently drafted. Again, Agricultural Use and Predator Control revisions should not place excessive burdens on managers and Refuges who have successfully employed these practices.

Vague and Otherwise Flawed Definitions

The proposed rule is rife with vague, ambiguous definitions that could be leveraged to restrict multiple-use of NWRS lands and waters. In a number of instances, from “predator” to “historical conditions” to “natural processes”, we previously communicated to the USFWS that these terms were vague and would benefit from being better defined, clarified, or omitted.

Where the proposed rule references the “best available science,” USFWS should explicitly state that this includes consideration of science from on-the-ground managers, whether state, federal or tribal. Additionally, the term and use of “historic conditions” throughout the definitions remains vague, as well as “natural processes” throughout the definition, management principles, and management activities and uses; all natural processes occur under some level of human influence and have for thousands of years. The term “historic conditions” is defined as referencing conditions “prior to substantial anthropogenic changes”. This definition is subjective, as humans have always been part of the ecosystem. We understand that the USFWS is drafting these policies based on the reality that pre-European contact conditions are not an attainable baseline for the NWRS. Moving away from the current baseline requires the establishment of a new baseline to measure effects to the refuge. The policy and definition do not define the new historic baseline condition. As the proposed planning policy decentralizes decision making, the proposed BIDEH policy needs to provide more direction to refuge managers to best understand what a substantial change is, whether the changes are anthropogenic in nature, and whether those anthropogenic changes are under local control (e.g. climate change impacts from carbon emissions elsewhere). We request that the USFWS explain what the new historic baseline condition will be to evaluate change on the refuges and how this aligns with previous conversations regarding historic human use. We also recommend amending the definition of “natural processes” to state that it encompasses interactions that would reasonably be expected to occur in the absence of substantial human influence.

The definition of “Anthropogenic change”—“Environmental change that humans cause or influence, either directly or indirectly,” is too broad and could include nearly any type of change as currently written. We recommend removing the term “indirectly” at the end of the definition to limit the scope of the change. Decision making at the local level will be difficult for the individual refuge managers if they must consider factors that are outside of their control. If the intent of the policy is to keep the decision making at the local level, then the policy must focus on issues that the individual refuge managers can control. Refuge managers simply cannot control the output of emissions that may affect their refuge. Requiring refuge managers to mitigate these emissions could result in undue burden on refuge management.

Including genetic differences in living organisms is a broad term that could mean anything from a genetic difference between individuals, genetic differences between populations, or other unknown advances in genetic science not yet contemplated. The more traditional definition of diversity focuses on species diversity which is the number of different species present in an ecosystem and the relative abundance of each of those species. Based on the proposed definition, we are concerned that there is no historic reference to serve as a baseline for measuring these genetic changes as proposed in the regulations and policy. The Alaska Native Interest Lands Conservation Act (ANILCA) uses the broader term natural diversity in the purposes of each refuge created by Title III of ANILCA. We request this definition be reworded to align more closely with the definition of species diversity, particularly as ANILCA remains the prevailing statute in Alaska. The definition of mosquito control in (d)(7) could also be expanded to include control of other biting arthropods that transmit disease (such as ticks) or pose a threat to conservation goals, for the greatest flexibility in this regulation.

Administrative Structuring/Priority

Finally, we are concerned that if an activity, such as the use of prescribed fire, was challenged because it would impact a directive, such as air quality, the directive to address air quality would prevail over the necessary and effective habitat management activity—prescribed fire. Another example is the inclusion of “soil compaction” as a directive. If an activity, such as a timber sale or forest practice like thinning were challenged due to its contribution toward the directive, which is to prevent soil compaction—which would prevail? Without clarification, such endless questions, challenges, and litigation could effectively hamstring any reasonable management practice which would prevent the NWRS from achieving its mission. Therefore, if this is not the intent of the rule, to have directives supersede individual refuge actions, it should be clarified. If this is the intent, and our concerns are legitimate, then we encourage the Service to reconsider this approach.

Thank you for the opportunity to testify today. The Association looks forward to continuing to work with the Service, the Department, and other federal and private partners to ensure co-management of the NWRS provides healthy habitats, abundant wildlife populations, and accessible recreation opportunities for all.

Mr. BENTZ. I thank the witnesses for their testimony. I will now recognize Members for 5 minutes each for questions.

Chair Westerman, you are recognized for 5 minutes.

Mr. WESTERMAN. Thank you, Chairman Bentz, and again, thank you to the witnesses for your testimony today.

I was taught that there is something called the scientific method, where you put a theory up, and you test that theory, and the more times you prove that that works, then you say we have some science here. Mr. Guertin, you and others talked about climate resiliency, and it seems that your scientific theory is that if you stop management on refuges it is going to give you more wildlife, biodiversity, more quantity and quality of wildlife. But the observations I have had, where you actually do management, seems to show that it is just the opposite of what the Fish and Wildlife Service is proposing.

Now, when we talk about climate resiliency, does that affect only public lands, or does that affect private lands, as well?

Mr. GUERTIN. Thank you for your question, Chairman. We are talking about a proposed rule here, which would guide—

Mr. WESTERMAN. Well, it is an easy question. Climate resiliency affects private lands, just like it does public lands.

Mr. GUERTIN. Yes, it does, sir.

Mr. WESTERMAN. There is a saying in Arkansas, “No rice, no ducks.” And the rice is not grown on public lands, it is grown on private lands. And we have seen farming practices change, where you have zero leveling and you don’t have the flooded fields like you used to. But at the same time, I have seen private landowners go out and intensively manage their land for duck habitat. And guess what? The land is resilient. The ducks are there. It is not all Ag, but Ag plays a huge part in it.

I have seen on fish and wildlife refuges in my district, where management practices have been put in place, the wildlife has flourished, including Ag management practices. So, it seems like, in the name of science, Fish and Wildlife is pushing false science and trying to make it to where we can have this utopia, where you just do what the Federal Government seems to be wanting to do with all public lands, and that is putting an imaginary fence around it and say we are going to let it be a wilderness area, and everything is going to be OK. And we know that doesn’t work.

One particular thing I am very concerned about is when we talk about predation. Feral hogs are essentially invasive predators. How would you address the feral hog program under this new rule?

Mr. GUERTIN. Thank you for your question, Chairman. We are continuing to do a lot of feral hog control on the refuge system. We don’t believe this proposed regulation would change any of that. We evaluate the impacts these invasive species have on the refuge system in accordance with our established policies, procedures.

Mr. WESTERMAN. So, what is the difference in a feral hog eating turkey eggs and a raccoon eating turkey eggs?

Mr. GUERTIN. Just definitional, sir, that the feral hogs are generally viewed as causing a lot of disruption to crops, and a lot of the other critters would go after animals and young chicks.

Mr. WESTERMAN. You don’t think feral hogs go after turkey eggs?

Mr. GUERTIN. Oh, of course, they do. But we categorize them as more of an invasive species.

Mr. WESTERMAN. But it is going to be OK to let the raccoon population explode and eat turkey eggs, but not the feral hogs.

Mr. GUERTIN. No, sir. We continue to look at predation on the refuge system. Last year, we trapped out over 4,000 animals on 69 refuges, as other witnesses have talked about. We view it as a—

Mr. WESTERMAN. It seems like a very, very low number. I have to move on.

Mr. GUERTIN. Yes, sir.

Mr. WESTERMAN. Mr. Batcheller, you mentioned something, and I think, if we have done something right about conservation in this country, we have given state wildlife agencies authority over all the wildlife, whether on private lands, public lands. They regulate that.

We have a proposed bill called the American Wildlife Habitat Conservation Act, where we actually not only give state wildlife agencies authority over the management of the wildlife, since the wildlife doesn’t recognize boundaries, but it would allow something

called Good Neighbor Authority, where wildlife agencies could go in and do management on the Federal land because the management is obviously not being done right now. A couple of questions on that.

But I will point out in Arkansas, the Arkansas Game and Fish Commission has wildlife management areas that, if you want to hunt on one of them, a lot of them you have to get permits because the demand to hunt on these managed properties is so high, you see people hardly going to U.S. Fish and Wildlife areas because they are not being managed correctly.

How would this rule prohibit, if the Wildlife Habitat Conservation Act passes, how would it prohibit state agencies from doing a good job of managing the Federal lands?

Mr. BATCHELLER. I appreciate your question.

I think the principle that you are bringing forward and underscoring is that we need to manage wildlife at a landscape scale: public, Federal, public, state, and private. If we want to address the needs of wildlife throughout this country, address climate change, meet the needs of constituents, solve wildlife problems, it has to be done at a landscape scale cooperatively with all partners.

And I am pleased to highlight that the National Wildlife Refuge System Improvement Act of 1997 recognizes that core principle of landscape conservation, and today the states and the U.S. Fish and Wildlife Service do work very assertively to identify landscape conservation practices that make sense for the United States.

So, I think the core principle you are bringing forward is the necessity of a landscape approach, all in, for wildlife throughout the country.

Mr. WESTERMAN. You are exactly right. And that is not an original idea. There was a guy named Teddy Roosevelt that was proposing that 120 or 130 years ago. And that model worked pretty well until we decided to stop managing appropriately.

And I was going to yield back my time, but I see it is going in the opposite direction. So, Mr. Chair, thank you for your indulgence.

Mr. BENTZ. Thank you, Mr. Chairman. I now recognize the Ranking Member for 5 minutes.

Mr. HUFFMAN. Thank you, Mr. Chairman.

Mr. Guertin, it has been suggested that this rulemaking is a sea change in policy. It has created all sorts of apprehension and speculation about a Pandora's box of litigation, the termination of all sorts of existing activities, including cooperative farming. So, I want to ask you a few questions.

Under existing law, is the Fish and Wildlife Service already required to ensure biological integrity, diversity, and environmental health of the refuge system?

Mr. GUERTIN. Yes, Congressman.

Mr. HUFFMAN. And does the Fish and Wildlife Service believe it already operates and has always operated in accordance with the same refuge system-wide principles for maintaining BIDEH, as we call it, represented in these proposed regulations? You have always operated under these principles?

Mr. GUERTIN. Yes, Congressman. They are called out in the Refuge Improvement Act and codified in our 2001 policy.

Mr. HUFFMAN. So, am I correct that the purpose of this proposed rule is to clarify management directives as they relate to your existing authority to carry out BIDEH in the refuges?

Mr. GUERTIN. Yes, Congressman. The purpose of the proposed rule is to clarify and provide guidance and modernize the guidance.

Mr. HUFFMAN. Does the proposed rule affect hunting or fishing in the refuge system?

Mr. GUERTIN. No, Congressman. Hunting and fishing are called out in the Refuge Improvement Act as one of the six priority mandates or uses on the National Wildlife Refuge System.

Mr. HUFFMAN. How about cooperative agriculture or water rights programs, do you anticipate any changes to these things if the rule is finalized in its current form?

Mr. GUERTIN. Congressman, it is a proposed rule. But no, I don't see major changes. We continue to recognize agriculture as contributing to our ability to manage for waterfowl, particularly—

Mr. HUFFMAN. Where it serves a refuge purpose. And it is a win-win.

Mr. GUERTIN. Yes, sir.

Mr. HUFFMAN. So, the millet farming in Arkansas that Mr. Westerman supports, and that we all support because of the habitat values it is creating, that continues without any change, right?

Mr. GUERTIN. Again, not pre-determining the outcome of the regulatory process here, I have to say that, per the lawyers.

Mr. HUFFMAN. OK.

Mr. GUERTIN. Just clarify that. Yes, these types of agricultural processes contribute to wildlife objectives, and we recognize they contribute to our mission, as well.

Mr. HUFFMAN. The organic potato farming that Mr. Staunton talked about in the Klamath refuge that seems to have great effects on soil health and other values, there is nothing in this proposed regulation that would end that?

Mr. GUERTIN. No, sir. We recognize that would continue, as well, in the Klamath. We recognize the Kuchel Act calls out agriculture as a priority use. And we also have a Crab Orchard National Wildlife Refuge, similar authorizing language. So, there are actually two refuge units that have a legal mandate for agriculture.

Mr. HUFFMAN. And it has been suggested in the Chairman's opening that a whole new complete NEPA process would be required for things like cooperative agriculture in the case of the millet farming, the Klamath organic potato farming, other cooperative farming that is providing that win-win benefit in the refuge system. Would each of these folks have to start over again with a new NEPA process?

Mr. GUERTIN. No, Congressman. If there is an existing cooperative agricultural agreement, say, that was signed last year for a 5-year period, the next time we will look at that is 4 years from now, and we will look at it in the lens of the revised version of the BIDEH. But we are not creating any new processes.

Mr. HUFFMAN. Thank you, Mr. Guertin. I know you are in the middle of a public comment process, and I can't take you into more detail because you can't be pre-decisional about that pending rule-making, but I appreciate those answers to demystify, frankly, some

of the misguided concerns that we are hearing about this rulemaking.

And Mr. Haskett, I would like to come back to you regarding what this Committee should be talking about if we cared about the refuge system, the actual issues our refuges are facing. What is the biggest challenge facing the refuge system today?

Mr. HASKETT. Thank you for that question. The biggest challenge is lack of funding and resources to efficiently manage the National Wildlife Refuge System. As I mentioned, severe underfunding and understaffing for decades. The refuge system needs 7,000 FTEs to manage its current resources at a minimum capacity. But as I said, they only have 2,500 FTEs across the entire system. So, it is funding and lack of it for the refuge system.

Mr. HUFFMAN. Yes. How does that shortfall affect how the refuges can be used and enjoyed by Americans?

We have 67 million folks that now visit our refuge system. How are they impacted?

Mr. HASKETT. That is 67 million annual visitors. That is an increase of 36 percent since 2010. But visitor services staff has decreased by 25 percent during that same period of time, yet the number of visits has steadily increased by an average of about 4 percent annually.

My specific examples, Bosque del Apache in New Mexico, renowned for birding opportunities, receives 142,000 visitors annually. We only serve fewer than 1 percent due to curtailed visitor center hours. I can give a whole bunch of examples. I am not sure you want me to take the time.

Mr. HUFFMAN. Does that critical staffing shortage limit the ability of the refuge managers to take advantage of friends groups and other resources that might be offered up?

I mean, if you don't have staff to oversee and implement that, what good is it?

Mr. HASKETT. Yes, there are 200 friends groups across the country that support refuges, and there are many, many volunteers. In the past, volunteers have been able to make up for significant shortfalls that refuges have been dealing with. But what has happened now is, because the staffing is so low, some refuges have gone from 20 people to 2, some refuges have zero. There is no one to supervise the volunteers, so it causes a problem even taking advantage of that.

Mr. HUFFMAN. Thank you, Mr. Haskett.

I yield back.

Mr. BENTZ. The Chair recognizes himself for 5 minutes.

Mr. Guertin, the Kuchel Act suggests, I think it states that the land in the refuges is dedicated to the major purpose of waterfowl conservation, but with full consideration to optimum agricultural use.

So, is it the Agency's position that one of the purposes of refuges is agricultural use?

Mr. GUERTIN. Chairman, for the Klamath Basin refuges, yes, it is authorized in the Kuchel Act, and we recognize that.

Mr. BENTZ. There is some concern that has been expressed that it would be relegated to a use, as opposed to a purpose. So, I am asking for the clarification from you that we don't need to be

worried about that, that it is indeed, under the Kuchel Act, a purpose. I just want to make sure the record is clear on that.

Mr. GUERTIN. That is my understanding, Chairman Bentz, and it has been a long-standing traditional use, as well. And as other witnesses have pointed out, we very effectively partner with producers in that geography and work with them to achieve a lot of habitat objectives, as well as energy sources for waterfowl in the basin.

Mr. BENTZ. Yes, thank you.

Mr. Staunton, your written testimony and your testimony today discusses your farming and innovative practices you have undertaken on the wildlife refuges in the Klamath. I have been out there. I have actually seen them. And it is amazing, that if we had water in the refuges, that would be helpful for the ducks. But, of course, that has been taken by NMFS and others for use in stream, and thus the refuges have been damaged.

But that aside, my question to you is, what is the proposed regulation that we are looking at today of concern to you? What part of it is of greatest concern to you?

Mr. STAUNTON. Thank you for the question, Congressman. I am happy to report first that we do have water back on the Tule Lake National Wildlife Refuge this winter and on the lower National Wildlife Refuge. We have been working really hard at achieving that in this winter. We are full again, so that is a win.

We have a great relationship working with the Tule Lake National Wildlife Refuge staff, and we are able to express all of our needs and concerns from year to year, whether that is times when we have extremely limited water or times that we have abundance, and we can expand our thinking and what we can achieve on refuge.

My concern with this rule stems back to what you asked about purpose versus use. And I think that is really an important part for us is that we feel that, although our relationship right now is very strong with our local staff, we don't know what may happen 10 years from now. There may be a new refuge manager that comes in, and his directive is that we start with no agriculture, because that is the way the rule reads.

So, our position changes materially, and that risk is something that would then have to go probably to a judicial system or a legal system to tell us what happens there. And all that uncertainty, what happens on the ground is we don't do anything. So, there is no agriculture activity, nothing happens.

I guess my point would be if agriculture seems like a very important factor to refuge system management, the rules should reflect that.

Mr. BENTZ. Thank you, and thank you for being here.

Mr. Guertin, back to you for a second. The Service appears to be attempting to manage refuges to and establish baseline of "historic conditions," a fairly subjective term, but perhaps you can throw some light on it. It goes on to say, "prior to substantial human anthropogenic change."

In your opinion, how far back in history will we go to establish such a baseline? And this issue comes up in other places, too.

Mr. GUERTIN. Thank you Chairman, it is an excellent question. The point I want to make, though, is the previous version of the BIDEH policy actually had a mandate or a requirement for us to manage the refuge system to a historic condition. That is unrealistic.

We all know how heavily we have done a lot of proactive work on the refuge system. The proposal vision is that we will manage to modern or future threats out there. We have no vision or mandate to try to restore the refuge system to pre-Columbian or hundreds-of-years-ago conditions. We are trying to acknowledge there are a lot of, as other witnesses have pointed out, water control structures, levees, dikes. We use a lot of fire on the refuge system for a tool. Recognize those as a given, and manage toward the emerging threats of the system, as well. So, just a point of clarification. That is not the goal of the proposal, to go back in time. It is to project forward.

Mr. BENTZ. Thank you. Thank you very much.

I yield back, and I recognize Congresswoman Peltola for 5 minutes.

Mrs. PELTOLA. Thank you very much, Mr. Chairman.

A number of issues I want to talk specifically with you about Mr. Guertin, but I really appreciate the comments of Mr. Batcheller regarding Alaska and the ungulate population and food security issues.

In 2016, the Fish and Wildlife Service finalized a rule titled, "Non-Subsistence Take of Wildlife and Public Participation and Closure Procedures on National Wildlife Refuges in Alaska," and I want to note there has been talk about people who visit refuges. Many Alaskans live on refuges. We had lived there as long as we can remember, and then it became a refuge in the 1960s. So, this is not a choice, this is not us going out of our way to visit, this is where we live.

And this rule that occurred in 2016 gave refuge managers in Alaska control over predator management on those lands, often without any consultation with the people who have lived there. And my understanding is this action has not had any kind of tribal consultation or outreach with the Alaska Native Corporations. This is a big concern to me, as well.

But back to the point. The finalized rule of 2016 was overturned in 2017 using the Congressional Review Act, and it was under House Joint Resolution 69, which was sponsored by my predecessor, Congressman Don Young, and it disapproved of that rule using the Congressional Review Act. Under the CRA, agencies are not permitted to reissue rules substantially similar to the one that was overturned.

And we recognize this rule isn't exactly the same as the one overturned, the proposed rule. This proposed rule has a national focus, not just Alaska. While it addresses predator control, it also addresses other issues that the Service says have been impacted by climate change and anthropogenic activities. However, this rule has the same result in Alaska, which would be predator control would fall to refuge managers, rather than the state and the people who live closest to the resources and have always lived there.

Please explain how the Fish and Wildlife Service justifies the part of this rule that would once again put refuge managers in charge of predator management in Alaska, which would violate the Congressional Review Act.

Mr. GUERTIN. Thank you for your question, Congresswoman.

Yes, we acknowledge that the 2016 predator rule for Alaska was revoked under Congressional Review Act authorities in 2017. The position of the Fish and Wildlife Service, after working very closely with our Solicitor's Office and attorneys in the Department of the Interior, is that there were significant differences in the approach and the authorities and foundations of this proposed BIDEH rule going forward, and you mentioned several of those yourself, such as application to an entire system of refuges, addressing not just predator control but a suite of ecological functions that could impact the refuge system, including grazing, pesticides use, et cetera.

Mrs. PELTOLA. Pesticides in Alaska?

Mr. GUERTIN. Oh, nationwide, ma'am, nationwide.

Mrs. PELTOLA. OK, thank you.

Mr. GUERTIN. So, that is our position on this. I hear you loud and clear. There is a lot of consternation about what does this mean in relation to the CRA, so that is why we are conducting this robust public outreach right now is to solicit that feedback. And I want to reassure you it is a huge priority for our director, Martha Williams, who I know you met with yesterday, to make sure we are engaging with tribal partners in Alaska.

Our regional director is hosting a couple of listening sessions and consultations over the next couple of weeks to make sure we get those all-important voices there. But we commit to you this is going to be all about hearing those voices and making sure that we keep this comment period open for the appropriate amount of time to get that feedback.

But thank you for your questions.

Mrs. PELTOLA. All right. Can I follow up, Mr. Chair?

OK, and I do understand that the Service feels that the biological integrity, diversity, and environmental health policies should be updated to meet current challenges, in particular concerning climate change. However, this rule doesn't align with the congressional mandates, and supersedes Alaska's expressed management authority by prohibiting state-authorized predator control in the refuge system.

And I think it is worth noting here, as well, that if we are talking about biological integrity, diversity, and environmental health, we have to recognize that human beings are part of the environment, and human beings' food security issues should be part of your consideration. And if we have ungulates that have been really low in abundance, abnormally low in abundance because of hoof rot and other things, the last thing we need are more wolves and bears really decimating those herds and that critical food source. And I think most herds of caribou in Alaska are just a tiny fraction of what they should be.

Mr. GRAVES [presiding]. If we could, try to wrap up, please.

Mrs. PELTOLA. OK. Many game management units are very low in moose numbers.

Anyway, I am very unhappy about this rule, especially when it comes to cultural practices and rites of passage and undermining the ability of people to exercise those.

Thank you, Mr. Chairman.

Mr. GRAVES. You bet. Mr. Guertin, if you could, reply to that on the record, please, in writing. That would be helpful.

Mr. GUERTIN. Thank you, Mr. Chairman.

Thank you for your feedback, Congresswoman. We are glad to follow up with you on that. We recognize ANILCA and other statutes are—

Mr. GRAVES. Thank you, Mr. Guertin. If you could just provide that in writing, that would be great.

I recognize the gentleman from Alabama, Mr. Carl, for 5 minutes.

Mr. CARL. Thank you, Mr. Chairman. Thank all of you for being here today. I realize your time is valuable.

The proposed “biological integrity, diversity, and environmental health” rule has me deeply concerned, and I am hearing similar worries from the constituents back home, particularly the farm community in Alabama.

I want to acknowledge that Jimmy Parnell, the President of the Alabama Farm Federation, has submitted comments on the proposed BIDEH rule. His insight reflects the concerns and the perspectives of these Alabama farmers, highlighting the importance of the consideration of what their needs and challenges are in shaping this rule.

Mr. Staunton, is that the way it is pronounced? Did I get close enough? That was our conversation back here, trying to figure out how to pronounce it correctly.

Mr. STAUNTON. That is close enough.

Mr. CARL. It is close enough? Good. Well, mine is pretty simple, as you can tell. Thank you for joining us here today.

The main concern we are facing is the potential impact of this rule on the Alabama farmers who rely on the genetic engineered crops. These crops are crucial for reducing pesticide use, promoting sustainable practices, and ensuring higher yields.

A question to you: How can we ensure that any policy change that supports our farmers’ need for sustaining agriculture will also address environmental goals effectively?

Mr. STAUNTON. Thank you for the question.

Like I mentioned before, working with your local wildlife refuges is the cornerstone of any working lands project. And in our situation, we have been able to have a very strong relationship with the local office.

The concern that I would have, again, is that a solicitor in Washington, DC or somebody making policy from far away may have a directive of saying that GMO or crop production on those lands is not a purpose or doesn’t fulfill that need, when maybe the local level has a different perspective. So, we would just like to recognize that agriculture is a purpose on those lands, and that we could work at the local level to continue to do that.

Mr. CARL. Thank you, sir.

Mr. Chairman, I yield back. That is all I have.

Mr. GRAVES. Would you yield to me real quick?

Mr. CARL. I would love to yield to you, sir.

Mr. GRAVES. I just want to make note that I think that was the first time in my life I have heard someone from Alabama concerned about the proper pronunciation. I just wanted to reflect just a minute.

I yield back.

Mr. CARL. I take offense to that.

[Laughter.]

Mr. LAMALFA [presiding]. The gentleman yields back. We will now recognize Mr. Mullin.

Mr. MULLIN. Thank you, Mr. Chair, and thank you all for your testimony today.

My district encompasses part of the San Francisco Bay, and we are very fortunate to have the Don Edwards National Wildlife Refuge in our very own backyard. Just last month, I had the opportunity to tour the refuge with Secretary Haaland. And while enjoying a walk along the beautiful Bay trail, we learned about how critical this habitat is for millions of migratory birds that stop over each year.

So, Mr. Guertin, could you provide a little more context or examples for how the proposed rule would improve your agency's management of this important habitat?

Mr. GUERTIN. Thank you for your question, Congressman. The vision of the BIDEH proposal is to manage, as best we can, the natural ecological functions of the refuge system to promote habitat so we can support healthy populations of small game species, other animals, fisheries resources, and provide hunters, anglers, and wildlife watchers these opportunities.

We believe the proposal will allow us to continue that work, provide more transparency, provide more accountability, consistency. The goal is population enhancement, habitat enhancement. So, doing this kind of work in conjunction with other partners on the landscape can give us those crucial habitats that we need, which will then turn back into economic drivers for local communities, as well.

Mr. MULLIN. I appreciate that answer.

My district in California is surrounded by water bordered not only by the Bay, but by the Pacific Ocean on the other side of the district. I am closely monitoring the threats posed by sea level rise and climate change. The aforementioned Don Edwards National Wildlife Refuge has tidal marshes that will play an important role in protecting communities in my district from rising sea levels, but the refuge itself is threatened, as well.

Based on our discussion here today, I am concerned that climate change will only increase the need for more funding to protect these ecosystems, yet funding for the National Wildlife Refuge System has been nearly stagnant since 2010. The question is for Mr. Haskett.

Thank you for being here, sir. Could you discuss how climate change may increase the need for additional funding to protect the refuge system?

Mr. HASKETT. You weren't here before, but I grew up in San Mateo, California, playing on all those lands that are the refuge now.

Climate change is probably the largest, most expensive danger looming for the refuge system coming up, and everything the Fish and Wildlife Service needs to do needs to look at climate through any kind of future work needs, through that climate change lens. And it is things like there are going to be marsh lands, there is going to be open water, there are going to be buildings that are going to no longer be there. We have had a building and a refuge here in the East Coast recently that slid into the ocean because of erosion and different changes from climate change. So, the San Francisco Bay certainly is one of those places that will be majorly affected.

I did want to mention, too, that I talked before about not being able to keep volunteers and that kind of thing. Well, Don Edwards just lost their volunteer coordinator at San Francisco Bay National Wildlife Refuge, which is going to make it even more difficult. So, definitely some problems out that way.

Mr. MULLIN. I yield back.

Mr. LAMALFA. Thank you, Mr. Mullin. Just a side note. I knew your dad back in the day in the legislature, and he was a great guy.

And as a Northern California farmer, I have a solution for the sea level rise. Just keep it in land behind the new dams we can build, and on the farms down in the Central Valley, and not let it run down the Klamath River or out the Delta, and we could do our part. Anyway, I know you would appreciate that.

Let me now recognize my colleague from Wyoming, Ms. Hageman, for 5 minutes.

Ms. HAGEMAN. Thank you, Mr. Chairman.

On February 2, the U.S. Fish and Wildlife Service proposed to update their approach to managing the biological integrity, diversity, and environmental health, or BIDEH policy, on lands in the National Wildlife Refuge System. As it currently stands, cooperative agricultural practices, such as grazing and haying are allowed to take place on refuge landscapes as long as the Fish and Wildlife Service cannot meet its resource management objectives through the maintenance, management, or mimicking of natural ecosystem processes or functions.

There are many ways that current agricultural practices help with land management, including through benefiting habitats that are vulnerable to catastrophic wildfires, which we in the West bear the brunt of. However, the policy change in this proposed rule wouldn't allow managers to make management decisions based off the needs of the individual refuge. Rather, the Fish and Wildlife Service is taking a drastic step to prohibit essential uses of lands that have been permitted for years, all in the name of so-called climate change.

Mr. Guertin, does every refuge have a biologist?

Mr. GUERTIN. Thank you for your question, Congresswoman.

My understanding is that all of our staff refuges have at least one biologist on board of their cadre.

Ms. HAGEMAN. Are there any refuges that do not have a biologist on staff?

Mr. GUERTIN. To the best of my knowledge, I don't believe so. But we can follow up for you for the record, just to give you certainty.

Ms. HAGEMAN. If you would, I would appreciate that.

Mr. GUERTIN. Yes, Congresswoman.

Ms. HAGEMAN. The burden that this proposed rule is placing on each individual refuge will be enormous. And it seems to me the Fish and Wildlife Service is trying to expedite considerable changes to the management of national wildlife refuges without fully weighing all of the practical costs.

Mr. Guertin, do you happen to know how many acres of farm and ranch land our country is losing each day?

Mr. GUERTIN. Not a specific number. No, Congresswoman.

Ms. HAGEMAN. Studies estimate that it is about 175 acres per hour, according to the College of Agriculture and Life Sciences at Virginia Tech. And this is land that we need to feed our nation, and it is being lost to things like development, sprawl, non-use fire, and, in many states, massive fields of solar panels.

Do you believe that the Service has a responsibility, as one of the agencies managing Federal lands, to help keep working lands in production and maintain uses like the managed grazing projects on refuge lands?

Mr. GUERTIN. Yes, Congresswoman, we believe that is inherent in our mission, and also believe the proposed BIDEH policy would continue that type of work to move on.

I have statistics right here, we work on 110 refuges and have over 1,700 agreements with farmers that are ongoing right now. We are working with another 1,700 co-operators and allowing grazing on 1.9 million acres of the refuge system to help us achieve our habitat restoration goals. And we believe our proposal is just putting a new lens on that work going forward.

But we recognize the contribution to our mission, and recognize that it is an important tool in our toolbox.

Ms. HAGEMAN. And I am glad to have that statement on the record as we move forward.

Mr. Wielicki, you have worked to restore duck habitat across the country. What do you believe would be the outcome of a major reduction or elimination in the use of agriculture on refuges?

Mr. WIELICKI. Thank you for the question. It is a very good question.

I am very concerned about the number of duck energy days that are on the landscape. For example, it takes only 1 acre of flooded rice to provide the duck energy days that are provided on 20 acres of flooded, moist soil vegetation. So, agriculture can provide a lot of energy for waterfowl.

We are losing flooded acres in the Mississippi alluvial valley. Ag research has shown in that area that when you flood your rice field, it actually reduces your following soybean output by about 14 bushels per acre. So, a lot of farmers are not willing to flood anymore.

Harvesting techniques have greatly improved. There is not as much waste grain on the landscape, so refuges need to do more.

There was a study completed by the Fish and Wildlife Service in the southeast region looking at waterfowl population and energy

objectives on national wildlife refuges. They currently provide 475 million duck energy days, of which 223 million, 47 percent, are provided with agriculture. And they want to provide another 140 million duck energy days. In order to accomplish that, agriculture would be the most efficient technique to complete that.

Ms. HAGEMAN. So, it is fair to say that there is a symbiotic relationship between duck habitat and agriculture production.

Mr. GUERTIN. Yes.

Ms. HAGEMAN. Thank you, I appreciate it.

With that, I yield back.

Mr. LAMALFA. The gentlelady yields back. My colleague on the other side of the aisle, you don't wish to ask any questions here?

Ms. HOYLE. No.

Mr. LAMALFA. OK, all right. Thank you.

I will toss it to Mr. Graves from Louisiana for 5 minutes.

Mr. GRAVES. Educated you are. All right, here we go.

Thank you all for being here. Mr. Guertin, I want to follow up on some of the conversations that you had with Mrs. Peltola earlier. CRAs are somewhat of a rarity. I think there have been 38 attempts this year, 9 of them have been vetoed by the President. None have been signed. Yet, there was a CRA that did, I believe, put substantial restrictions on your ability to draft a new rule.

Earlier, you were saying that you thought that there were not significant changes, and then you said that there were significant changes when Mrs. Peltola raised the concern about the CRA.

I am just curious. In the existing rule, how many times is "predator" or "prohibition" mentioned in the existing policy?

Mr. GUERTIN. Off the top of my head, I don't have a definitive answer for you.

Mr. GRAVES. You want the answer? You want it?

Mr. GUERTIN. A couple of times.

Mr. GRAVES. All right. So, "predator" is mentioned once, "prohibition" none. In the new one, it is all over the place. And I think showing that your efforts to try to kind of strike that balance, I think that this is substantially different than what is in place today, which I think is contrary to some of the testimony that you made a few minutes ago. I want to come back to you, but real quick over to Mr. Batcheller.

Mr. Batcheller, I know that the Association was engaged for participation to some degree to provide comments. But do you feel that the concerns of the Association were actually incorporated into the draft?

Mr. BATCHELLER. Thanks for the question, and I appreciate the issue. I just want to underscore, we really enjoy a productive working relationship with the Fish and Wildlife Service at all levels, all divisions, in many issues facing wildlife conservation in the United States. We really value those relationships, and we did appreciate being brought into the discussions at a pre-decisional stage.

But as I underscored earlier and in the written testimony, much of our concern or concerns were not addressed in the proposed rule now before.

Mr. GRAVES. And that is what I read from your testimony and surmised there.

And, specifically, you talked about some of the burdens on your refuge managers as a result of this. Could you expand upon that briefly? I have a couple of other questions I want to try to get out.

Mr. BATCHELLER. Sure. Well, I have been in government a long time, and I have done policy a lot. I have written and analyzed regulations and legislation, so I have a fairly good eye for the tone of a policy proposal. And I think it is very fair to say, without exaggeration, that this particular policy proposal has a lot of noes in it, a lot of prohibitions.

But there are allowances based on certain analysis that a refuge biologist or manager could do, and I imagine myself as that biologist in a refuge unit going through that process of analysis, and it is onerous.

Mr. GRAVES. Yes.

Mr. BATCHELLER. And time consuming. And earlier today, in testimony we have heard about the needs for refuge funding to be robust, et cetera. We are very concerned that the onerous restrictions and requirements on refuge personnel to explain biological integrity in light of commonly-accepted management practices is basically a budget cut, because the staff are going to be shackled to—

Mr. GRAVES. Because you are putting additional burden, you don't have the resources to carry it out. So, suffice to say that you don't think that the overall cost of the bureaucracy caused doesn't justify any perceived benefits. Is that—

Mr. BATCHELLER. We need our biologists—

Mr. GRAVES. Could you just give me a yes or no on that one? Is that safe?

Mr. BATCHELLER. We need our biologists in the field, eyes on wildlife with their binoculars, not at their desk, doing onerous paperwork.

Mr. GRAVES. OK, thank you very much.

Mr. Guertin, I want to come back to you. I know that in regard to engagement of stakeholders, we just heard the International Association of Fish and Wildlife Agencies say that they didn't feel like their comments or input were really considered. I understand the Humane Society issued a positive press release, and that is impressive.

What about groups like Ducks Unlimited? Did you engage any of the sportsmen's groups in this?

Mr. GUERTIN. Thank you for your question, Congressman.

Our practice that is codified in our internal service regulations is that when we are working on proposals like this we reach out to state fish and game and tribal fish and game agencies only. We don't engage with the advocacy groups or the NGOs.

Mr. GRAVES. So, Humane Society was not brought in to any meetings or anything like that?

Mr. GUERTIN. No, sir, not—

Mr. GRAVES. There were no discussions or—

Mr. GUERTIN. Until we proposed the rule back on February 2, that is the first they should have heard about it.

Mr. GRAVES. OK, I would love to make sure we probe that a little bit more. Thank you.

So, you don't think that other stakeholders, user groups like Ducks Unlimited, or other sportsmen's groups, are appropriate to engage on this?

Mr. GUERTIN. Oh, we think absolutely. But we engage with them when we roll the proposed regulation out per our established policies. We just work closely on the development of it with state fish and game and the tribes.

Mr. GRAVES. Mr. Chairman, I am over time, but I let Mrs. Peltola go 45 seconds. Can I just slide in one more here?

Mr. LAMALFA. Slide a little more.

Mr. GRAVES. All right, thank you.

Mr. Guertin, nutria, why do you like nutria so much?

Mr. GUERTIN. I have no personal opinion on nutria, nor does the Agency. But we have been working very aggressively to eradicate them in the Chesapeake Bay. We are working very closely also in—

Mr. GRAVES. I am just having trouble understanding why you would want to go through a full NEPA analysis on nutria eradication or efforts to control, whenever all they do is actually contribute to climate change, if that is your goal here, because they destroy vegetation, which then causes greater emissions, and actually causes erosion and other incredible problems in Louisiana. I just don't understand why you would carry out policies to protect nutria and allow for the population growth that is entirely contrary to what we have done here to the interests of Louisiana and California. I think this is absolutely ridiculous.

I yield back.

Mr. LAMALFA. All right. Thank you, Mr. Graves.

It looks like I am it. So, thank you, panelists. I do have something I would like to submit to the record here. It is comments submitted to the Administration by three counties in my neighborhood, Modoc, Siskiyou, and Klamath, on the proposed BIDEH rule that we are discussing. I ask unanimous consent that we insert that into the record.

And since I am chairing, without objection.

[The information follows:]

COUNTY OF SISKIYOU • COUNTY OF MODOC • KLAMATH COUNTY

April 5, 2024

U.S. Fish and Wildlife Service
Public Comments Processing

Re: Docket No. FWS-HQ-NWRS-2022-0106: Proposed Rule; National Wildlife Refuge System: Biological Integrity, Diversity, and Environmental Health

To Whom it May Concern:

The three counties of Modoc and Siskiyou, California and Klamath, Oregon (Tri-Counties), are writing this letter to provide comments and express our concerns regarding the U.S. Fish and Wildlife Services Proposed Rule; National Wildlife Refuge System: Biological Integrity, Diversity and Environmental Health.

The lease lands within the Klamath Basin National Wildlife Refuge Complex and throughout northern California and southern Oregon have played and continue to play a vital role in the multi-generational farming and ranching legacies of Siskiyou, Modoc (California), and Klamath (Oregon) Counties, and enable agricultural operators to produce valuable crops that are critical to the Counties' small

economies. However, farming the lease lands within the Counties is a continuous struggle.

Farmers have weathered restrictions on water supplies for years, have faced several lawsuits, and now are challenged with a proposed rule from the U.S. Fish and Wildlife Service (Service) which in addition to other concerns, would seek to “prohibit the use of agricultural practices unless they are determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health, and where we [the Service] cannot achieve refuge management objectives through natural processes.”

In 1905, the states of Oregon and California ceded the lands under Lower Klamath and Tule Lakes to the United States. During the same year, the U.S. Secretary of Interior directed the U.S. Reclamation Service (now the Bureau of Reclamation) to reclaim the lands beneath both lakes for the primary purpose of homesteading. In 1932, areas within the refuge were designated as sumps and reserved for flood control and drainage to protect developed homestead lands from flooding. Areas outside the sump, but within the refuge boundary, were leased by Reclamation for agricultural use and additional flood control. In addition to providing flood control, the reserved sump areas also preserved existing wetland habitats for wildlife.

In the early 1960s, Congress was faced with whether to dedicate the land to homesteading or waterfowl production. To answer this question, the Kuchel Act (Public Law 88-567) was passed in 1964. The Kuchel Act defines the purposes of the Lower Klamath and Tule Lake NWR's. The refuges are dedicated to wildlife conservation and the lands are administered for the major purpose of waterfowl management, but with full consideration to optimum agricultural use (USFWS 1998).

Reclamation administers a Lease Land Program under a Cooperative Agreement with the Service, on the Klamath Refuge National Wildlife Refuge Complex. The primary objective of the Lease Land Program is to comply with the law and provide a commercial farming program with benefits for wildlife. In addition, there are livestock grazing and hay farming activities on the Modoc Refuge in Modoc County and similar agricultural practices on other refuges in our area.

The legislative history of the Kuchel Act supports the interpretation that Congress mandated that agriculture continue on lease lands for generations to come. As detailed in 16 USC 695n: Leases of Lower Klamath and Tulelake National Wildlife Refuge reserved lands; management of other reserved public lands for waterfowl purposes, the Secretary is required to continue the present pattern of lease lands within the Klamath Basin. Farming on the lease lands no doubt is beneficial to wildlife, as the production of cereal grains and other wildlife-friendly agricultural produce provides vital food sources for waterfowl during migration.

As detailed in the April 4, 2024, joint letter from the Tulelake Irrigation District, Klamath Drainage District, and Klamath Water Users Association “In recent informal discussions, Service personnel have indicated that they do not believe the proposed rule/policies would apply to the lease lands or would not lead to management changes.” Consistent with the joint letter, while we agree that the Service's proposal should be irrelevant to the Kuchel Act, the use of Kuchel Act lands for agriculture practices are required to be considered and approved in compatibility and consistency determinations. The Tri-Counties want to reiterate that the proposed rule/policies cannot be adopted for Kuchel Act lands.

The legislative language is also critically important to the Counties as it recognizes that this continued pattern of leasing is important for revenue to impoverished Counties dependent on such revenue. For decades, the Counties have relied, and continue to rely, on the lease lands as an important aspect of the regional economy. The lands contain rich soil, ideal for crops like grain, alfalfa, potatoes, grass hay, onions, and horseradish. The lease lands contain 17,302 acres within the Tule Lake NWR and 5,526 acres within the Lower Klamath NWR, for a total of 22,828 acres throughout our areas devoted to agriculture. The Counties receive payments from the leasing of these lands, as outlined in Section 3 of the 1964 Kuchel Act. The total amount between the three counties averages between \$450,000 to \$500,000 per year. If agriculture on the lease lands were to be terminated, the impact would be felt through vital services provided by the County to its constituents.

It is also necessary for us to be clear with respect to the pesticide program that is allowed on the lease lands. This program is highly regulated by the U.S. Department of the Interior. Pesticides are utilized as a last resort under an integrated pest management plan. Specific pesticides are only approved for use after a federal team conducts stringent risk assessments. This assessment includes evaluation and anal-

ysis of toxicity data, proposed use of the pesticide, environmental conditions, degradation rates, solubility, and availability of other cultural, biological, or less toxic alternatives. There is also an established no-spray zone within 300 feet of sumps and 50 feet within any water bodies within the refuges. In addition, there has been tremendous efforts to increase acreage of organic crops on the lease lands. In 2000, only 38 acres were farmed organically, but by 2017, 13,571 acres (59.5%) of the total lease land acreage was farmed organically.

In summary, the language included in the U.S. Fish and Wildlife Service's February 1, 2024, proposed rule is far too broad, ignores the authorities of Congressional determinations and the Kuchel Act, and would have profound impacts on local farming communities and the counties that represent them.

Sincerely,

Brandon A. Criss, District 1
Siskiyou County Board of
Supervisors

Ned Coe, District I
Modoc County Board of Supervisors

Michael N. Kobseff, District 3
Siskiyou County Board of
Supervisors

Geri Byrne, District V
Modoc County Board of Supervisors

Derrick DeGroot
Klamath County Commissioners

Mr. LAMALFA. So, a lot of ground I could cover here. First, a couple of notes from the portion that I was able to hear in between having to run in and out of the room. Sorry about that.

Mr. Wielicki, as a personal aside, I liked hearing in your comments about when there is less rice grown it has a big impact on waterfowl, as I am a rice grower in Northern California. But that is not just a whole self-centered deal, it is indeed a region-wide issue, as it is in the southern states, of how important that is. As you know, in 2022, about half the rice acreage in California was taken out because the water supply was shifted elsewhere for that. So, instead of a half-million acres, we had about a quarter-million acres. And the devastation was visited upon that northern Sacramento Valley area as the folks up in Klamath have been feeling for a long time.

So, if you were lucky enough to be in the state water system, then you did OK, but the Federal water, we can go on and on about water allocation, and the wisdom with which water is stored, contributed greatly to the devastation of that and the resulting effects.

Mr. Haskett, you were talking quite a bit about levels of funding, and I will come back to the water, as well. If you don't have a water supply, you can have all the funding in the world and the devastation we have seen up in the Klamath Basin, the waterfowl that was so prevalent last year was grasshoppers instead of ducks. And I had never heard of up there before. So, it is indeed a situation where the resource needs to be made available as we are seeing happen in that area.

I would like to throw it to Mr. Staunton for a moment on how that is looking here with the allocation that is being requested up there. My understanding is that three counties have also submitted a letter asking for 100 percent allocation, as the lake seems to be doing quite well in water levels. Would you care to emphasize that?

Mr. STAUNTON. Thank you for the question, Chair. I will not speak directly to the allocation, because we don't know it yet.

Mr. LAMALFA. Yes.

Mr. STAUNTON. We are hearing that maybe later this month. But to speak to the impacts, the Tule Lake and lower Klamath National Wildlife Refuge was drained in 2020, and it was totally dry for 2 years. And in that time, we lost multi-species, including suckerfish that were native to that habitat, as well as all the migratory birds that use that as part of their Pacific Flyway.

We have been working very hard at trying to get water back out onto that landscape, and I am happy to report that there is water moving back out there today, but it has come with a major cost. And as you mentioned, one of those costs was a grasshopper infestation last year. It was to biblical proportions of grasshoppers that were growing in these dry regions of the refuge.

Mr. LAMALFA. Like you had never seen, right?

Mr. STAUNTON. Like you have never seen.

Mr. LAMALFA. Yes. Talk about, I am going to pronounce it wrong, the Kuchel Act, Kuchel Act. What?

VOICE. The Kuchel Act.

Mr. LAMALFA. Kuchel, sorry about that, which requires farmers to use a certain amount of their leased lands to grow grain and generate food for wildlife.

Discuss that a little bit, please, on the Act and the congressional intent being clear that agriculture has to be allowed on the Tule Lake and lower Klamath refuges. Can you talk about the existence of that rule, how it will fundamentally change the partnerships you have had with the local refuge?

Mr. STAUNTON. Thank you for the question. Yes, the Kuchel Act was started in 1964, and it basically authorized as a co-purpose of the refuge agriculture use.

Our concern with this rule is that there have been challenges made to the use of that land as being agriculture purpose by a lot of different environmental groups who would like to see us not out there farming on the refuge. So, I think this rule could potentially open the door for continued litigation by those groups that would like to see our purpose removed.

Thank you for the question.

Mr. LAMALFA. So, it is really going to make it a lot of uncertainty as to how you are supposed to even manage and grow on the land.

Mr. STAUNTON. It will give an unknown about how lawyers may interpret this proposed BIDEH language.

Mr. LAMALFA. Yes, so it is not settled at all.

Mr. STAUNTON. I would like to believe that the Kuchel Act has authorized a co-purpose on the refuge, but that has been challenged in many different courts' cases. And those were provided as reference.

Mr. LAMALFA. All right, thank you.

Mr. Guertin, as we are talking about these grasshopper infestations, what can be done to help by the Fish and Wildlife?

And are they actually coming from the refuges themselves, or how are they affecting it? It is devastating to the surrounding agri-

culture that is still there. What can you say about what can be done and the source?

Mr. GUERTIN. Thank you for your question, Mr. Chairman. I have seen some photos of these grasshoppers. It is quite frightening. I can imagine what they are doing to the landscape out there.

I think the bigger solution is getting more water onto the refuge. That will tamp down their ability to grow out there.

Also, while we don't have authority over them necessarily, we can certainly help out the local partners there to reach out to other local groups about some type of mechanical or spraying treatments or things like that.

But we would be glad to follow up with your office here in California with some options going forward.

Mr. LAMALFA. All right. I hear a lot of it being blamed on climate change and all that wide discussion here constantly.

What is the target, Mr. Guertin? What is the level of CO₂ in our atmosphere, percentage-wise?

Mr. GUERTIN. Off the top of my head, I will be honest, I cannot recite that for you right now, Mr. Chairman.

Mr. LAMALFA. Anybody else on the panel want to take a crack at that?

Mr. Haskett?

Don't have a number? OK, well, I do like to remind folks that when we constantly talk about CO₂ and such, which is essential to plant life, that it is only 0.04 percent of our atmosphere.

With that, I have run way over my time, but I appreciate the indulgence, and thanks so much to our panelists and all those in the audience for coming here today.

I want to thank the witnesses for their testimony and the Members, when we had them here, for their questions.

The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to these in writing. Under Committee Rule 3, members of the Committee must submit questions to the Subcommittee Clerk by 5 p.m. Eastern Time next Monday, April 15, Tax Day. The hearing record will be held open for 10 business days for these responses.

I ask unanimous consent to enter into the record documents received by the Committee. These documents include comments from the Family Farm Alliance, the State of Utah Department of Natural Resources, the Wyoming Game and Fish Department, the Western Association of Fish and Wildlife Agencies, and others.

Without objection.

If there is no further business, without objection, the Subcommittee stands adjourned.

[Whereupon, at 12:25 p.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Submissions for the Record by Rep. Bentz**American Exploration & Mining Association
Spokane Valley, WA**

March 4, 2024

Shannon Estenoz, Assist. Secretary for Fish and Wildlife and Parks
Katherine Harrigan, Div. of Natural Resources and Conservation Planning,
National Wildlife Refuge System
U.S. Fish and Wildlife Service
Public Comments Processing

Dear Ms. Harrigan and Assistant Secretary Estenoz:

The American Exploration & Mining Association (“AEMA”) appreciates the opportunity to share our concerns and comments on the proposed rule and proposed policy updates of the U.S. Fish and Wildlife Service (“FWS”), *National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health* (individually, the “Proposed Rule” and “Proposed Service Manual Update,” and collectively “BIDEH Updates”).¹

AEMA is a 129-year-old, 1,800-member national trade association representing the minerals industry with members residing in 46 U.S. states, 7 Canadian provinces or territories and ten other countries. AEMA is the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands, and represents the entire mining life cycle, from exploration to reclamation and closure. More than 80 percent of our members are small businesses or individuals who work for small businesses. Our members have extensive first-hand experience with exploring for mineral deposits, finding and developing mineral deposits, permitting exploration and mining projects, operating mines, reclaiming mine sites, and ensuring that exploration and mining projects comply with all applicable federal and state environmental laws and regulations. Indeed, AEMA’s members operate their respective exploration and mining activities in a responsible manner through a wide range of social and environmental conditions across the United States, and their operations are subject to extensive environmental evaluations at the project level to ensure resource protection through federal and state permitting actions. Moreover, our members extract the minerals necessary for renewable energy, electric vehicles, and modern technology.

AEMA acknowledges that the FWS has a statutory mandate to manage current National Wildlife Refuge System lands (“System Lands”) in a way that maintains the biological integrity, diversity, and environmental health (“BIDEH”).² However, AEMA has concerns that, if adopted as-is, the BIDEH Updates may have complex and far-reaching effects—that have not been fully evaluated—on our member mining companies, as well as various other sectors of the economy such as ranching, on both public and private lands. AEMA is concerned that such effects may be contrary to the statutes governing the National Wildlife Refuge System, public lands, and mining, and may additionally frustrate the Biden administration’s goals for promoting a renewable energy transition sourced with domestic minerals. Specifically, AEMA is concerned that the potential ramifications of the BIDEH Updates include:

1. blanketly applying BIDEH policies to an array of lands that the public does not understand to be a part of the National Wildlife Refuge System, including conservation easements;
2. impeding the exploration and development—on public and currently private land—of minerals that are essential for modern technology, including renewable energy and medical devices, through new acquisitions to the National Wildlife Refuge System;
3. effecting mineral withdrawals of public lands without complying with the statutory and regulatory processes for such withdrawals;

¹*National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health*, 89 Fed. Reg. 7345 (Feb. 2, 2024) (Docket No. FWS-HQ-NWRS-2022-0106, RIN 1018-BG78) (hereinafter “Proposed Rule”).

²See 16 U.S.C. § 668dd(a)(4)(B).

4. interfering in matters outside of the statutory scope of the National Wildlife Refuge System, including interfering in the planning and regulatory processes of *other* federal agencies and tribal, state, and local governments with respect to both public *and private* property; and
5. conflicting with the multiple-use mandate imposed by statute on public lands, as well as several other statutes that prioritize mineral development.

Further details and explanations as to AEMA's concerns and requests for clarification are included below.

I. SWEEPING AND UNIFORM APPLICATION OF BIDEH TO NEW LANDS

The BIDEH Updates blanketly and surreptitiously apply BIDEH policies to an array of lands that the public does not understand to be a part of the National Wildlife Refuge System, including conservation easements. AEMA is dually concerned that: (1) this application of BIDEH to land interests such as conservation easements is misleading to the public and obscures the public's ability to impact the full and true impacts of the BIDEH Updates; and (2) a one-size-fits-all approach ignores the unique needs of individual areas, including biological needs as well as the needs of local communities, local economies, and local governments, and consequently will degrade public relations.

The statute, Proposed Rule, Proposed Service Manual Update, and other FWS manuals and handbooks use varying terminologies to describe the lands to which BIDEH concepts apply, and use varying definitions of those terms. This variation is likely to cause confusion, and may also leave the public feeling deceived because it subsumes a broader array of lands into the BIDEH umbrella than at first meet the eye—including conservation areas and conservation easements managed by the FWS, the designation and acquisition of which FWS has recently prioritized.³ This is a far broader application of BIDEH than what the public would commonly understand to be the National Wildlife Refuge System.

The statute applies BIDEH to the administration of “the System.”⁴ The Proposed Rule applies BIDEH to “national wildlife refuges, both individually and as a network,” and to “refuge ecosystems and all their components across processes across multiple spatial scales.”⁵ The Proposed Service Manual Update applies its BIDEH management directives to “to all Refuge System units.”⁶ The statute and current regulations define “refuge” as “a designated area of land, water, or an interest in land or water within the System, but does not include Coordination Areas.”⁷ The “System,” in turn, is defined as “the National Wildlife Refuge System designated under [16 U.S.C. § 668dd(a)(1)],”⁸ which broadly includes “the various categories of areas that are administered by the Secretary for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas.”⁹ The FWS's Conservation Easement Handbook clarifies that the FWS considers “conservation easements” to be “subject to the same laws, regulations, and policies as any other real property that is part of the National Wildlife Refuge

³For example, the FWS established the Bear River Watershed Conservation Area in 2013, which approves the purchase of up to 920,000 acres of conservation easements in a 4.5-million-acre area of Idaho, Wyoming, and Utah, and 30 acres of conservation easements were added in 2016 as a “unit of the National Wildlife Refuge System.” See 81 Fed. Reg. 93951 (Dec. 22, 2016). In 2022, the FWS established the Lost Trail Conservation Area as a unit of the National Wildlife Refuge System, which includes 38,052 acres of conservation easements in Flathead and Lincoln counties, Montana, and up to 100,000 acres of conservation easements within the project boundary may be added. See 87 Fed. Reg. 62113 (Oct. 13, 2022). And in 2023, the FWS proposed the establishment of the Missouri Headwaters Conservation Area, which is a 5.7-million-acre area in Montana that approves the purchase of up to 250,000 acres of conservation easements. See *Proposed Missouri Headwaters Conservation Area*, U.S. Fish & Wildlife Service (last visited Feb. 29, 2024), <https://www.fws.gov/project/proposed-missouri-headwaters-conservation-area>.

⁴See 16 U.S.C. § 668dd(a)(4)(B).

⁵Proposed Rule, at 43 C.F.R. § 29.3 and § 29.3(a).

⁶Proposed Service Manual Update, § 3.2.

⁷16 U.S.C. § 668ee(11); see also 50 CFR § 25.12.

⁸16 U.S.C. § 668ee(14).

⁹16 U.S.C. § 668dd(a)(1); see also 50 CFR § 25.12 (“National Wildlife Refuge System, and System mean *all lands, waters, and interests therein administered by the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, coordination areas, and other areas for the protection and conservation of fish and wildlife including those that are threatened with extinction . . .*”)

System.”¹⁰ Further, the FWS Strategic Growth Policy expressly includes “conservation areas” in its use of the term “refuge.”¹¹ And the FWS webpage on “conservation areas” states that conservation areas are a “a type of national wildlife refuge that consists primarily or entirely of conservation easements on private lands.”¹²

Piecing those terms and definitions together, the BIDEH Updates would apply BIDEH to all lands in the System, which includes not only what the public commonly understands to be a “refuge,” but also all “other areas” managed by the FWS “for the protection and conservation of fish and wildlife,” which already includes millions of acres of conservation areas and conservation easements. The FWS has already designated 13 conservation areas,¹³ and has recently prioritized adding more, such as: (i) the Lost Trail Conservation Area that was added in 2022 as a unit of the National Wildlife Refuge System and includes 38,052 acres of conservation easements in Flathead and Lincoln counties, Montana, and up to 100,000 acres of conservation easements within the project boundary may be added;¹⁴ and (ii) the overwhelmingly large, 5.7-million-acre Missouri Headwaters Conservation Area in Montana that was proposed in 2023 and would allow the purchase of up to 250,000 acres of conservation easements.¹⁵ It is concerning that the BIDEH updates could lead to the FWS’s application of BIDEH to millions of acres of current, currently proposed, and future FWS conservation areas and conservation easements. This is a much farther-reaching application of BIDEH than what the public commonly understands to be a FWS refuge.

While AEMA acknowledges that FWS has a statutory mandate to manage System Lands in a way that maintains BIDEH,¹⁶ AEMA is concerned that the BIDEH Updates may deceive the public by roping in far more areas than what the public understands to be refuges. If the public does not fully understand where and how the BIDEH Updates would apply, then the public is unable to fully evaluate and meaningfully participate in the rulemaking process, which process is mandated to involve and meaningfully consider the public’s input. AEMA is further concerned that a blanket, nationwide application of BIDEH ignores the unique needs of individual areas, including biological needs as well as the needs of local communities, local economies, and local governments. Such a one-size-fits-all approach that takes away any local autonomy is likely to degrade trust between FWS and the local communities and local businesses companies who will be impacted the most by these policies. Moreover, AEMA is concerned that, when further examining how the BIDEH Updates plan to utilize BIDEH in the name of protecting System Lands, such broad application will significantly impede land uses such as mining and ranching, as discussed in more detail in the section below.

II. IMPEDING EXPLORATION AND DEVELOPMENT OF IMPORTANT MINERALS THROUGH EXPANSION OF THE NATIONAL WILDLIFE REFUGE SYSTEM

Not only do the BIDEH Updates implicitly apply BIDEH to a broad new array of lands that may not be commonly understood as National Wildlife Refuges, they also promote the addition of new lands to the System. AEMA acknowledges that FWS has a statutory mandate to manage System Lands in a way that maintains BIDEH,¹⁷ and AEMA understands this mandate with respect to what is commonly understood to include System Lands. But the BIDEH Updates push this mandate beyond the bounds of the statutory intent in affecting lands arguably outside the System and/or in emphasizing the addition of new lands to the System.

¹⁰ *Conservation Easement Handbook (Supplements 601 FW 6 (Administration of National Wildlife Refuge System Conservation Easements))*, at 9, NATIONAL WILDLIFE REFUGE SYSTEM, U.S. FISH & WILDLIFE SERVICE (October 2022), <https://www.fws.gov/sites/default/files/policy/files/ConservationEasementHandbook.pdf> (*hereinafter* Conservation Easement Handbook).

¹¹ *See Strategic Growth Policy, 602 FW 2*, U.S. FISH & WILDLIFE SERVICE (Sept. 4, 2014), <https://www.fws.gov/policy-library/602fw5>.

¹² *Conservation Area*, U.S. Fish & Wildlife Service, <https://www.fws.gov/glossary/conservation-area> (last visited Feb. 29, 2024).

¹³ *Conservation Area*, U.S. Fish & Wildlife Service, <https://www.fws.gov/glossary/conservation-area> (last visited Feb. 29, 2024).

¹⁴ *See* 87 Fed. Reg. 62113 (Oct. 13, 2022).

¹⁵ *See also supra* note 3.

¹⁶ *See* 16 U.S.C. § 668dd(a)(4)(B).

¹⁷ *See* 16 U.S.C. § 668dd(a)(4)(B).

Specifically, the Proposed Rule promotes the *expansion* of the National Wildlife Refuge System through “acquir[ing] lands when necessary to . . . ensure biological integrity, diversity, and environmental health” and “connect habitat.”¹⁸ The Proposed Rule’s repeated references to “connectivity,”¹⁹ “connect[ing] habitat,”²⁰ and conservation “across multiple spatial scales,”²¹ together with its instructions to pursue “appropriate actions” to address “threats to refuge resources [that] arise *outside refuge boundaries*,”²² further indicate the FWS’s intent to link currently separate National Wildlife Refuge System lands with each other by acquiring and adding the intervening lands to the System.

The Proposed Service Manual Update is even more replete with instructions to acquire and add new lands to the National Wildlife Refuge System. Specifically, it instructs the FWS to: promote “ecological connectivity” by “acquir[ing] lands to . . . ensure BIDEH”;²³ “take a *proactive* approach” to “acquiring” lands for “*enhancing* the BIDEH of the Refuge System at all spatial scales”;²⁴ create “connected, and intact habitats,” “habitat corridors, linkages, or contiguous blocks”;²⁵ “*maximize* the size of contiguous habitat, restore and maintain connectivity between blocks of habitats, and protect wildlife corridors”;²⁶ and “acquire additional lands to establish wildlife corridors that improve connectivity and allow species movement from one habitat to another in support of BIDEH.”²⁷ It also charges the Chief of the Refuge System with “[e]nsuring that the national land acquisition strategy for the Refuge System is designed to *enhance* the BIDEH of the Refuge System at all spatial scales,”²⁸ which further implies that the FWS intends to emphasize expansion of the Refuge System. And, like the Proposed Rule, the Proposed Service Manual Update instructs the FWS to take action to promote BIDEH not only on established “refuges” but also “associated ecosystems,”²⁹ “across multiple spatial scales,”³⁰ and address “events occurring off refuge lands”³¹ and “outside refuge boundaries.”³²

Although AEMA supports the protection of biological integrity, diversity, and environmental health, we oppose such a dramatic push to *expand* the National Wildlife Refuge System, which will immediately halt mineral exploration, prospecting, locating, and filing of mining claims on lands added to the System where the minerals are federally owned.³³ Further, to the extent the lands newly acquired for the System have non-federal mineral rights (e.g., conservation easements where the minerals are reserved for the landowner), even if exploration and development of non-federal minerals would be technically permissible, adding them to the System will have a chilling effect on such exploration and development by imposing more stringent limitations on surface occupancy and other regulatory restrictions on operations.³⁴ Indeed, the FWS’s Conservation Easement Handbook and Service Manual on the Administration of National Wildlife Refuge System Conservation Easements both instruct the FWS to, “whenever possible, include in the easement document authority for the Service to require and approve a permit to access any associated subsurface minerals.”³⁵

This expansion of the System is also likely to suppress mining outside of but near System Lands. This is because mineral operations typically need to be of a certain size to be economically feasible. And, unlike some other types of land uses like recreation, mining operations can’t simply shift to another location—the minerals

¹⁸ See Proposed Rule at 43 C.F.R. § 29.3(c)(2).

¹⁹ See Proposed Rule at 43 C.F.R. § 29.3(b).

²⁰ See Proposed Rule at 43 C.F.R. § 29.3(c)(2).

²¹ See Proposed Rule at 43 C.F.R. § 29.3(a).

²² See Proposed Rule at 43 C.F.R. § 29.3(c)(5) (emphasis added).

²³ See Proposed Service Manual Update, § 3.10(B).

²⁴ See Proposed Service Manual Update, § 3.10(B) (emphasis added).

²⁵ See Proposed Service Manual Update, § 3.10(B).

²⁶ See Proposed Service Manual Update, § 3.11(B)(2) (emphasis added).

²⁷ See Proposed Service Manual Update, § 3.10(B).

²⁸ See Proposed Service Manual Update, § 3.7, Table 3–1 (emphasis added).

²⁹ See Proposed Service Manual Update, § 3.5(C).

³⁰ See Proposed Service Manual Update, § 3.6(A)(1).

³¹ See Proposed Service Manual Update, § 3.15(A).

³² See Proposed Service Manual Update, § 3.19(E) (instructing the FWS to pursue “appropriate action” to address “threats to refuge resources [that] arise outside refuge boundaries.”)

³³ See 50 C.F.R. § 27.64 (“Prospecting, locating, or filing mining claims on national wildlife refuges is prohibited unless otherwise provided by law.”)

³⁴ See 50 C.F.R. § 29.32 (addressing non-federal mineral rights within the National Wildlife Refuge System).

³⁵ See Conservation Easement Handbook, § V(j); see also *Administration of National Wildlife Refuge System Conservation Easements*, 601 FW 6, at § V(i), p.8§, U.S. FISH & WILDLIFE SERVICE (Oct. 27, 2022), <https://www.fws.gov/policy-library/601fw6> (hereinafter “Conservation Easement Service Manual”).

are where the minerals are. Precluding mining on large, newly acquired areas of the Refuge System, including large conservation areas, may leave the remaining outside areas as legally available for mining, but practically and economically unavailable, particularly in light of the emphasis of the BIDEH Updates on interfering with neighboring land use planning.

Such an expansion of the National Wildlife Refuge System—and associated halting of new mineral development—is an extreme measure that is unnecessary to protect biological integrity, diversity, and environmental health. AEMA members’ mining activities are subject to a comprehensive suite of regulations designed to protect the natural environment, wildlife, and human health, and AEMA members are committed to responsible mineral development and operations. Enforcing existing environmental regulations and allowing responsible, compliant companies to continue their lawful activities is a better-reasoned approach than the proposed wholesale elimination of mining through expansion of System Lands.

Moreover, expansion of the National Wildlife Refuge System with the aim of protecting fish and wildlife against the impacts of climate change could actually have the opposite effect by hindering the transition to renewable energy. Mining for minerals like copper that are designated by the U.S. Department of Energy as “critical materials for energy”—meaning they are deemed essential to energy technologies and have a high-risk for supply chain disruption³⁶—are necessary to facilitate a transition to a clean energy economy. Indeed, such minerals are commonly used in electric utility equipment, electric vehicles, solar and wind power systems, and building construction, among other things. Many other minerals, such as gold and silver, are crucial in making technological advancements, such as in many electronic devices as well as in medical equipment. Likewise, the fifty minerals designated by the United States Geological Survey as “critical minerals”³⁷ are important for the nation’s technological progress.

Currently, the United States is heavily reliant on foreign countries for such minerals and materials that are essential to modern technology and the clean energy transition. This reliance on imported materials presents the risk of uncertainty of availability and pricing of materials necessary to meet our domestic technological needs and environmental goals. In addition, outsourcing our nation’s mineral needs can mean that mining takes place in countries that lack similarly rigorous environmental standards for mining as the United States, which may lead to avoidable environmental degradation in those countries.

Precluding domestic production of critical materials, critical minerals, and other important hard-rock minerals via the BIDEH Updates would not only frustrate the goals of the Biden administration to shift to clean energy, tackle climate change, and promote environmental stewardship—it would also run counter to the Biden administration’s goals to invest in domestic jobs, domestic production and manufacturing, and the U.S. economy. Specifically, Executive Order 14017, “On America’s Supply Chains,” makes it a presidential priority to “revitalize and rebuild domestic manufacturing” and “domestic production,” and directs cabinet officials to develop policies to “sustainably reshore[] supply chains,” “develop[] domestic supplies,” and encourage domestic “investment in critical goods and materials.” In addition, the Inflation Reduction Act incentivizes electric vehicle batteries and solar and wind projects made with domestic content or domestic supply chains.³⁸ Because the BIDEH Updates would facilitate putting both public and private lands off-limits to mineral exploration and development, it consequently could thwart President Biden’s stated goals to strengthen domestic critical minerals supply chains in order to lessen the Nation’s dependency on foreign minerals.

III. UNAUTHORIZED MINERAL WITHDRAWALS

The effect of the BIDEH Updates would be to either preclude or significantly hinder mining and mineral exploration on a growing area of land, through the proposals’ encouragement of adding lands to the National Wildlife Refuge System. To the extent that such additions to the National Wildlife Refuge System come from land that is currently managed by the U.S. Bureau of Land Management (“BLM”) or U.S. Forest Service (“Forest Service”) and open to mineral exploration and development, the effect of adding such land to the National Wildlife Refuge System is

³⁶ See *What are Critical Materials and Critical Minerals?*, U.S. Dep’t of Energy, <https://www.energy.gov/cmm/what-are-critical-materials-and-critical-minerals> (last visited Jan. 10, 2024).

³⁷ See 2022 Final List of Critical Minerals, 87 Fed. Reg. 10381 (Feb. 24, 2022).

³⁸ The Inflation Reduction Act of 2022, Pub. L. No. 117-169, 136 Stat. 2001.

a mineral withdrawal and/or a conveyance of public lands, both of which implicate a suite of statutory and regulatory procedural requirements.

First, the Federal Land Policy and Management Act (“FLPMA”) requires that, when the Secretary of the Interior conveys title to public lands, generally only the *surface* may be conveyed, while the minerals and “the right to prospect for, mine, and remove the minerals” must be reserved.³⁹

Second, minerals belonging to the United States, including those underlying lands managed by the BLM land and Forest Service land, are statutorily required to allow mineral exploration and mining,⁴⁰ unless the minerals are “withdrawn” after, and only after, following one of four procedural pathways:

1. *Administrative Withdrawals.* Pursuant to FLPMA, the Secretary or Assistant Secretary of Interior may withdraw public lands from mining and mineral exploration, but subject to limitations and following specific procedures.⁴¹ Secretarial withdrawals must be published in the Federal Register⁴² and cannot take effect until after providing an “opportunity for a public hearing.”⁴³ In addition, withdrawals proposed to last more than twenty (20) years or comprise more than 5,000 acres in aggregate must generally be reported to Congress prior to taking effect.⁴⁴
2. *Presidential Withdrawals.* The President of the United States may, by Executive Order or Presidential Proclamation under the authority of the Antiquities Act of 1906 withdraw public lands from mineral exploration and to designate landmarks, historic and prehistoric structures, and other objects of historic or scientific interest.⁴⁵
3. *Congressional Withdrawals.* Congress may, through duly enacted legislation, withdraw public land from mineral exploration and mining by, for example, designating areas as Wilderness areas, National Parks, or Wild and Scenic Rivers.
4. *Federal Power Act Withdrawals.* The Federal Power Act provides for withdrawals for certain hydroelectric power developments under the authority of the Federal Energy Regulatory Commission (“FERC”).

Unless withdrawn pursuant to one of the above procedures, “all valuable mineral deposits in lands belonging to the United States . . . shall be free and open to exploration”⁴⁶ Therefore, the BIDEH Updates should be amended to clarify that if FWS intends to acquire into the National Wildlife Refuge System any public lands that are currently open to mineral exploration, such acquisitions and mineral withdrawals can only be effected after following the statutory and regulatory procedures for mineral withdrawals.

IV. INTERFERENCE IN LOCAL, STATE, AND FEDERAL MATTERS OUTSIDE THE STATUTORY SCOPE OF THE NATIONAL WILDLIFE REFUGE SYSTEM

AEMA acknowledges that the Secretary, through the FWS, is statutorily tasked with managing “the System” in way that ensures a number of specific goals, including but not limited to: maintenance of the BIDEH of the System; “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

³⁹ See FLPMA Section 209, 43 U.S.C. § 1719. There is a limited exception for when the surface owner is or will be a non-Federal entity, in which case the Secretary may convey the minerals if s/he makes the findings that: “(1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.” *Id.* This exception does not apply to conveyances to another federal entity.

⁴⁰ See 30 U.S.C. § 22 (“[A]ll valuable mineral deposits in lands belonging to the United States . . . shall be free and open to exploration”).

⁴¹ See FLPMA Section 204, 43 U.S.C. § 1714.

⁴² See FLPMA Section 204(b), 43 U.S.C. § 1714(b).

⁴³ See FLPMA Section 204(h), 43 U.S.C. § 1714(h). Emergency withdrawals are excepted from the hearing requirement. *See id.*

⁴⁴ See FLPMA Section 204(c), (d), 43 U.S.C. § 1714(c), (d). There is a limited exception for withdrawals necessitated by “emergency,” which withdrawals must still be reported to Congress within three months after taking effect and can only last for three years. *See* FLPMA Section 204(e), 43 U.S.C. § 1714(e).

⁴⁵ Pub. L. No. 59-209, 34 Stat. 225 (June 8, 1906) (currently codified at 54 U.S.C. §§ 320301-320303).

⁴⁶ 30 U.S.C. § 22.

located”; and “timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies during the course of acquiring and managing refuges.”⁴⁷

But the BIDEH Updates stretch the boundaries of these statutory authorizations and positions FWS as the aggressive landowner in the neighborhood who will soon wear out its welcome. Specifically, the Proposed Rule instructs FWS to pursue “appropriate actions” to address “threats to refuge resources [that] arise *outside refuge boundaries*.”⁴⁸ The Proposed Service Manual Update likewise instructs the FWS to take action to promote BIDEH not only on established “refuges” but also “associated ecosystems,”⁴⁹ “across multiple spatial scales,”⁵⁰ and address “events occurring *off refuge lands*”⁵¹ and “*outside refuge boundaries*.”⁵² The Proposed Service Manual Update even goes so far as to have an entire section on actions the FWS should take to protect “BIDEH from actions *outside of refuges*” and “events occurring *off refuge lands*.”⁵³ It instructs Refuge managers, with respect to “events occurring *off-refuge*,” to “regularly monitor land use proposals, changes to *adjacent lands*, and *external activities* for their potential impacts to the BIDEH of ecosystems that include refuges,” and to “engage constructively with the broader community” to “encourage compatible adjacent land uses and seek to avoid and mitigate potential adverse impacts on refuge resources by actively participating in the planning and regulatory processes of other Federal agencies and Tribal, State, and local governments having jurisdiction over public or private property affecting, or affected by, the refuge.”⁵⁴ While this language might seem initially benign, the instructions continue: “If . . . a decision is made or is imminent that will result in unacceptable impacts on refuge resources, *we may take action within the legal authorities available* . . .”⁵⁵

In other words, under the BIDEH Updates, the FWS may bring legal action against landowners or local governments in the vicinity of System Lands, which could be in the vicinity of tens of millions of acres of conservation easements, conservation areas, and other property interests that the FWS has acquired or plans to acquire for conservation purposes. This has the potential to significantly disrupt the FWS’s relationships with landowners and local governments and disrupt land uses like mining that are important to our nation’s economy and the functioning of modern technology.

V. CONFLICTING WITH THE STATUTORY MULTIPLE-USE MANDATE FOR PUBLIC LANDS AND STATUTES PRIORITIZING NATIONWIDE MINERAL DEVELOPMENT

As discussed above, the BIDEH Updates direct the FWS to acquire new lands to add to the National Wildlife Refuge System as well as interfere with other agencies’ planning processes for lands outside of the Refuge System. This includes “actively participating in the planning and regulatory processes of other Federal agencies and Tribal, State, and local governments” in the vicinity of National Wildlife Refuges.⁵⁶ Given that many System Lands, including conservation easements, are in the vicinity of public lands managed by the BLM and Forest Service, the directive to promote BIDEH outside of refuges and in other agencies’ planning process conflicts with the statutory mandates for the federal government to manage public lands for “multiple uses,” including mining. Specifically, FLPMA makes it the policy of the United States to manage public lands “on the basis of multiple use and sustained yield”⁵⁷ and “in a manner which recognizes the Nation’s need for domestic sources of minerals . . . from public lands.”⁵⁸ Similarly, the Multiple-Use and Sustained Yield Act (“MUSY”) directs that the surface of national forests be managed and developed “for multiple use and sustained yield.”⁵⁹ FLPMA defines “multiple use” to include “a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources,

⁴⁷ 16 U.S.C. § 668dd(a)(4).

⁴⁸ See Proposed Rule at 43 C.F.R. § 29.3(c)(5) (emphasis added).

⁴⁹ See Proposed Service Manual Update, § 3.5(C).

⁵⁰ See Proposed Service Manual Update, § 3.6(A)(1).

⁵¹ See Proposed Service Manual Update, § 3.15(A) (emphasis added).

⁵² See Proposed Service Manual Update, § 3.19(E) (instructing the FWS to pursue “appropriate action” to address “threats to refuge resources [that] arise outside refuge boundaries.”)

⁵³ See Proposed Service Manual Update, § 3.15

⁵⁴ See Proposed Service Manual Update, § 3.15(A) (emphasis added).

⁵⁵ See Proposed Service Manual Update, § 3.15

⁵⁶ See Proposed Service Manual Update, § 3.15(A).

⁵⁷ FLPMA Section 102(a)(7), 43 U.S.C. § 1701(a)(7).

⁵⁸ FLPMA Section 102(a)(12), 43 U.S.C. § 1701(a)(12).

⁵⁹ Multiple-Use and Sustained Yield Act of 1960, Section 2, 16 U.S.C. § 529.

including . . . minerals.”⁶⁰ FLPMA additionally designates “mineral exploration and production” as a “principal or major use” of public lands, along with domestic livestock grazing, fish and wildlife development and utilization, production, rights-of-way, outdoor recreation, and timber production.⁶¹

Moreover, FLPMA and multiple other statutes emphasize that mineral development is a national priority. Specifically, FLPMA directs that “public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals . . . from public lands.”⁶² Similarly, the Mining and Minerals Policy Act of 1970 (“MMPA”), declares that “it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs . . . including all minerals and mineral fuels including oil, gas, coal, oil shale and uranium.”⁶³ In addition, the National Materials and Minerals Policy, Research and Development Act of 1980 expressly directs the Secretary of Interior to act immediately to attain the goals set forth in the MMPA, and it calls for the Executive Office to promote goals of the MMPA within the various departments and agencies.⁶⁴

It is difficult to see how these statutes prioritizing mineral development nationwide—on both public and private land—and additionally directing the BLM and Forest Service to manage public lands for multiple-uses (which includes allowing mining and mineral exploration) can be coalesced with the FWS’s policy of BIDEH, the restrictions on mineral exploration that implicitly come with BIDEH, and the BIDEH Updates’ elimination and/or hindering of mining by promoting the aggressive addition of lands into the National Wildlife Refuge System.

CONCLUSION

AEMA acknowledges that the FWS must manage System lands to maintain their BIDEH. However, we are concerned that the BIDEH Updates will be used by the FWS to go beyond the agency’s statutory mandate to interfere with land uses outside of the System, aggressively add new lands to the System, and impede exploration and mining of minerals that are important to this nation’s economy, clean energy transition, and modern technology, and may otherwise have complex and far-reaching effects that have not been fully evaluated by the public on multiple sectors of the economy. AEMA accordingly requests that the Proposed Rule and Proposed Service Manual Update be amended and significantly scaled-back.

Sincerely,

MARK COMPTON,
Executive Director

⁶⁰ FLPMA Section 103(c), 43 U.S.C. § 1702(c).

⁶¹ FLPMA Section 103(l), 43 U.S.C. § 1702(l).

⁶² 43 U.S.C. § 1701(a)(12).

⁶³ 30 U.S.C. § 21(a).

⁶⁴ See generally 30 U.S.C. §§ 1601-1605.

Montana Mining Association

March 4, 2024

Shannon Estenoz, Assist. Secretary for Fish and Wildlife and Parks
 Katherine Harrigan, Div. of Natural Resources and Conservation Planning,
 National Wildlife Refuge System
 U.S. Fish and Wildlife Service
 Public Comments Processing

Re: Comments to Proposed Rule (50 C.F.R. 29.3) and Policy Updates (601 FW 3)

Dear Ms. Harrigan and Assistant Secretary Estenoz:

The Montana Mining Association (“MMA”) is an industry organization representing the mining community throughout the State of Montana. MMA’s mission promotes the responsible mining of critical and important metal and mineral resources within Montana for purposes of furthering energy independence, combating climate change, and feeding the supply chains of our country. This mission includes engaging with federal agencies as they craft policies for land use and natural resource planning, as well as advocacy at the agency and executive level on behalf of the mining industry. In this capacity, MMA is concerned with the United States Fish & Wildlife Service (“FWS”)’s proposed “biological integrity, diversity, and environmental health” (“BIDEH”) rule and associated policy updates (together, “Proposed Rule and Policy”). We believe the Proposed Rule and Policy, while well intentioned, will negatively affect the ability for existing mines to expand and/or continue to develop, and it will stymie future mineral exploration or development.

As a preliminary matter, we note that MMA is not opposed to conservation. On the contrary, MMA believes that conservation and mineral development are far from being mutually exclusive. As Congress intended, there is room for multiple uses on public lands, without blocking mining and without halting conservation efforts. Along these lines, private landowners and interest-holders have shown their ingenuity and the ability to conserve wildlife while conducting mineral operations on their own properties. The Proposed Rule and Policy, however, would have negative consequences for multiple use efforts. It would effectively block mineral exploration and development on lands managed by FWS, lands included within the agency’s broadly designated conservation areas, and lands linked or near any portion of the FWS refuge system. Consequently, MMA is opposed to the Proposed Rule and Policy, as drafted.

I. The Proposed Rule and Policy is overbroad.

As drafted, the Proposed Rule and Policy is overly broad and would apply to lands and property interests which the public would not typically consider as part of the National Wildlife Refuge System (“NWRS”) (e.g., conservation areas and easements). In this respect, we note that the Proposed Rule and Policy and other FWS policy manuals use a variety of words and phrases to describe the lands and interests subject to BIDEH management—none of which are consistent and few of which are defined. The result of these inconsistent definitions is a strong likelihood that the agency will apply the Proposed Rule and Policy far beyond the original intent of Congress.

The Proposed Rule and Policy states that it would apply BIDEH to “national wildlife refuges, both individually *and as a network*,” and to “refuge *ecosystems and all their components* across processes across multiple spatial scales.”¹ The associated policy manual confirms BIDEH would be applied to “to all Refuge System units.”² By statute, a “refuge” is “a designated area of land, water, or an interest in land or water within the System, but does not include Coordination Areas.”³ The “System,” in turn, is defined as “the National Wildlife Refuge System designated under [16 U.S.C. § 668dd(a)(1)],”⁴ which broadly includes “the various categories of areas that are administered by the Secretary for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction,

¹ Proposed Rule at 43 C.F.R. § 29.3 and § 29.3(a) (emphasis added).

² Proposed Service Manual Update, § 3.2.

³ 16 U.S.C.S. § 668ee(11); *see also* 50 CFR § 25.12.

⁴ 16 U.S.C.S. § 668ee(14).

wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas.”⁵

Clearly, the Proposed Rule and Policy would apply to all NWRS lands, which includes refuges and all “other areas” managed by the FWS. However, based on the broad and inconsistent definitions used, it appears conservation areas and similarly designated areas would be encompassed as well. To this point, we note that FWS asserts that the term “other areas” includes conservation areas and easements alike. Indeed, the FWS Strategic Growth Policy expressly includes “conservation areas” in its use of the term “refuge.”⁶ Because “conservation area” is largely undefined in the underlying federal laws, FWS acts as though it is not bound to a specific definition, and would be free to interpret the phrase as narrowly or broadly as it sees fit. This creates problems where conservation areas encompass vast amounts of federal and public lands managed by other agencies with conflicting policies and management plans. Despite other management agencies and interests, the FWS Conservation Easement Handbook asserts that “conservation easements . . . are subject to the same laws, regulations, and policies as any other real property that is part of the National Wildlife Refuge System.”⁷

The applicability of the Proposed Rule and Policy to conservation areas and easements is concerning. For example, just this past year, FWS proposed the establishment of the Missouri Headwaters Conservation Area (“MHCA”) in Montana. As proposed, the MHCA would encompass approximately 5.8 million acres comprised of county, state, federal, and privately held interests, and would include the entirety of Beaverhead County, the majority of Madison County, and large portions of Jefferson, Silver Bow, and Deer Lodge Counties. If established, the MHCA would become the largest conservation area within Montana. With respect to the MHCA, this Proposed Rule and Policy would not only restrict extractive activities on NWRS lands⁸ but also empower FWS to police activities occurring on adjacent lands and, arguably, any lands associated with the conservation area.⁹ Consequently, if the MHCA is established, the Proposed Rule and Policy would permit FWS to apply BIDEH concepts, directly or indirectly, to a landmass larger than the State of Connecticut—thereby affecting the ability of existing mines to expand or continue operations and potentially forestalling future mineral development altogether.

II. The Proposed Rule and Policy would undermine critical mineral development.

The Proposed Rule and Policy wrongfully encourages an unprecedented expansion of the NWRS. Specifically, it promotes this expansion by “acquir[ing] lands when necessary to . . . ensure biological integrity, diversity, and environmental health” and “connect habitat.”¹⁰ In this regard, the Proposed Rule and Policy’s repeat references to “connectivity,”¹¹ “connect[ing] habitat,”¹² and conservation “across multiple spatial scales,”¹³ together with its instructions to pursue “appropriate actions” to address “threats to refuge resources [that] arise *outside refuge boundaries*,”¹⁴ demonstrate FWS’s intent to link and expand the NWRS through the acquisition of additional lands and affect adjacent properties. The associated policy manual is even more explicit—instructing FWS to: promote “ecological connectivity” by “acquir[ing] lands to . . . ensure BIDEH”;¹⁵ “take a *proactive* approach” to “acquiring” lands for “*enhancing* the BIDEH of the Refuge System at all spatial

⁵ 16 U.S.C. §§ 668dd(a)(1); *see also* 50 CFR § 25.12 (“National Wildlife Refuge System, and System mean *all lands, waters, and interests therein administered by the U.S. Fish and Wildlife Service* as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, coordination areas, and *other areas for the protection and conservation of fish and wildlife* including those that are threatened with extinction . . .”).

⁶ *See Strategic Growth Policy, 602 FW 2*, U.S. FISH & WILDLIFE SERVICE (Sept. 4, 2014), <https://www.fws.gov/policy-library/602fw5>.

⁷ *Conservation Easement Handbook (Supplements 601 FW 6 (Administration of National Wildlife Refuge System Conservation Easements)*, at 9, NATIONAL WILDLIFE REFUGE SYSTEM, U.S. FISH & WILDLIFE SERVICE (October 2022), <https://www.fws.gov/sites/default/files/policy/files/ConservationEasementHandbook.pdf> (*hereinafter* Conservation Easement Handbook).

⁸ Proposed Service Manual Update, § 3.10(B)(4) (“We avoid resource intensive activities and uses such as logging or livestock grazing”).

⁹ *See generally* Proposed Service Manual Update, § 3.15.

¹⁰ *See* Proposed Rule at 43 C.F.R. § 29.3(c)(2).

¹¹ *See* Proposed Rule at 43 C.F.R. § 29.3(b).

¹² *See* Proposed Rule at 43 C.F.R. § 29.3(c)(2).

¹³ *See* Proposed Rule at 43 C.F.R. § 29.3(a).

¹⁴ *See* Proposed Rule at 43 C.F.R. § 29.3(c)(5) (emphasis added).

¹⁵ *See* Proposed Service Manual Update, § 3.10(B).

scales”;¹⁶ create “connected, and intact habitats,” “habitat corridors, linkages, or contiguous blocks”;¹⁷ “maximize the size of contiguous habitat, restore and maintain connectivity between blocks of habitats, and protect wildlife corridors”;¹⁸ and “acquire additional lands to establish wildlife corridors that improve connectivity and allow species movement from one habitat to another in support of BIDEH.”¹⁹ The result of these directives is a blank check, which wrongfully allows the agency to expand its reach and authority.

MMA opposes such a dramatic expansion of the NWRS. With respect to federally owned minerals, mineral exploration, prospecting, and the location of mining claims, these activities would be immediately halted on newly acquired or affected lands.²⁰ To the extent minerals are privately owned (e.g., grants of surface rights or conservation easements where landowners have specifically reserved the minerals), even where mining is legally permissible, existing regulations would impose restrictive burdens and chill any efforts to explore and develop the mineral estate responsibly.²¹ Notably, FWS is instructed to exert its authority when seeking and drafting conservation easements, by, “whenever possible, includ[ing] in the easement document authority for the Service to require and approve a permit to access any associated subsurface minerals.”²² Such language disrupts the general rights of parties in split estate situations and creates unpredictability for the application of state and local laws balancing the interests of private ownership.

In this regard, we note that under Montana law, when ownership of surface and mineral estates are split, the holder of the mineral estate must obtain approval from the surface owner before it can commence any mineral development or disturb the property.²³ FWS regulations restrict the exploration, development, and production of private minerals by mandating that such activities “prevent damage, erosion, pollution, or contamination to Service-administered lands, waters, facilities, and to wildlife thereon,” “to the greatest extent practicable.”²⁴ In addition to these standards, the request for surface owner approval would trigger, at the least, an environmental assessment under the National Environmental Policy Act.²⁵ Expansion of the NWRS is also likely to suppress mining on adjacent lands. Unlike other types of uses (e.g., recreation, hunting, fishing, grazing, etc . . .), mining operations cannot simply move to another location—the minerals are where they are. As seen with the proposed MHCA, expansion of the NWRS creates an increasing likelihood that access to mineral interests not subject to FWS jurisdiction will be effectively blocked by NWRS lands. Mineral and other operations which occur on checkerboard lands or locations involving multiple interests within the same section would be effectively blocked as well.

Expansion of the NWRS—and the associated interference with mineral and other types of development—is an extreme measure that is ultimately unnecessary to protect BIDEH. MMA members’ activities are already subjected to a comprehensive suite of state and federal statutes and regulations, all of which protect the natural environment, wildlife, and human health, and these members are committed to responsible mineral development and operations. In furtherance of these goals, many of MMA’s members engage in good samaritan cleanup efforts and go above and beyond their legal requirements. Enforcing existing environmental regulations and allowing responsible, compliant companies to continue their lawful activities is better than the wholesale elimination or obstruction of mining. Moreover, contrary to the agency’s assertions, expansion of the NWRS would actually have an adverse effect on efforts to reduce climate change. Gold, silver, and copper and many other minerals have been designated by the U.S. Department of Energy as “critical materials for energy”—i.e., they are essential for energy technologies and have a

¹⁶ See Proposed Service Manual Update, § 3.10(B) (emphasis added).

¹⁷ See Proposed Service Manual Update, § 3.10(B).

¹⁸ See Proposed Service Manual Update, § 3.11(B)(2) (emphasis added).

¹⁹ See Proposed Service Manual Update, § 3.10(B).

²⁰ See 50 C.F.R. § 27.64 (“Prospecting, locating, or filing mining claims on national wildlife refuges is prohibited unless otherwise provided by law.”).

²¹ See 50 C.F.R. § 29.32 (addressing non-federal mineral rights within the National Wildlife Refuge System).

²² See Conservation Easement Handbook, § V(j); see also *Administration of National Wildlife Refuge System Conservation Easements*, 601 FW 6, at § V(i), p.8, U.S. FISH & WILDLIFE SERVICE (Oct. 27, 2022), <https://www.fws.gov/policy-library/601fw6> (hereinafter “Conservation Easement Service Manual”).

²³ See MCA § 82-2-303.

²⁴ See 50 CFR § 29.32.

²⁵ See *San Luis Valley Ecosystem Council v. U.S. Fish and Wildlife Service*, 657 F.Supp.2d 1233 (Colo. Dist. 2009).

high-risk for supply chain disruption.²⁶ These and other minerals are also essential to fuel the country's transition to a green energy economy.²⁷ Restricting mining and mineral development in areas where these minerals are found makes it more difficult for the United States to obtain materials necessary to develop renewable energy alternatives. More importantly, it results in the United States outsourcing its mineral needs to other countries (like China) which do not adhere to the same rigorous environmental standards as MMA's membership. In this regard, the contemplated expansion is likely to be counterproductive.

III. The Proposed Rule and Policy ignores existing local efforts to manage BIDEH.

The Proposed Rule and Policy is a one-size-fits-all, top-down approach for BIDEH management which ignores the role that local stakeholders already play in management activities and their efforts to conserve species habitat and promote BIDEH. While the Proposed Rule and Policy extols the virtue of "coordination" with local stakeholders, it incorporates an assumption that local efforts to advance BIDEH are insufficient and require more rigid federal oversight. The Proposed Rule and Policy fails to account for local efforts and local interests. Using the proposed MHCA as an example—we note that public lands make up more than sixty percent (60%) of the lands within the proposed conservation area.²⁸ As noted above, these lands are already subject to significant state and federal regulations designed to prevent environmental degradation. Additionally, of the remaining private lands, we note that large portions of the conservation area are already subject to state and private conservation easements which, arguably, already promote BIDEH and its purposes.²⁹ More broadly, Montana Fish Wildlife & Parks has engaged, and continues to engage, in the successful conservation and management of critical keystone species and their habitat, and the state agency has been in constant coordination with FWS. At best, the Proposed Rule and Policy duplicates efforts already being undertaken locally. At worst, it amounts to a power grab by supplanting local efforts and subverting local autonomy.

IV. The Proposed Rule and Policy conflicts with multiple use requirements and federal minerals policy.

Contrary to numerous federal statutes, in which Congress has prioritized mining and instructed agencies to promote the same, the Proposed Rule and Policy fails to account for and allow mineral development. In the Mining and Minerals Policy Act of 1970 ("MMPA"), Congress declared "it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs . . . including all minerals and mineral fuels including oil, gas, coal, oil shale and uranium". 30 U.S.C. 21(a). Moreover, the MMPA expressly provides the Secretary of Interior with the responsibility to carry out MMPA policies.

Furthering Congress' mandated policy of prioritizing mineral development, the Federal Land Policy and Management Act of 1976 ("FLPMA") establishes that it is the authority of the U.S. Department of Interior and BLM to manage federal lands and federal mineral interests. 43 U.S.C. 1701 et seq. Under FLPMA, "public lands [are to] be managed in a manner which recognizes the Nation's need for domestic sources of minerals . . . from public lands" in further implementation of the MMPA. 43 U.S.C. 1701(a)(12). Additionally, the National Materials and Minerals Policy, Research and Development Act of 1980 expressly directs the Secretary to act immediately to attain goals set forth in the MMPA, and calls on the Executive Office to promote the MMPA within the federal government's various departments and agencies. *See generally* 30 U.S.C. 1601-1605.

²⁶ See *What are Critical Materials and Critical Minerals?*, U.S. Dep't of Energy, <https://www.energy.gov/cmm/what-are-critical-materials-and-critical-minerals> (last visited Jan. 10, 2024).

²⁷ See 2022 Final List of Critical Minerals, 87 Fed. Reg. 10381 (Feb. 24, 2022).

²⁸ See, e.g., U.S. Fish & Wildlife Serv., *Proposed Missouri Headwaters Conservation Area Map* (Sept. 15, 2023), <https://www.fws.gov/sites/default/files/documents/Landowner-Public-Meeting-09-14-2023.pdf>.

²⁹ Approximately 25% of Madison County and 19% of Beaverhead County private lands are already under conservation easements.

The Proposed Rule and Policy fails to provide a means for mineral development, as mandated by the above policies and statutes, and it stands in direct conflict with mineral development. Despite the lack of statutory authority for such restrictions, it is well understood that mineral development is not allowed on federally owned lands within the NWRS. The Proposed Rule and Policy further alienates the prospect of mineral development by requiring additional analysis by the agency—ensuring BIDEH is furthered by the action—in addition to making a determination that a proposed action is compatible with the refuge purpose and NWRS mission. These disparities are especially concerning given the vast amount of federal lands included in FWP's conservation area designations (see MHCA discussion above). Clearly, the Proposed Rule and Policy stands to impact lands which are not typically understood to constitute wildlife refuges—including private lands and other public lands. These changes, therefore, put FWS in conflict with both private ownership as well as other federal agencies trying to advance congressional policies on public lands.

V. Conclusion.

The overbreadth, substantive deficiencies, and inherent consequences of the Proposed Rule and Policy cause MMA serious concern. Further, it is unnecessary. For the reasons discussed above, we ask that FWS abandon the Proposed Rule and Policy as drafted.

Regards,

MATT VINCENT,
Executive Director

Montana Natural Resource Coalition

March 4, 2024

U.S. Fish and Wildlife Service
Falls Church, VA

Re: National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health (BIDEH) 50 CFR Part 29 and 601 FW 3

Dear Assistant Secretary Shannon Estenoz:

The Montana Natural Resource Coalition (MtNRC) is a network of eighteen (18) counties who have county governmental jurisdiction over 53,814 square miles in the State of Montana. MtNRC's mission is to inform federal agency rulemaking pertaining to land use, natural resource planning, and advocating on behalf of our membership. Current MtNRC members include Beaverhead, Blaine, Fergus, Garfield, Liberty, Madison, McCone, Musselshell, Pondera, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Sweet Grass, Valley, and Wibaux Counties.

MtNRC has already submitted comments to United States Fish and Wildlife Service (USFWS) on two other processes regarding refuge management. Some of the procedural issues and other concerns we identified relate to the current proposal, therefore we are including those comments as part of this submittal. One thing we noted was the failure to consult with and coordinate USFWS policy and management development and decisions with local governments and adjacent property owners. As for this current proposed BIDEH regulation and policy changes our potentially affected member counties were not provided with any advance notice.

The USFWS has decided to lump a policy revision to their manual (601 FW 3) and inserting new BIDEH regulations into the code of federal regulations (CFR) in a single process. Though these items correlate they should be separate processes in order to provide utility to the commenting public. The USFWS has not adequately demonstrated at the unit level that climate change and anthropogenic stressors are indeed transforming the ecological function of habitats on individual refuge systems.

- The Climate-Policy Agenda (CPA) is deficient in that it fails to comply with the Data Quality Act standards for scientific information, and inappropriately relies upon top-down executive directives and international guidance while significantly diminishing intergovernmental coordination with political subdivisions of the United States.
- The CPA agenda has resulted in a fragmented public record, and diminished the role, power, and authority of State and local governments by removing parity they have in land-use planning.
- USFWS proposed policies fail to consider interagency land use planning conflicts and impacts to private property and local governments by imposing the expansion of refuge boundaries and prioritizing pre-human conditions and ecosystem corridors.¹
- The proposed Rule does not contain peer reviewed scientific information, data, articles, and/or other substantive, high integrity, reproducible scientific information that would allow MtNRC county governments to understand the need, purpose, and foreseeable impacts of the proposed Rule.
- The administrative record for the proposed Rule does not contain examples of climate change or invasive species that would allow MtNRC members to conclude why the BIDEH regulations are necessary.
- The BIDEH as proposed prioritizes management that would further pressure compatible uses on individual refuges which have long established compatible and historic use.²

¹Federal Register/Vol. 89, No. 23/Friday, February 2, 2024/Proposed Rules—“*Historical conditions* means composition, structure, and function of ecosystems that **existed prior to ecological degradation caused by anthropogenic change**, based on best available scientific and historical information.” (all bold, emphasis ours)

²“This proposed language would untether current and future management actions from sustaining historical conditions that may no longer be possible on many refuges,” the FWS said.

- The proposed BIDEH Rule in conjunction with the Missouri Headwaters Conservation Area and the land planning policy changes constitute a group of concerted efforts³ by USFWS which poses unassessed impacts on the state and counties which contain or border the refuge systems.

Background

On September 15th of 2023 the United States Fish and Wildlife Service (USFWS) issued a proposed rule on the Federal Register to update planning policies, 602 FW 1-4,⁴ for the National Wildlife Refuge System (Refuge System). The purpose of these policy updates is stated to modernize the Refuge System's management by incorporating landscape conservation plans and consideration of climate change and other anthropogenic forces in refuge management. Neither landscape conservation planning, nor climate change and other anthropogenic forces are mentioned within the National Wildlife Refuge System Improvement Act.⁵

We identified in our comment on this proposed rule,

“ . . . that it is clear that USFWS and their partners desire to apply landscape scale ecoregional planning which could reach far outside of wildlife refuge boundaries. The fact that the proposed policy would allow Service partners to develop landscape plans which delineate ecoregional units outside of refuge boundaries in order to inform refuge planning is concerning to adjacent property owners and local governments with special expertise and jurisdiction by law.”

On September 20th of 2023 the USFWS published the proposed Missouri Headwaters Conservation Area, which as proposed, would authorize the Service to facilitate the acquisition of up to 250,000 acres of conservation easements within the 5.7-million-acre boundary. USFWS failed to **published this on the Federal Register** but instead published notice on its website starting a public scoping period on the 20th of September. Initially the scoping period was slated to end on the 26th of October. After another letter being issued by the Montana Attorney General's office the window was extended to the 27th of November.

After reviewing a response to a FOIA request on this item it is evident that USFWS and partners violated the Administrative Procedures Act and failed to disclose maps and other information. This information confirmed that the conservation area is indeed a Land Protection Plan (LPP, see attachment I) making it a part of the refuge system and therefore presumably subject to the refuge system BIDEH and land planning policies and regulations that USFWS is promulgating.

Now USFWS is proposing the BIDEH policy into the Code of Federal Regulations in parallel with BIDEH policy revision at 601 FW 3. This notice was published on the Federal Register on February 2nd, 2024, with a 30-day comment period. The Federal Register states that,

“The Service did not anticipate the extent of climate change impacts on refuge species and habitats or the need to clarify in regulations our interpretation of and authority to implement the BIDEH mandate.”

This statement is made and asserted without cited references or empirical data that shows climate change is transforming species composition and ecological function of habitats.⁶ To the contrary the CMR game refuge in Montana is stable and has remained largely unchanged in ecological composition and presence of wildlife. One significant negative impact on the refuge is the USFWS has been retiring

³ CFR 1508.1(q)(3) “**Major Federal actions** tend to fall within one of the following categories: (iii) Adoption of programs, such as a **group of concerted actions to implement a specific policy or plan**; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or **executive directive**.” (emphasis ours)

⁴ Federal Register :: National Wildlife Refuge System Planning Policies (602 FW 1-4) for the U.S. Fish and Wildlife Service

⁵ *West Virginia v. Environmental Protection Agency*, 597 U.S. ____ (2022) “. . . We presume that ‘Congress intends to make major policy decisions itself, not leave those decisions to agencies.’ *United States Telecom Assn. v. FCC*, 855 F. 3d 381, 419 (CA DC 2017); “. . . it is unlikely that Congress will make an ‘[e]xtraordinary gran[t] of regulatory authority’ through ‘vague language’ in ‘a long-extant statute.’ Ante, at 18-20 (quoting *Utility Air*, 573 U. S., at 324).”

⁶ “[I]n order to qualify as ‘scientific knowledge,’ an inference or assertion must be derived by the scientific method,” “any and all scientific testimony or evidence admitted [must be] . . . reliable,” “tested,” and “supported by appropriate validation.” *Daubert v. Merrell Pharmaceutical, Inc.*, 509 U.S. 579 (1993) (emphasis added). As to peer review, the Supreme Court similarly explained that peer review can be helpful but “does not necessarily correlate with reliability” because “in some instances well-grounded but innovative theories will not have been published.” *Daubert*, supra, p. 593.

Grazing permits recognized in Animal Unit Months (AUMs) off the range in spite of the long established historical compatible use under the Taylor Grazing Act and reserved grazing districts which predate the establishment of the CMR.⁷

USFWS proposed policy and regulations conflict with individual refuge priorities

The USFWS asserts that climate change has had an unanticipated impact on the refuge system. This assertion needs to be rationally verified and documented at the unit level with full consultation with counties and adjacent land holders. The proposed regulations prioritize focusing on pre-human conditions within the refuge system (which includes conservation buffers) and inappropriately leave discretion to unit managers to alter wildlife and biodiversity targets.

FWS said,

“This proposed language would untether current and future management actions from sustaining historical conditions that may no longer be possible on many refuges.”

The organic act for the National Wildlife Refuge System requires that each individual refuge is managed to fulfill the specific purpose for which the refuge was established,

“With respect to the Refuge System, it is the policy of the United States that—
(A) *each refuge shall be managed to fulfill the mission of the System, as well as the **specific purposes for which that refuge was established** . . .”*
[NWRS Improvement Act, Section 5(a)(3)]

When there is a conflict between system goals and individual refuge purposes, the statute provides deference to the individual priority scheme.

*“. . . ensure that the mission of the System described in paragraph (2) and the purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and the mission of the System, **the conflict shall be resolved in a manner that first protects the purposes of the refuge**, and, to the extent practicable, that also achieves the mission of the System; (NWRS Improvement Act Section 5 (a)(4)(D))*

The proposed regulations define historical conditions,

*“Historical conditions means composition, structure, and function of ecosystems **that existed prior to ecological degradation caused by anthropogenic change**, based on best available scientific and historical information.”*

The USFWS then under the heading of diversity states,

*“We evaluate diversity by referencing **historical conditions**, recognizing that climate change and other **anthropogenic change** are influencing refuge ecosystems.”*

So USFWS is directing unit managers to focus their evaluations for “diversity” based on conditions prior to anthropogenic (human) influence. The regulations also correspond to the USFWS policy proposals last year for landscape planning goals (see attachment I). Here is how they address *Conserve and Connect Habitat* in the FR,

*“(2) **Conserve and connect habitat**. We allow for and defer to natural processes on habitats within the Refuge System and promote conservation, restoration, and connectivity to meet refuge habitat objectives and **landscape planning goals** (the earlier policy changes USFWS issued last year redirect their landscape planning goals). We will avoid and minimize habitat fragmentation to sustain biological integrity and diversity. **When natural processes cannot meet habitat objectives or facilitate adaptation to anthropogenic change, we***

⁷On December 11, 1936, President Roosevelt signed Executive Order 7509, establishing the Fort Peck Game Range (FPGR). FPGR, the precursor to the Charles M. Russell Wildlife Refuge (CMR), specifically provided that lands previously withdrawn or reserved “will be affected hereby only insofar as may be consistent with the uses and purposes for which such prior withdrawal or reservation was made.”; This Executive withdrawal performed under the authority of the Picket Act of 1910 was done “subject to all valid existing rights” and were “reserved and set apart for the conservation and development of natural wildlife resources and for the **protection and improvement of public grazing lands and natural forage resources.**”

will use science-based management techniques or acquire lands when necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health.”

Therefore, if natural processes do not produce the results of management level biodiversity and connectivity objectives the service will acquire lands to accomplish what for all intents and purposes are arbitrary administrative goals. The proposed regulations then explicitly prohibit agricultural practices unless they are deemed necessary (by whom?) to fulfill refuge purposes which under the proposed regulations will likely be heavily mitigated,

“(6) Agricultural uses. We prohibit the use of agricultural practices unless they are determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health, and where we cannot achieve refuge management objectives through natural processes.”

These policies conflict with statutory requirements and long-established compatibility uses on certain refuges. USFWS has failed to address or assess these conflicting priorities and is imposing policy changes which will create more conflict and confusion over time.

a. Proposed policies pose conflicting and competing priorities for refuge managers (CMR case example)

Executive order 7509 which established the CMR Game Range recognized the existing TGA reserved districts and required the domestic livestock grazing be administered under the TGA, the history of the range proves domestic livestock has always enjoyed a secondary use and by custom has long been a compatible use on the range. The proposed regulations run counter the organic act of the refuge system which explicitly states,

*“With respect to the Refuge System, it is the policy of the United States that—
(A) each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established . . .”*
[NWRIS Improvement Act, Section 5(a)(3)]

The Act also points to specific documentation in order to determine the purposes of each refuge,

“. . . purposes of a refuge and purposes of each refuge mean the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit.”
(Refuge Improvement Act, Section 5)

On December 11, 1936, President Roosevelt signed Executive Order 7509, establishing the Fort Peck Game Range (FPGR). FPGR, the precursor to the Charles M. Russel Wildlife Refuge (CMR), specifically provided **that lands previously withdrawn or reserved “will be affected hereby only insofar as may be consistent with the uses and purposes for which such prior withdrawal or reservation was made.”**

This Executive withdrawal was performed under the authority of the Picket Act of 1910 and was “subject to all valid existing rights” and were “reserved and set apart for the conservation and development of natural wildlife resources and for the protection and improvement of public grazing lands and natural forage resources.” This order also stated that “the range or preserve, being within grazing districts duly established pursuant to the provisions of the TGA as amended by the 74th Congress, shall be under the exclusive jurisdiction of the Secretary of the Interior, so far as it relates to the public grazing lands and natural forage resources thereof.”

April 13, 1942, the FPGR was expanded. Executive Order 9132 reserved an additional 7,474 acres of lands around the Fort Peck Dam and Reservoir for war department (US Army Corps of Engineers) use. The withdrawal **recognized that TGA Districts 1, 2 and 6 “will remain under the jurisdiction and administration of the Secretary of the Interior . . .” for protection of grazing lands . . .** Consistent with EO 7509, which recognized the duly established TGA grazing districts created by Departmental Orders of July 11, 1935, and October 6, 1935.

It is important to note that E.O. 9132s recognition of TGA districts 1, 2, and 6 was in reference to the entire game range not just the 7,474-acre legal description in the Order. If the Order were only referencing the 7,474-acre legal description regarding grazing districts it would not have included district 6 which is not within the legal description but overlays the southern portion of the game range to the west. TGA districts 1, 2, and 6 represent the three grazing districts duly established wherein the entirety of the Game Range overlays, the entirety of which E.O. 7509 applies.

Though the Congress shifted management of the refuge solely to USFWS and passed the the 1997 NWRSA to amend the 1966 act providing an organic act for the system, the Act itself in Sec. 5 (A) recognizes the “organic” specific purposes for which each individual refuge was established, and to manage each refuge for those specific purposes. E.O. 7509⁸ establishes the specific purposes for which the CMR was established and still applies to the refuge under the authority of the National Wildlife Refuge System Act.⁹

Conclusion

In this letter we mainly address problems with the 50 CFR Part 29 and did not have the time to address the policy revision at 601 FW 3. We hold that USFWS should not have lumped these processes into a single notice with only 30 days to comment. The proposed CFR and policy changes are not rationally justified from our review and should be withdrawn. The Code of Federal Regulations are supposed to direct agencies in a way to maintain compliance with statutory mandates and priorities, and then policy is developed for management level staff and personnel to assure compliance with the CFR and organic laws that govern the system. The USFWS in issuing novel CFR into the code while simultaneously revising their BIDEH policy in the same notice shows disregard for the commenting public and effected landowners and governments.

It is clear that USFWS and their partners desire to apply *landscape scale* ecoregional planning which could reach far outside of wildlife refuge boundaries. The fact that the proposed policy would allow Service partners to develop landscape plans which delineate ecoregional units outside of refuge boundaries in order to inform refuge planning is concerning to adjacent property owners and local governments with special expertise and jurisdiction by law.

The policy changes proposed appear to remove emphasis regarding the requirements for USFWS to obtain information and data relating to each planning area from private landowners concerning land management issues that may impact or relate to the planning unit. This is especially important in cases such as with the CMR game refuge or other refuges where cattle producers have a priority use of the refuge for domestic livestock grazing purposes under the Taylor Grazing Act and other authorities.¹⁰

The system-wide policy cannot be used in such a way to repurpose game refuges for priorities inconsistent with the original purposes. Long established uses on certain game refuges have established customs and cultures by use and law. In many cases bona-fide occupants and settlers have maintained active use on the range since before the refuge was established.

These and other valid existing rights must be accounted for and protected in any policy which may impact or seek to change the priority scheme of the refuge. This should include advanced notification, consultation, and coordination with adjacent property owners and local and state governments regarding associated lands and waters.

⁸The 9th circuit in 1983 concluded: “The legislative history on this point is more indicative of confusion regarding the existing priority scheme than of an intent to change priorities. Many legislators seemed to think E.O. 7509 had established an absolute wildlife priority. Such confusion is not sufficient to revoke E.O. 7509. We thus hold that P.L. 94-223 did not revoke the priority scheme for access to the resources of the Range established by E.O. 7509.”

⁹43 USC 1701(f) Savings provisions “Nothing in this Act shall be deemed to repeal any existing law by implication.”; National Wildlife Refuge System Administration Act of 1966 16 USC § 668dd (h) “Regulations applicable to areas of the System that are in effect on the date of enactment of this Act shall continue in effect until modified or rescinded.”; “It is the law of our circuit that revocation or modification of an existing withdrawal should be express to be effective.” See *United States v. Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 445-46 (9th Cir.1971); “Repeal of a statute or order by implication is not favored.” *Watt v. Alaska*, 451 U.S. 259, 267, 101 S.Ct. 1673, 1678, 68 L.Ed.2d 80 (1981)

¹⁰MCA 76-16-102; 43 USC § 1901(a)(4), (5); 43 USC § 315b; 43 CFR § 4100.0-2; The Repurposing of Federally Reserved Taylor Grazing Districts For Wildlife Rewilding: A Statutory, Administrative and Legal Analysis. Stillwater Technical Solutions. April 22, 2020. J.R. Carlson et. al.

Find also attached to this letter comments we submitted on the revision of 602 FW 1-4 and the Missouri River Headwaters Conservation Area which identify substantive concerns and failure to consult with and coordinate such processes with affected private land holders and local governments.

Regards,

JOHN FAHLGREN,
President
Valley County

The complete letter with attachments is available for viewing at:
<https://docs.house.gov/meetings/II/II13/20240410/117029/HHRG-118-II13-20240410-SD007.pdf>

Missouri River Conservation Districts Council

March 1, 2024

Public Comments Processing
U.S. Fish and Wildlife Service
Falls Church, VA

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

To Whom It Concerns:

The Missouri River Conservation Districts Council (MRCDC/Council) is a coalition of the 15 conservation districts along the Missouri River in Montana, spanning 725 miles of the river corridor, including its tributaries and associated uplands, from its headwaters in Gallatin County to Richland County at the North Dakota border.

MRCDC member districts are organized according to Montana statute contained in Title 76, Chapter 15, Section 102 which states, "It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of flood-water and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state."

On page 7348, column 3 last paragraph, you state that these proposed regulations and policy updates comply with and incorporate the Service's commitment to cooperate and coordinate with State partners, as appropriate . . . , it is our understanding that coordination efforts should extend to local governments within which the lands are located. With the authority above, the Council would like the reference to the Federal Land Policy and Management Act 43 U.S.C.1712(c)(9) added to language under new section 29.3 referring to this coordination requirement in the implementation of section 29.3.

Two species that come to our minds when talking about imperiled species that may be translocated to refuges are grizzly bears and wolves, both of which are found and are becoming more abundant in Montana. It is a concern of ours that the proposed rule specifies no control, lethal or non-lethal, will be allowed of these imperiled species unless there is a human health concern. These two predators have a large impact on the communities they are currently in—changes to ranching operations, changes to wildlife abundance and distribution, and changes to human safety while recreating. *Are these the imperiled species the US Fish and Wildlife Service refers to when they talk about translocating imperiled species and control options of predators on refuges?* (Page 7348, left column in second paragraph, ". . . policy updates would similarly codify the Service's ability to supplement natural processes to meet fish and wildlife population objectives, sustain ecosystems, and restore or recover imperiled species on refuges when habitat conditions and natural processes are insufficient.", page 7351, #3 Manage fish and wildlife. ". . . and where appropriate, restore or recover imperiled species.", page 7352, #2 Conservation translocations definition, "We may allow the introduction of a species outside its current range to avoid extinction or extirpation; restore a species; reestablish a specific ecological function lost to extinction or extirpation; or, in accordance with §17.81(a) of this chapter, when necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health.")

In FWS-HQ-NWRS-2023-0024 potential policy changes included the USFWS being able to acquire land, ". . . land acquisition, minor and major refuge boundary modifications . . ." and ". . . developing comprehensive conservation plans for new refuges, their scope . . ." The Council was concerned with this wording and sent a comment letter regarding this language. Additional lines in this current proposed rule change for BIDEH supplement our concern for USFWS land acquisition. *Is there potential for the US Fish and Wildlife Services to obtain additional lands under this proposed rule change?* (Page 7351 paragraph (c)(2) . . . "When natural processes cannot meet habitat objectives or facilitate adaption to anthropogenic change, we will use science-based management techniques or acquire lands when necessary to meet statutory requirements." And (c)(5) Promote and maintain healthy soil, water, and air, "We will address threats to these abiotic components

by pursuing appropriate actions, including when such threats to refuge resources arise outside refuge boundaries.”, page 7347 left column near bottom, “This proposed regulation would codify the Service’s continued commitment to managing refuge ecosystems holistically as components of larger landscapes and seascapes and supporting natural processes to meet our conservation goals . . .”, and page 7348 left column near middle, “. . . instruct managers to use such techniques and encourage establishment of wildlife corridors . . .”)

On page 7352 section 29(3)(d)(6) Agricultural uses, the document states, “We prohibit the use of agriculture practices unless they are determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health, and where we cannot achieve refuge management objectives through natural processes.” The language under section 29(3)(d)(6) could be interpreted that all agricultural practices on the refuge would be terminated “unless” it can be determined necessary to meet statutory requirements. We believe this statement is far too broad for us to understand the true meaning of the section. Appropriately managed livestock grazing improves habitat for fish and wildlife species, so we believe this habitat management tool should not be taken away but rather implemented at a greater level across the refuges system. Garfield County Conservation District is conducting a scientific grazing monitoring project on over 60,000 acres of CMR Wildlife Refuge, Bureau of Land Management, and private lands. In short, eight years of data from 25 monitoring sites have proven that the range health on the control sites with no grazing show a downhill (negative) trend. The range health on lightly grazed and heavier grazed sites shows an uphill (positive) trend. This study has included wet years as well as two of the driest years on record. As such, this science proves livestock are excellent eco-system service providers that benefit range health. As Alan Savory has studied, learned and promoted; without livestock grazing and trampling, the grass vegetation has to decay biologically before the next growing season, and if it doesn’t, the grassland and the soil begin to die. If vegetation doesn’t decay biologically, it shifts to an oxidation process, which is very slow leading to the excess vegetation smothering and killing other grasses which then leads to a shift to woody vegetation and bare soil, releasing carbon. Fire as a tool simply removes all vegetation, grass, brush and other woody plants, releasing a massive amount of carbon and causing desertification of the landscape. MRCDC believes that ‘no management’ is not a management technique that benefits wildlife or habitat lands. *Will this proposed rule change impact the livestock grazing leases on the Charles M. Russel National Wildlife Refuge in Montana? Will USFWS coordinate and utilize this local science in decision making?*

Livestock grazing permits on wildlife refuges in Montana are vital to the natural resources, and to our local communities, counties, and state economy. On page 7349 under Regulatory Flexibility Act, the proposed rule states, “. . . no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.” and “. . . the Service certifies that this rule, as proposed, would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act.” *What data was used by the USFWS to come to this conclusion?* The Council would like to see the economic data that was used by the USFWS and be able to verify this statement.

Under section 29(3)(c)(5) Promote and maintain healthy soil, water, and air. In Montana, an example of refuge management that directly impacts air quality are wildfires that become difficult to control due to a buildup of fuel loads and/or encroachment of flammable invasive annual grasses within the boundaries of the refuge. Through proper forage management, such as livestock grazing, the likelihood and intensity of wildfires can be reduced. *What are examples of refuge management directives that impact air quality that the USFWS has identified?*

Under section 29(3)(d)(5) related to pesticide use as a form of land management directly is the importance of land managers being able to control noxious and invasive species with pesticides, or other means, as needed and as stated in the proposed rule change. The Council does agree with the ability to use pesticides in controlling invasive species as part of an integrated pest management (IPM) plan. We would also add that having a pre-approved IPM plan would allow refuge management to expedite control measures when needed. Invasive species won’t wait for an approved plan to become a problem so it would be good to have one in place before control is warranted.

To have better understanding and comments of these proposed BIDEH rule changes overall, the Council needs to know what impacts there will be, none of which were provided, but as stated in the document 'are too speculative for meaningful analysis.' The Council doesn't understand why the US Fish and Wildlife Service brought forth these rule changes to BIDEH without having meaningful analysis to go along with it. *Shouldn't the environmental impacts on implementing these rules changes be better understood and known before introducing these BIDEH rule changes?* (Page 7350, in the middle column just above Primary Author, the document states, "Therefore, the environmental impacts of the proposed rule are too speculative to lead to meaningful analysis at this time.")

The Council believes that local input and coordination is key for the proper administration of National Wildlife Refuges. When specific changes are proposed under the rule, with a commitment on page 7348 third column bottom of page to coordination with local governments, specific language should be included in the policies emphasizing cooperation and coordination in the implementation of these rules with state, tribal, and local governments. On-the-ground, local ecological knowledge of the land is important to incorporate into any plans and decision processes.

An additional question the Council has is, *how does the definition of "conservation" in the proposed rule change compare to the definition in the America the Beautiful Initiative?* All of the public comments submitted by the Council since this initiative was implemented have gone unanswered.

The Missouri River Conservation Districts Council thanks you for taking our comments into consideration regarding the proposed rule change for the National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health rule.

Sincerely,

KARL CHRISTIANS,
Chairman

Western Association of Fish & Wildlife Agencies

February 27, 2024

Public Comments Processing
U.S. Fish and Wildlife Service
Falls Church, VA

Re: National Wildlife Refuge System; Biological Integrity, Diversity, and
Environmental Health; Docket No. FWS-HQ-NWRS-2022-0106

The Western Association of Fish and Wildlife Agencies (WAFWA) is a professional organization that represents 23 western state and Canadian provincial fish and wildlife agencies. The states within WAFWA hold nearly 60% of all National Wildlife Refuge (NWR) acres. The responsibility for the management of fish and wildlife in and around those NWR lands is held by the states' fish and wildlife agencies. That being the case, it is necessary for the leadership within each states' agency to have ample time to review materials that impact the management of their public-entrusted responsibility.

In 2023, the U.S. Fish and Wildlife Service requested our states review an earlier draft of the proposed BIDEH regulations and policy and provide feedback. Since that draft, substantial changes were made when producing the final document presented in the Federal Register. Furthermore, the feedback from our states, via Association of Fish and Wildlife Agencies submission, went largely unaddressed. This means that we need to amend our earlier feedback to incorporate edits in this final draft that have only confounded those original issues posed.

Fourteen of our eighteen active member states are in legislative session during this 30-day period. Over eighty-one million acres of NWR lands are in states that have had state fish and wildlife agency leadership involved with their state legislative sessions during this review period. **WAFWA requests that the public comment period be extended additional 60 days** to allow for our agency leadership to have time after their legislative sessions to give this the due diligence it requires.

We appreciate your consideration of a deadline extension to allow our state agencies the ability to effectively review the posted proposed BIDEH regulations and policy changes and to provide input using the formal public comment process.

Sincerely,

ZACHARY LOWE,
WAFWA Executive Director

Docket (/docket/FWS-HQ-NWRS-2022-0106)

/ Document (FWS-HQ-NWRS-2022-0106-0001) (/document/FWS-HQ-NWRS-2022-0106-0001) / Comment

 PUBLIC SUBMISSION

Comment from Yell County Farm Bureau Board of Directors

Posted by the **Fish and Wildlife Service** on Feb 28, 2024

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Comment

The Board of Directors of the Yell County Farm Bureau in Yell County Arkansas is submitting comments in **OPPOSITION** to this rule change. In particular, we oppose the language in section (6) Agricultural uses. The Holla Bend Wildlife Refuge in Yell County has been operated for many years in co-operation with area farmers to provide abundant food and habitat for wildlife, making the area a wonderful spot for sportsmen and nature enthusiasts alike. The prohibition of agricultural practices would be detrimental to the wildlife habitat and we do not think it is in the best interest of the animals, the public that enjoys the area, or the farmers who get a beneficial use of the fertile cropland. Thank you for your consideration of these comments.

Comment ID

FWS-HQ-NWRS-2022-0106-17823

Humboldt County, Nevada
Board of Commission

March 4, 2024

U.S. Fish and Wildlife Service
Falls Church, VA

Re: Proposed Rulemaking: National Wildlife Refuge System: Biological Integrity, Diversity, and Environmental Health. Docket number: FWS-HQ-NWRS-2022-0106

Dear Director Williams:

The U.S. Fish and Wildlife Service (FWS or “the Service”) is proposing to write new regulations at 50 CFR § 29.3 (the “proposed rule”) and related policy revisions to Service Manual 601 FW 3 to further implement the biological integrity, diversity, and environmental health (BIDEH) provision¹ of the National Wildlife Refuge System Improvement Act (“Improvement Act” or “Act”) of 1997 at 16 U.S.C. § 168dd(a)(4)(B).²

The Board of Commissioners of Humboldt County, Nevada (the “Board” or “County”), takes an active interest in this rulemaking due to the Sheldon National Wildlife Refuge. The Sheldon National Wildlife Refuge (or “Sheldon Refuge”) occupies 572,896 acres of federal land in northwest Nevada, the majority of which are in Humboldt County. The Refuge has long been a valued resource in the region for hunting, fishing, and other forms of recreation, as well as (until 1994) livestock grazing.³ In our experience, Refuge management decisions can profoundly impact County interests, including wildfire risk on the greater landscape, hunting, fishing, and recreational access, ecologically and economically important activities like grazing, control of invasive species on the greater landscape, regional species conservation projects, and the economic stability and cultural character of Humboldt County. In short, management decisions on the Sheldon Refuge—and the regulations and policies that shape them—affect the public health, safety, and welfare in our community.

It is deeply troubling to this Board that in its rush to provide a one-size-fits-all “consistent approach” to managing refuges, the proposed rule elevates select provisions of the Improvement Act (like BIDEH at 16 U.S.C. § 168dd(a)(4)(B)) while suppressing and contravening others (like the supremacy of refuge purposes at 16 U.S.C. § 168dd(a)(4)(D)). The FWS has apparently forgotten that not all refuges can be managed under a blanket set of BIDEH requirements because different refuges have unique “refuge purposes” which refuge managers must prioritize consistent with the Improvement Act. *Id.* For example, some refuges (like Sheldon) have historic refuge purposes that specifically include agricultural activities like livestock grazing which, under the Improvement Act, must be prioritized even above the agency mission.⁴ The proposed rule attempts to overwrite this statutory requirement. Instead, it would unlawfully subordinate all agricultural activities (even if they are a refuge purpose) to a host of blanket and practicably insurmountable BIDEH requirements—effectively banning the FWS from implementing any agricultural refuge purpose. In other words, the proposed rule invents novel, extra-statutory standards for carrying out agricultural refuge purposes that are inconsistent with, and undermine, Congress’s requirement that carrying out a refuge’s purposes (regardless of whether they support wildlife or agriculture) shall be the refuge manager’s highest priority.

¹The BIDEH provision states: “In administering the System, the Secretary shall [. . .] ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans . . .” 16 U.S.C. § 168dd(a)(4)(8).

²National Wildlife Refuge System Administration Act of 1966 (Administration Act; 16 U.S.C. 668dd-668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act; Pub. L. 105-57).

³As stated in the Humboldt County Public Lands Resource Management Policy Plan, the County maintains that the current prohibition of livestock grazing on the Sheldon Refuge is inconsistent with 16 U.S.C. § 168dd(a)(4)(D).

⁴“In administering the System, the Secretary shall . . . ensure that the mission of the System described in paragraph (2) and the purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and the mission of the System, the conflict shall be resolved in a manner that **first protects the purposes of the refuge**, and, to the extent practicable, that also achieves the mission of the System.” 16 U.S.C. § 168dd(a)(4)(D).

As a separate matter, the proposed rule would also effectively ban discretionary agricultural activities which, even if not included in a refuge's purpose, serve as critical tools for fuels management, invasive species control, and habitat enhancement.

Beyond questions of agriculture and grazing, we are also alarmed that the proposed rule issues a biased, rigid, and sweeping interpretation of Congress's broad mandate to manage refuges for general BIDEH. This unwarranted interpretation forms a web of priorities and prohibitions which will frustrate refuge managers' flexibility and latitude to address complex landscape-scale issues such as wildfire resistance and resilience, invasive vegetation management, and conservation-oriented predator control (among other actions) in the most timely and effective manner. The proposed rule's sweeping BIDEH mandates also have the potential to interfere with priority wildlife-dependent recreation such as hunting and fishing activities.⁵ We therefore submit the following comments to ensure FWS regulations are consistent with the Improvement Act and allow for flexible refuge management decisions that support landscape-scale public health, safety, and welfare concurrent with protecting valued wildlife and habitat.

1. Primary Comment:

Humboldt County's primary comment is that the current rulemaking and companion policy should be abandoned because they are inconsistent with and undermine key provisions of the Improvement Act. Tangentially, the proposed rule and companion policy would create confusion, do more harm than good, and are unnecessary for implementation of the Improvement Act. Failing abandonment of this unnecessary rulemaking, any regulation that is adopted must remedy these substantial shortcomings. Our subsequent comments (below) expand on and give context to this recommendation.

2. The Proposed Rule would improperly restrict or ban agricultural refuge purposes which have priority under the Improvement Act.

Background:

The Improvement Act lays out the policies and administrative mandates under which the national wildlife refuge system (the "System") and its component refuges are managed. Foremost among these is the System's mission "to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans." 16 U.S.C. § 668dd(a)(2). Through the mission, Congress made clear its general intent that the System be managed to prioritize wildlife and habitat over other values.

⁵Under Executive Order 12996, "wildlife dependent recreation" as it pertains to the System is defined as: hunting, fishing, wildlife photography and observation, and environmental interpretation and education. Amendments to the National Wildlife Refuge System Administration Act state it is the policy of the United States that:

"[C]ompatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System." 16 U.S.C. § 668dd(a)(3)(B) (emphasis added).

"[C]ompatible wildlife-dependent recreational uses are the priority general public uses of the System and shall receive priority consideration in refuge planning and management." 16 U.S.C. § 668dd(a)(3)(C) (emphasis added).

"[W]hen the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity should be facilitated . . ." 16 U.S.C. § 668dd(a)(3)(D) (emphasis added).

Further, in administering the System, the Secretary shall:

[P]rovide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting." 16 U.S.C. § 668dd(a)(4)(K) (emphasis added).

Congress has further determined that:

"When managed in accordance with principles of sound fish and wildlife management and administration, fishing, hunting, wildlife observation, and environmental education in national wildlife refuges have been and are expected to continue to be generally compatible uses." Public Law 105-57, Sec. (2)(6).

However, the Improvement Act also recognizes that each individual refuge has specific “refuge purposes”⁶ set forth in the refuge’s establishing documents that differ from one refuge to another. As a general policy, the Improvement Act stipulates that “each refuge shall be managed to fulfill the mission of the System, **as well as** the specific purposes for which that refuge was established . . .” 16 U.S.C. § 668dd(a)(3)(A).

Finally, Congress also recognizes that the System mission and the purposes of an individual refuge may sometimes diverge, and that meeting the dual requirements of fulfilling both the mission and a refuge’s purpose may not always be straightforward, or even possible. In such instances, Congress gives clear instruction that it is an individual refuge’s purpose(s) that must take precedence:

“In administering the System, the Secretary shall . . . ensure that the mission of the System described in paragraph (2) and the purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and the mission of the System, the conflict shall be resolved in a manner that ***first protects the purposes of the refuge***, and, to the extent practicable, that also achieves the mission of the System.”

16 U.S.C. § 668dd(a)(4)(D) (emphasis added).

In short, Congress makes a special provision for ensuring that fulfilling the unique, historical reasons for the creation of each refuge (the “refuge purposes”) are prioritized in refuge management decisions, even surpassing the FWS’s responsibility to fulfill the System mission.

Humboldt County is aware that the Sheldon Refuge was created with a historical dual wildlife/ agriculture refuge purpose. The majority of the Refuge (~539,000 acres) was established under an Executive Order⁷ “for the conservation and development of natural wildlife resources **and** for the protection and improvement of public grazing lands and natural forage resources.” More specifically, according to the Sheldon Refuge’s refuge purpose statement:

- the natural forage resources on the Sheldon Range “shall first be utilized for the purpose of sustaining in a healthy condition a maximum of three thousand five hundred (3,500) antelope, the primary species, and such non-predatory secondary species in such numbers as may be necessary to maintain a balanced wildlife population . . .”
- “[A]ll the forage resources within this range or preserve shall be available, except as herein otherwise provided with respect to wildlife, for domestic livestock . . .”

This dual wildlife/agriculture refuge purpose is also recognized in the refuge Comprehensive Conservation Plan (CCP), which states that the Sheldon Refuge was:

- “. . . set apart for the conservation and development of natural wildlife resources and for the protection and improvement of public grazing lands and natural forage resources . . . EO 7522 dated December 21, 1936.” (emphasis added).

Sheldon National Wildlife Refuge Final Comprehensive Conservation Plan and Environmental Impact Statement, August 2012, p. 1-7.

⁶“The terms ‘purposes of the refuge’ and ‘purposes of each refuge’ mean the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit.” 16 U.S.C. § 668ee(10).

⁷The Sheldon National Wildlife Refuge (“Sheldon Refuge”) was established under three separate executive orders. Executive Order 7522, issued in 1936 by President Franklin D. Roosevelt, created the Charles Sheldon Antelope Range which constitutes the vast majority (539,000 out of 573,000 acres) of what is now the Sheldon Refuge. By contrast, the purpose of the—31,000 acre Charles Sheldon Wildlife Refuge (“Little Sheldon”) established under E.O. 5540 in 1931 (and expanded under E.O. 7364 in 1936) was “as a refuge and breeding ground for wild animals and birds” (and subsequently in 1936: “. . . to further effectuate the purposes of the Migratory Bird Act . . .”) and did not include grazing as one of the purposes for that much smaller parcel. In 1978, the ~31,000-acre Charles Sheldon Wildlife Refuge (“Little Sheldon”) and the 539,000-acre Charles Sheldon Antelope Range were combined (PLO 5634) and renamed the Sheldon National Wildlife Refuge. Therefore, the two units that today make up the Sheldon National Wildlife Refuge have distinct refuge purposes, as established under three distinct E.O.s.

While this dual wildlife/agricultural refuge purpose may not be palatable to current FWS leadership, it is a sound conservation approach and, more to the point, is protected by a Congressional mandate that the FWS does not have the authority to overwrite, i.e. provided the Sheldon Refuge's specific wildlife quotas are met, if a conflict (real or perceived) exists between the agricultural component of Sheldon's refuge purpose and the wildlife prioritizing mission of the System, "the conflict shall be resolved in a manner that **first protects the purposes of the refuge.**" 16 U.S.C. § 668dd(a)(4)(D) (emphasis added).

The Proposed Rule:

The FWS's proposed rule at 16 CFR § 29.3(d)(6) does not acknowledge the fact that a refuge can have agricultural refuge purposes. Nor does it acknowledge that under the Improvement Act refuge purposes have *priority* over the System mission; while the rulemaking notes that "[t]he law states that each refuge must be managed to fulfill both the Refuge System mission and the specific purposes for which that refuge was established" (89 FR 7364) the FWS guilefully omits any mention of the *priority* Congress gives refuge purposes over the System mission in 16 U.S.C. § 668dd(a)(4)(D). Ignoring these facts, the proposed rule instead singles out agriculture as a special management activity "having a particular propensity to affect BIDEH"⁸ therefore requiring almost total prohibition, irrespective of whether the agricultural activity is a refuge purpose or not:

"Agricultural uses. We prohibit the use of agricultural practices unless they are determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health, and where we cannot achieve refuge management objectives through natural processes." 89 FR 7352.

This provision creates a four-part test that would have the practical effect of a blanket ban on agriculture. It also invents novel criteria (e.g. meeting the FWS's new definition of BIDEH; being authorized only upon failure of "natural processes") that a refuge purpose—like grazing on the Sheldon Refuge—is not subject to under the Improvement Act. To the contrary, Congress did not impose restrictions or criteria on carrying out refuge purposes, agricultural or otherwise, in the Improvement Act and the FWS cannot invent them where they do not exist.

The FWS's attempt to overwrite this critical provision of the Improvement Act is all the more apparent in its spurious claim that in the Act, Congress really recognized *three* competing priorities (the System mission, refuge purposes, *and* BIDEH) in refuge management, and tasked the *FWS* with sorting out the ensuing confusion:

"In the statute's requirements for administering the Refuge System, Congress elevated ensuring the maintenance of BIDEH **to a similar level of importance as ensuring that the Refuge System mission and refuge purposes** are carried out, **challenging the Service to implement these integral directives together** to provide the greatest conservation benefits for fish and wildlife." 89 FR 7346-7. (Emphasis added.)

In the proposed rule's creative interpretation, the Act's BIDEH clause (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 . . . 16 U.S.C. § 668dd(a)(4)(B)) somehow emerges from the "challenging" confusion carrying more weight than even the System mission; i.e. while the Act clearly subordinates the System mission to refuge purposes without exception, under the proposed rule, the BIDEH provision would trump (agricultural) refuge purposes.

⁸ 89 FR 7346.

This creative interpretation has no basis in fact. Congress recognizes two, and only two, competing directives when it states that “each refuge shall be managed to fulfill the mission of the System, **as well as** the specific purposes for which that refuge was established . . .” 16 U.S.C. § 668dd(a)(3)(A). And again, Congress recognizes two, and only two, competing directives in its clear instruction that conflicts will be resolved in favor of refuge purposes:

“In administering the System, the Secretary shall . . . ensure that the mission of the System described in paragraph (2) and the purposes of each refuge are carried out, except that if a conflict exists between the purposes of a refuge and the mission of the System, the conflict shall be resolved in a manner that **first protects the purposes of the refuge**, and, to the extent practicable, that also achieves the mission of the System.”

16 U.S.C. § 668dd(a)(4)(D) (emphasis added).

Summary:

In the proposed rule, the FWS claims to be providing much needed interpretation of inconclusive “challenging” statutory language that creates competing responsibilities that the FWS itself has been tasked with resolving—which they do (not surprisingly) in favor of prioritizing BIDEH above even the System mission or refuge purposes. But the Improvement Act requires no such tortured interpretation; it is perfectly clear. The Act recognizes only two primary administrative responsibilities—carrying out the System mission and the refuge purposes—and provides plain instruction that any conflicts between these shall preserve the refuge purposes first. The FWS’s proposed regulation seeks to overwrite this provision through elevating BIDEH as a value superior to (agricultural) refuge purposes. But the FWS cannot simply invent new restrictions on agricultural refuge purposes when Congress has imposed no such restrictions under the Improvement Act, and further, given that Congress elevates carrying out refuge purposes (agricultural or otherwise) to the highest management priority. “[A] regulation does not trump an otherwise applicable statute.” See, e.g. *United States v. Maes*, 546 F.3d 1066, 1068 (9th Cir. 2008); *United States v. Doe*, 701 F.2d 819, 823 (9th Cir. 1983). (“Where an administrative regulation conflicts with a statute, the statute controls.”)

Remedy:

The FWS cannot overwrite existing statute in its proposed rule. Nor can it selectively implement statute so as to ignore, or worse, contravene, Congressional mandates. The FWS’s proposed rule does both. We therefore recommend the FWS abandon the current rulemaking. Failing that, any regulation pertaining either to BIDEH or agricultural activities must acknowledge in regulatory and guidance documents the priority of refuge purposes (agricultural or otherwise) over the System mission.

3. The Proposed Rule undermines flexible, effective refuge management.

Beyond the blanket BIDEH mandates in sections (a)-(c), section (d) of the proposed rule imposes additional restrictions on specific management activities that, according to the FWS, “especially influence BIDEH.” 89 FR 7348. These include predator control, invasive species management, pesticide use, agricultural uses, and mosquito control. Under the proposed rule—

“these activities and uses **are all subject to the underlying conservation principle** that defers to natural processes and favors management that mimics natural processes.” 89 FR 7348.

We find that this restrictive mandate is unnecessary and will cause more harm than good. Reflexively deferring to “natural processes” as a rigid conservation principal is a dangerous management approach when (as in Humboldt County) wildfire and invasive vegetation are now primary drivers of habitat loss as well as being a profound human health and safety risk. Refuge managers should have full flexibility to use any reasonable tool⁹ at their disposal to mitigate fuel loading and invasive

⁹ Refuge management flexibility to manage fuels is necessary to implement interagency policy for wildland fire prevention:

“Fire Management and Ecosystem Sustainability: The full range of fire management activities **will be used** to help achieve ecosystem sustainability, including its interrelated ecological, economic, and social components. “Full range of fire management activities” may include any vegetative management treatment.” Guidance for Implementation of Federal Wildland Fire

vegetation (particularly near human habitation and private property) and restore burned landscapes regardless of whether such activities meet the proposed rule's standard as "natural." This applies particularly (though not exclusively) to managed livestock grazing and farming, which can serve as a critical fuels reduction and habitat management tool. By hampering refuge managers' ability to make timely decisions based on the specific conditions and threats to a given refuge or refuge area, the proposed rule sacrifices long-term fuels and vegetation outcomes for short-term optics and ideals.

Similarly, in Humboldt County predator control is an essential component of special status species conservation (as with the Greater Sage-grouse) when predator populations are substantially out of balance (as with ravens). In order to participate in the timely, meaningful conservation of special status species with other federal, as well as state and local partners, refuge managers should not be bound by an artificial and idealistic deference to "natural processes" but should have the latitude to use any reasonable means to reestablish a thriving ecological predator/prey balance on a given refuge.

Remedy:

Any regulation implementing the Improvement Act should allow refuge managers the latitude and flexibility to address ecological imbalances including, but not limited to, fuel loading, invasive vegetation, and predator control, in a manner that is appropriate and effective to the specific refuge and circumstances. Because the proposed rule requires deference to "natural processes" and "mimicking natural processes" in all management decisions, it fails to allow managers the flexibility necessary for timely and effective refuge management decisions. The proposed rule should therefore be abandoned. Failing this, the proposed rule should be substantially amended to include such flexibility.

4. The Proposed Rule has the potential to undermine wildlife-dependent recreational activities¹⁰ like hunting and fishing.

The proposed rule at § 29.3(c) creates novel, sweeping BIDEH management directives that have the potential to restrict, or even foreclose on, heritage refuge recreational activities such as hunting and fishing. Under the Improvement Act, "compatibility" is the unique standard to which wildlife-dependent recreational activities (including hunting and fishing) are held. According to the Act—

"The term "compatible use" means a wildlife-dependent recreational use [. . .] that, in the sound professional judgment of the Director, **will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.**" 16 U.S.C. § 668ee(1).

Under the Improvement Act, wildlife-dependent recreational activities that meet the above two-fold compatibility standard are given priority:

"[C]ompatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System." 16 U.S.C. § 668dd(a)(3)(B) (emphasis added).

"[C]ompatible wildlife-dependent recreational uses are the priority general public uses of the System and shall receive priority consideration in refuge planning and management." 16 U.S.C. § 668dd(a)(3)(C) (emphasis added).

"[W]hen the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity should be facilitated . . ." 16 U.S.C. § 668dd(a)(3)(D) (emphasis added).

Further, in administering the System, the Secretary shall:

[P]rovide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting." 16 U.S.C. § 668dd(a)(4)(K) (emphasis added).

Management Policy. Interagency Wildland Fire Leadership Council, Feb. 13, 2009, p. 10. (Emphasis added.)

¹⁰Under Executive Order 12996, "wildlife-dependent recreation" as it pertains to the System is defined as: hunting, fishing, wildlife photography and observation, and environmental interpretation and education.

Congress has further determined that:

“When managed in accordance with principles of sound fish and wildlife management and administration, fishing, hunting, wildlife observation, and environmental education in national wildlife refuges have been and are expected to continue to be generally compatible uses.” Public Law 105-57, Sec. (2)(6).

Notably, the FWS’s proposed BIDEH rule invents an additional management standard that exceeds the Improvement Act’s two-fold compatibility test for hunting and fishing. The proposed rule would only allow—

“Compatible, refuge-approved recreational hunting and fishing opportunities that do not compromise maintaining biological integrity, diversity, and environmental health on the refuge . . .” 89 FR 7352.

It is clear that the proposed rule’s novel BIDEH management directives have the potential to restrict hunting and fishing activities (though the vagueness of the rule with respect to hunting and fishing gives no specific information as to how BIDEH directives would apply to hunting and fishing). What is unclear is what authority the FWS has to augment the two-fold compatibility standard Congress has established for permissible hunting and fishing use of refuges in this proposed rule. As we noted above, the Improvement Act nowhere acknowledges BIDEH as a *third* standard that refuge uses must meet. By imposing new, additional conditions on hunting and fishing refuge uses beyond the Act’s two-fold compatibility test, the proposed rule exceeds the limits of statute and could improperly restrict Congressionally prioritized wildlife-dependent recreational activities that substantially contribute to Humboldt County’s economy, customs, and community character.

Remedy:

Any regulation implementing the Improvement Act must defer to Congressionally mandated compatibility standards for authorizing hunting, fishing, and other wildlife-dependent recreational activities, as well as Congressional directives prioritizing such activities when they meet the Improvement Act’s two-fold compatibility test. The proposed rule improperly seeks to add additional BIDEH restrictions and criteria to hunting and fishing activities not recognized in the Improvement Act. For this reason, the proposed rule should be abandoned. Failing this, the proposed rule must be substantially amended to defer to Congress’s two-fold compatibility test and prioritization of compatible hunting and fishing refuge uses.

5. Summary:

The FWS’s proposed rule attempts to rewrite the Improvement Act by papering over the inconvenient truth that the Improvement Act explicitly preserves and prioritizes the historic purposes for which individual refuges were created, which in some cases (as on the Sheldon Refuge) include agricultural use. This is impermissible. It is not for the FWS to pick and choose which provisions of the Improvement Act to implement and which to ignore, or to otherwise revise or edit the laws Congress writes. The agency must implement Congress’s laws without bias or favor, but the proposed rule fails to do so. Further, by imposing blanket BIDEH management criteria, including mandatory deference to natural processes, the proposed rule inappropriately constrains refuge managers’ ability to make timely and effective management decisions regarding fuels control, invasive vegetation, predator control, and other factors that affect the public health, safety, and welfare as well as wildlife and habitat. Finally, the proposed rule’s vague and sweeping BIDEH mandates could improperly restrict hunting, fishing, and other wildlife-dependent recreational activities that have been recognized by Congress as priority public refuge uses. For these reasons Humboldt County recommends that the proposed rule and the companion BIDEH policy document be abandoned. Failing this, they must be substantively rewritten to correct these shortcomings.

Humboldt County appreciates the opportunity to provide these comments on the FWS’s proposed rule. If the FWS has questions or would care to discuss these comments further, please contact County Manager Don Kalkoske or County public lands consultant Andy Rieber.

Sincerely,

JESSE HILL,
Chairman

Alabama Farmers Federation

February 29, 2024

Public Comments Processing
U.S. Fish and Wildlife Service
Falls Church, VA

Re: FWS-HQ-NWRS-2022-0106

To Whom It May Concern:

The Alabama Farmers Federation is an affiliate of the American Farm Bureau Federation and Alabama's largest farm organization representing over 350,000 members in all 67 Alabama counties. We appreciate the opportunity to comment on the proposed rule and updated policy for "biological integrity, diversity and environmental health" on the National Wildlife Refuge System (NWRS).

Farmers in Alabama have been and continue to participate in cooperative agriculture with NWRS, including Wheeler National Wildlife Refuge. This mutually beneficial relationship provides opportunities for farmers to access good farmland and leave a portion of their crop as feed for wildlife. However, due to policy changes over the last several years, the farmers have been pushed out and then invited back onto the refuge. This current proposal jeopardizes the continued use of genetically engineered crops (GECs) on NWRS lands which are essential to meeting the objectives of the NWRS.

Farmers choose to plant GECs due to their advantages, which include reduced pesticide applications, reduced tillage practices, reduced fuel consumption and greater and more consistent yields. These should be the same goals the NWRS seeks to achieve. Increased and more consistent production with less inputs are good for both the farmer and the ecosystem.

On August 2, 2018, the USFWS issued a policy memorandum withdrawing a July 17, 2014, policy which would have phased out the use of GECs on NWRS lands. At that time, the USFWS stated, "there may be situations, however, where the use of GMO crop seeds is essential to best fulfill the purposes of the refuge and the needs of birds and other wildlife . . ." We believe this is still the case and encourage the agency reach this same conclusion once again.

Further, genetically modified crops continue to be used widely in agriculture as they have time and time been found to be safe. In fact, the United States Food and Drug Administration (FDA) estimates that more than 95% of animals used for meat and dairy in the United States eat GMO crops. The FDA also states that studies show the health and safety of animals are the same whether they eat GMO or non-GMO foods. The USFWS should adopt this same view. Policies across various agencies at the federal level should not be at odds with one other.

Thank you again for the opportunity to comment.

Sincerely,

JIMMY PARNELL,
President

Family Farm Alliance

April 2, 2024

Shannon Estenoz, Assistant Secretary
 U.S. Fish and Wildlife Service
 Department of the Interior
 Washington, DC 20240

Re: FWS-HQ-NWRS-2022-1016—Proposed Regulations to Ensure BIDEH of the
 Refuge System are Maintained

Dear Assistant Secretary Estenoz:

On behalf of the Family Farm Alliance (Alliance), I appreciate the opportunity to comment on the U.S. Fish and Wildlife Service's (Service) proposed new regulations intended to ensure that the biological integrity, diversity, and environmental health (BIDEH) of the National Wildlife Refuge System (Refuge System) are maintained, and where appropriate, restored and enhanced, in accordance with the National Wildlife Refuge System Improvement Act of 1997. In addition, the Service is proposing updates to the existing BIDEH policy. We urge that the Service not adopt the proposed rule/policies for the reasons articulated in this letter.

Of utmost concern is that the notice of rulemaking recites reductions in wildlife populations and climate change but does not link the specific policy changes to these underlying concerns.¹ In fact, when the healthy relationship between Western waterfowl populations and irrigated agriculture is fully considered and understood, it would appear that the Service should be encouraging increased partnership-driven collaboration that seeks to replicate these successes elsewhere, instead of advancing the types of anti-farming arguments that we regularly see coming from litigious, well-funded environmental organizations. The fact that some of the most litigious anti-farming and ranching organizations² are supportive of this regulation speaks volumes. One group has vocally advocated phasing out 22,000 acres of farming in the Tule Lake and Lower Klamath National Wildlife Refuges.³

For generations, American family farmers and ranchers have grown food and fiber for the world, and these farmers will have to muster more innovation to meet the critical challenge of producing even more to meet projected future increases in world (and U.S.) demand for these commodities. It is our view that such innovation in agriculture must be encouraged by the Federal government, rather than stifled with new, top-down federal policies and regulations that create uncertainty for irrigated farms and ranches in the rural West.

About the Family Farm Alliance

The Alliance is a grassroots organization of family farmers, ranchers, irrigation districts and allied industries in 16 Western states. The Alliance is focused on one mission: To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. We are also committed to the fundamental proposition that Western irrigated agriculture must be preserved and protected for a host of economic, sociological, environmental, and national security reasons—many of which are often overlooked in the context of other national policy decisions.

¹The preamble to the proposed rule states that refuges “*have begun to experience the effects of climate change while continuing to contend with the myriad of other anthropogenic stressors affecting fish, wildlife, plants, and their habitats. Climate change is transforming historical species composition and ecological function of habitats, creating new challenges to traditional wildlife management strategies that were based on stable, stationary baseline conditions. . . . the Service has determined that this proposed rule and policy revision is warranted to clarify Refuge System policies and practices; better prepare refuges to confront future impacts from climate change and other anthropogenic change; and provide the opportunity for public input on the Service’s interpretation of the Improvement Act’s BIDEH mandate, including its application in the context of predator control, conservation translocations, genetically engineered organisms, invasive species, pesticide use, agricultural practices, and mosquito control.*”

²e.g., Western Watershed Project 2/28/24 letter to Shannon Estenoz, (“We applaud the recognition that agriculture is incompatible with wildlife conservation on refuges in most cases.”); 2/2/2024 News Release, Center for Biological Diversity (“conventional agricultural practices” are “one of the most egregious threats to wildlife on refuges”).

³<https://waterwatch.org/programs/klamath-basin/>

Background

There are over 560 national wildlife refuges in the United States, encompassing more than 897 million land acres.⁴ with the involved land either having been reserved from the public domain or acquired from private ownership by purchase or condemnation, and most are located in western states with irrigated agricultural lands. Each has its own specific history and circumstances. Farming and grazing are common on refuge lands and integrated with other management practices by refuge managers.

The statutes and executive orders establishing each refuge also provide management policies. For example, by statute, a group of refuges where I reside—the Klamath Basin of Oregon and California—“shall be administered by the Secretary of the Interior for the major purpose of waterfowl management, but with full consideration to optimum agricultural use that is consistent therewith.” (Public Law 88-567) Highly productive land within these refuges was originally designated for homesteading. Congress later chose to stop the homesteading to preserve the unoccupied state of land then being farmed but directed that Interior “continue the present pattern of leasing” specified land and “maximize” revenue from the leasing, and lease revenue (rent) is used for compensatory payments to local governments including three counties.

In 1997, recognizing the multitude of circumstances and management practices on wildlife refuges, enacted the National Wildlife Refuge System Improvement Act (Improvement Act) (Public Law 105-57). The Improvement Act requires refuge managers to prepare comprehensive conservation plans (CCP) for refuges or refuge complexes. The Improvement Act also provides a uniform procedure to authorize “uses” of refuges land that are not specified in statutes or executive orders creating the reservation. These uses may include hunting, wildlife viewing, grazing, farming, or myriad other activities. Where an activity is not among the legal purposes of a refuge, it can be authorized if it is “compatible” with the purpose or purposes of the refuge. A use is compatible if, “based on sound professional judgment, [the use] will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose(s) of the national wildlife refuge.” (50 C.F.R. §25.12) Refuge managers have made many thousands of compatibility determinations under a process detailed in federal regulations. (50 C.F.R. 26.41)

Overview of the Proposed Regulation

The Service claims these proposed regulatory and policy revisions would support conservation throughout the Refuge System in response to both long-standing and contemporary conservation challenges, including the “universal and profound effects of climate change” on refuge species and ecosystems. Together, these proposals are intended to uphold BIDEH across the Refuge System by providing refuge managers with a consistent approach for evaluating and implementing management actions to protect vulnerable species, restore and connect habitats, promote natural processes, sustain vital ecological functions, increase resilience, and adapt to climate change. The proposed regulation, an update of a policy issued during the last week of the Clinton administration, targets, and points to the elimination of long-standing and widespread agricultural practices on public lands in the national wildlife refuge system. The regulation would establish a policy to **prohibit** farming and grazing unless new, extra-statutory criteria are satisfied.

Concerns with Proposed Regulation

The regulation proposed on February 1, 2024, includes several new policy approaches that directly affect agriculture. These include 1) *Use of genetically engineered organisms*; 2) *Invasive species management*; 3) *Pesticide use*; and 4) *Agricultural uses*. These new requirements would change the rules for selected activities. For example, in the case of agricultural uses, the Improvement Act stipulates that agricultural activities can be authorized if compatible with refuge purposes, but the new rule would presumptively prohibit agriculture unless it is “determined necessary” to accomplish refuge purposes. Thus, the proposed rule/policies would impermissibly establish a presumption against allowing certain activities of refuge lands nationwide rather than follow the requirements of the Improvement Act, which provides that the Service may allow activities that are not specific refuge purposes, on a case-by-case basis, for each refuge, if the activity is determined to be a compatible use.

⁴ https://www.fws.gov/sites/default/files/documents/2022_annual_report_of_lands_with_data_tables.pdf

Additionally, the proposed rule could threaten important activities on privately-owned agricultural lands adjacent to or near federal refuge lands, in contradiction to the statutory requirement that the Secretary of Interior, “in administering the [Refuge] System, 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.”⁵

Specifically, subparagraph (c)(5) the proposed rule includes sweeping new authority to empower the Service to “address threats” to refuges “by pursuing appropriate actions, including when such threats to refuge resources arise outside refuge boundaries.”⁶ The Alliance is concerned that the Service’s discretion of what a “threat” to refuge resources is, how far “outside refuge boundaries” could be interpreted, and what “appropriate actions” could mean to irrigation and agricultural activities near and adjacent to refuge boundaries.

The Service’s proposed policy update to its refuge Service Manual includes a new vague, legal standard that directs refuge managers to use their “sound professional judgment” to “ensure that management actions benefit wildlife conservation by contributing to, and not diminishing BIDEH.”⁷

Included with a host of proposed management directives is proposed paragraph (c)(4), which empowers refuge manager to “acquire, transfer, or lease water rights” and “to pursue and secure critical water assets to support the myriad of migratory birds, fish, and other wildlife that rely on refuge habitats.”

These statements are concerning in light of provisions in Service Manual paragraph 3.15 that direct managers to “regularly monitor land use proposals, changes to adjacent lands and external activities for their potential impacts to the BIDEH of ecosystems that includes refuges,” but that if the refuge manager deems appropriate, can “take action within the legal authorities available to the Service.”⁸ The policy proposals appear to invite litigation rather than promote cooperation with local, state and private agricultural landowners.

Many aspects of the proposed rule/policies are highly subjective or vague. The proposed rule thus proposes sweeping, self-granted power that is undefined and we believe would invite conflict and litigation that would not serve the public interest. It is not good policy or appropriate to promulgate these broad statements and objectives as rules with legal effect. The proposed rule is anchored in the BIDEH policy, which itself derives from broad directives in the Improvement Act. The rule appears to be an obvious departure from the process for approving compatible uses in favor of a blanket policy that is hostile to agriculture.

Perhaps our biggest concern with the proposed regulation is that the notice of rulemaking recites reductions in wildlife populations and climate change but does not link the specific policy changes to these underlying concerns. While the proposed rule discusses important global concerns regarding impacts to species and ecosystems, there is no clear logic explaining why the specific elements of proposed rule would address or resolve these issues or improve the conditions of concern. In the absence of this discussion, a primary purpose of our letter is to demonstrate the important role that Western irrigated agriculture plays in providing habitat to Western wildlife, in particular waterfowl.

The Intermountain West Joint Venture Water 4 Initiative

The Family Farm Alliance works closely with the Intermountain West Joint Venture (IWJV), a leader in utilizing science and technology advancements to link agriculture, hydrology, and wildlife habitat conservation. The IWJV’s Water 4 Initiative is focused on the importance of maintaining agricultural land for habitat conservation and landscape resiliency within western states. Integrating agriculture, science, technology, and ecology can lead to improved understanding of key linkages related to the importance of agricultural irrigation and the need to invest in modernizing irrigation infrastructure. Such investments also have collateral benefits for landscape resiliency including groundwater recharge, habitat enhancement, and conservation of fish and wildlife.

We agree with IWJV that there is a unique opportunity to address long term food security through investments in agricultural infrastructure that in turn have benefits for wildlife conservation.

⁵ The National Wildlife Refuge System Administration Act, 16 U.S.C. § 668dd(a)(4)(E).

⁶ Fed.Reg. 7351 (Feb. 2, 2024) (amending 50 C.F.R. subchapter C, part 29).

⁷ 89 Fed.Reg. 7347 (Feb. 2, 2024) (amending 50 C.F.R. subchapter C, part 29)

⁸ U.S. Fish and Wildlife Service Manual Part 601 FW 3.15.

The Importance of Agriculture to Migratory Birds in the West

Agriculture and human settlement have long been tied to ecologically important wetland and riparian resources and the water they provide. For over one hundred years, this pattern has concentrated private landownership in the West's river bottoms and valleys, areas that are surrounded by publicly-owned sagebrush rangelands and forests. Meadow hydrology today is influenced by water law in the west of the United States that structures timing of irrigation and flooding in early to late spring when water is first made available to growers and again in mid-summer when fields are re-flooded to promote regrowth after hay cutting:

“Waterbird reliance on agricultural wetlands is well documented, and while natural systems exhibit greater ecosystem benefit, seasonal waterbird utilization provides an important habitat niche compatible with existing water-use practices.”⁹

In order to monitor changes in the resiliency of these networks, IWJV scientist Patrick Donnelly partnered with scientists from the University of Montana, the U.S. Geological Survey, and the U.S. Fish and Wildlife Service's Migratory Bird Program to look at surface water changes over 35 years in 26 key waterbird landscapes in the Intermountain West. Donnelly's work noted that agricultural and wetland relationships were very complex. Notably, the study found that approximately 7% of irrigated lands linked to flood irrigation and water storage practices supported 61% of all wetland inundation in snowmelt watersheds.¹⁰ In monsoonal watersheds, small earthen dams, meant to capture surface runoff for livestock watering, were a major component of wetland resources (67%) that supported networks of isolated wetlands surrounding endorheic¹¹ lakes.

Emerging science is greatly expanding our understanding of wetland resources and the impacts that climate change and human water uses are having on finite wetland habitats on public and private lands in the West. The data has also elevated the role that flood-irrigated agricultural lands in natural floodplains are playing a key role in maintaining migratory bird populations in water-limited landscapes. These habitats are immensely valuable to migratory birds. Recent research shows that roughly 80% of the habitat use by sandhill cranes, white-faced ibis, cinnamon teal, and northern pintails in the Intermountain West is on privately owned, flood-irrigated wet meadows. To wit:

- *“Sustaining network resilience will require conservation strategies to balance water allocations preserving agriculture and wetlands on private lands that accounted for 67–96% of habitat use.”¹²*
- *“Flood-irrigated agriculture, an important foraging resource for ibis (Moulton et al. 2013), was associated with approximately 88% of sites.”¹³*
- *“Moreover, 29.8% of stopover use points occurred in wet agriculture, the most used (cinnamon teal) habitat type across all ecoregions in our study.”¹⁴*
- *“We documented the majority of foraging birds in flood-irrigated and wheel-line sprinkler-irrigated agricultural fields (76%) and natural wetlands (13%), which were limited in our study area (3% of land cover) Most agricultural fields (>85%) used by foraging ibis were flood-irrigated and all had standing water or recent moisture at the time of use.”¹⁵*

The IWJV's goal, informed by human dimensions research, is to help landowners continue to mimic natural hydrology through flood irrigation in floodplain systems. Cutting-edge IWJV science shows that critically important flood-irrigated landscapes within the Intermountain West comprise a wetland network supported by agriculture and necessary for the survival of migratory birds.

A pre-print version of Patrick Donnelly's next publication—*Beneficial 'inefficiencies' of western ranching: Flood-irrigated hay production sustains wetland systems by mimicking historic hydrologic processes*—affirms that grass-hay flood

⁹ Working Science for Working Landscapes (see discussion section of original research paper)

¹⁰ Wetland trends from the IWJV: Maintaining Resiliency of Continental Waterbird Flyways (see paper)

¹¹ An endorheic lake or basin has no outflow to an external body of water such as a river or ocean, and only loses water through evaporation or seepage into the ground.

¹² From the paper abstract: The Call of the Cranes: What Sandhill Crane Migration Can Tell Us About Water Availability in the West (see original research paper)

¹³ “White-Faced Ibis and Water in the West: Indicating the Path to Resiliency in an Arid Region” (Page 6 of original technical report)

¹⁴ From discussion: Migration Stopover Ecology of Cinnamon Teal (*Research under review*).

¹⁵ From discussion: Importance of flood irrigation for foraging colonial waterbirds

irrigation at large scales, in part, mimics floodplain processes sustaining wetlands and groundwater recharge.¹⁶ Despite representing only 2.5% of irrigated lands, grass-hay operations supported a majority (58%) of temporary wetlands, a rare and declining habitat for wildlife in the Intermountain West. This novel understanding of grass-hay agroecology highlights the vital role of working ranches in the resilience and stewardship of riparian systems.

Finally, based on the upcoming paper's finding on flood-irrigated grass hay, Mr. Donnelly analyzed managed public wildlife refuge/wildlife area wetlands. This provided a glimpse at the managed surface water on the landscape (irrigation resulting in surface water wetland habitat + managed public wetlands) in which private and landowners and refuge managers have the ability to manage the timing, flooding duration, and water levels:

- Flood-Irrigated Grass-Hay: 818,156 acres¹⁷
- Managed Public Wetlands: 193,646 acres (IWJV analysis)

That shows that 81% of the managed surface water wetland habitat in the Intermountain West over the last seven years is a result of irrigated agriculture. The wildlife refuges provide certain habitats—summer flooded semi-permanent wetlands, fall-flooded seasonal wetlands—that are different from the irrigated grass-hay habitats, so we truly need all these habitats.

There's also evidence that points to the fact that many wildlife refuges in the Intermountain West traditionally relied upon agricultural irrigation return flows (e.g., tailwater) as a key component of their water supplies. For example, the narrative at the beginning of the Great Salt Lake Wetland Habitat Needs report¹⁸ observes that, when canals flowed, the refuges had water supplies, when irrigated agricultural lands were developed and irrigation ceased, those water supplies went away.

Here's the bottom line. Based on the bird utilization of flood-irrigated agricultural lands, the reality that irrigated agriculture accounts for 81% of the managed surface water wetland habitat, and the history of some key wildlife refuges being dependent on return flows from irrigated agriculture (which is lost without agricultural irrigation), it's clear that irrigated agriculture is playing a very important role in sustaining wetland-dependent migratory bird habitat across the Flyways.

The importance of maintaining Western agricultural land for habitat conservation and landscape resiliency

The proposed regulation imbeds a message that we often hear from certain litigious environmental activist groups. While irrigation has increased agricultural productivity in the arid American West, these critics often focus only on how it has altered the natural landscape. However, irrigation projects also provide important benefits to wetlands. In California's Sacramento Valley, rice production provides vitally important surrogate habitat and food for waterfowl and other species. In the Klamath Basin of California and Oregon, cereal grains and other wildlife-friendly agricultural production is critical to meeting the needs of Pacific Flyway waterfowl. In addition, irrigated corn, wheat, and alfalfa croplands in the McNary and the Columbia National Wildlife Refuges in central and eastern Washington provide a valuable source for ducks, geese and other waterfowl.

IWJV has begun to quantify the exact number of agricultural acres that need to be enhanced/protected in the Klamath Basin in California and Oregon (among other locations) to provide habitat to sustain water bird and waterfowl populations. This has critical implications for the broader agricultural community in the Pacific Flyway. If habitat is not maintained in the Klamath Basin, migrating birds will likely move south, to California's Central Valley, earlier in the season. This earlier migration means birds may arrive before rice is harvested, resulting in potentially devastating impacts to rice production. This is just one example showing the importance of understanding landscape systems as a whole and the ripple effects that can occur through habitat loss.

In Northern Colorado, a study by Colorado State University (CSU) researchers found that 92 percent of wetlands were visually connected to the irrigation infrastructure. Though land conversion and water diversions have led to dramatic

¹⁶ <https://www.biorxiv.org/content/10.1101/2023.12.10.571036v1.full>

¹⁷ Id.

¹⁸ Great Salt Lake Wetland Habitat: A Needs Report Based on Interviews with the Managers. November 2020. Prepared by Janice Gardner and Sarah Woodbury, Wild Utah Project.

reductions in historic wetland acreage in some places, it is clear from the CSU study that current agricultural landscapes create wetlands that rely on irrigation water.¹⁹

Americans should appreciate the fact that Western farming and ranching operations provide valuable open space. In the Southern Rockies, for example, 43 percent of the private land that is located adjacent to public lands has a public grazing lease. The approximately 24,000 grazing leases on BLM and Forest Service lands are connected to more than 230 million acres²⁰ of private land that ranchers utilize for sheep and cattle grazing during the rest of the year. What would happen to wildlife and open space if public-land grazing were to end and the private lands were developed? Private lands provide most winter and riparian habitat for many wildlife species. Public lands, being less productive, cannot sustain healthy wildlife populations once the private lands rimming their boundaries are developed and reappear as housing subdivisions.²¹

Conclusion

We urge that the Service not adopt the proposed regulations. Our members and others in the regulated community see increased Federal top-down regulations and controls being proposed and put in place, while proven, collaborative partnership-driven approaches to find lasting solutions to vexing water problems appear to have been put on the back burner. Our producers find it difficult to understand why agricultural production finds itself continually under attack when farmers and ranchers continue to provide the food and fiber to feed and clothe the Nation and the world. We are troubled why the Service and other federal agencies are “biting the hand” that produces the food.

While inflation and the cost of living being the top concern of Americans, our own government’s policies are putting the squeeze on some of the world’s best producers of safe, affordable food. We are already losing American farmers,²² against the current backdrop of shrinking significantly inflated food costs, global food supply challenges, and a looming global famine. Rather than advance the harmful agendas of anti-farming and ranching activists, the importance of Western American agricultural production should be carefully and thoughtfully evaluated.

Now is the time to focus on the critical importance of maintaining our country’s food security and locally sourced foods. Rising food prices and global hunger are linked to the war in Ukraine, extreme climate events, and other global stressors.

Thank you for this opportunity to comment. Farmers, ranchers, and some conservation groups know that the best water solutions are unique and come from the local, watershed, and state levels. They know we need policies that encourage agricultural producers, NGOs, and state and federal agencies to work together in a strategic, coordinated fashion. They understand that species recovery and economic growth and activity do not have to be mutually exclusive.

Western irrigated agriculture is a strategic and irreplaceable national resource important to both our food security and our economy. It must be appreciated, valued, and protected by the federal government in the 21st Century.

Sincerely,

DAN KEPPEL,
Executive Director

¹⁹Sueltenfuss, Cooper, Knight, and Waskom, “The creation and maintenance of wetland ecosystems from irrigation canal and reservoir seepage in a semi-arid landscape,” Colorado State University, 2012.

²⁰Congressional Research Service Report, “*Statistics on Livestock Grazing on Federal Lands: FY 2002–2016*” (August, 2017) <https://crsreports.congress.gov/product/pdf/R/R44932/3>

²¹Gary P. Nabhan, Richard L. Knight, and Susan Charnley, “The Biodiversity that Nature Reserves Can’t Capture: How Western Ranches, Tribal Grazing Lands and Private Forests Sustain Ecosystems and Their Diverse Species” in *Saving the Wide Open Spaces*, 2011

²²The USDA’s recently released five-year Census of Agriculture showed the biggest five-year decline in number of farmers since at least 2000. Agriculture Secretary Tom Vilsack recently said this highlights the need to do more to help medium-sized and small operations.

State of Utah
Department of Natural Resources

March 4, 2024

Shannon Estenoz, Assistant Secretary
U.S. Fish and Wildlife Service
Department of the Interior
Washington, DC 20240

Re: FWS-HQ-NWRS-2022-1016—National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health

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 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.

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 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,

REDGE B. JOHNSON,
Director

Modoc County, California
Board of Supervisors

February 27, 2024

Public Comments Processing
U.S. Fish and Wildlife Service
Falls Church, VA

Re: Comments: Docket No. FWS-HQ-NWRS-2022-0106

To Whom It May Concern:

Modoc County, California (County) appreciates the opportunity to submit its position regarding the U.S. Fish and Wildlife Service's (Service) proposed new regulations regarding the biological integrity, diversity, and environmental health (BIDEH) of the National Wildlife Refuge System (Refuge System). Modoc County could be considered an epicenter for refuges "created" from productive agricultural land rich in wildlife habitat. This habitat often existed because of traditional, ecologically friendly agricultural practices. In many cases, we have seen that habitat degraded and lost through preservation-like refuge management that ceased the activities that were beneficial to wildlife. It is, through this lens, that the County analyzes the Service's proposal.

General Comments

The National Wildlife Refuge System Administration Act (as amended) states refuges should be managed to meet both the purpose for which the refuge was established and the overall mission of the Refuge System. As it relates to this proposal, it is also to ensure the BIDEH are maintained for the future. As a County, we respect this mission.

However, as a practical matter, we observe the U.S. Fish and Wildlife Service is skeptical of commercial agricultural activities (haying, grazing, farming), on refuge land, even when these practices are producing desired habitat and food. Many believe there is no place for any agriculture, other than raising a little grain for waterfowl feed, on refuges. Based on our experience interacting with the agency, it is evident that they feel great pressure from many in the environmental community to maintain these beliefs and implement them. Our primary concern with this proposal is that it will go even further in pushing managers to make decisions regarding agriculture on refuges that will be detrimental to both wildlife and our local communities.

The U.S. Fish and Wildlife Service lacks the experience or knowledge of how to properly manage agricultural practices on the refuge that benefit both the refuge and the local community. There is a natural tendency to want to "love a refuge to death" rather than see habitat maintained through agriculture. We are seeing other federal efforts to 'preserve rather than conserve' federal land and resources. The County urges you to rewrite this proposal in order to give local managers the latitude and the support necessary to employ beneficial agricultural activities that can provide quality habitat and maintain community backing.

We have many local examples of the ecological damage created when agricultural activities have ceased in the name of environmental purity on refuges. Within the County, we have seen quality habitat degraded by removing the haying and grazing that maintained the wetland/meadow grasses in the short, growing stages desired by grazing waterfowl. We have observed productive land invaded by noxious weeds and destructive rodents because weed and predator control were abandoned. Lack of irrigation or proper irrigation has turned wetlands into deserts, valuable meadow habitat into overgrown, waterfowl unfriendly swamps, and become breeding grounds for destructive swarms of grasshoppers. Pressure from anti-use advocates and a lack of strong support from the upper echelons have contributed to these situations.

One solution to repeating these mistakes continually is interaction with local government. County governments have direct connections with local producers who continue to produce, on nearby farms and ranches, the kind of habitat that are often what refuge wildlife need. County government also can bring university cooperative extension (natural resource advisors) scientists into the discussions that can lead to management outcomes that can benefit refuges, local communities, and nearby landowners. To this end, we are quite concerned that in the section of the Federal Register entitled "Coordination with Adjacent Landowners, State, and Tribal

Partners”, you have failed to include local government. The Service’s relationship with adjacent landowners is often troubled as they see increased depredation of their private land and crops if refuge habitat is degraded or not appealing. Additionally, we are now seeing refuges, because of stagnant overgrowth, creating wildfire risks for neighbors.

In this same section of the description of your proposal, you discuss the need for a landscape perspective in order to ensure the BIDEH of the Refuge System. While we don’t disagree that there may be a need for some 30,000 feet guidance, each refuge is unique unto itself and it is far more important to address BIDEH at the refuge level. Your best facilitator for that remains local government. We strongly encourage you to not be swept up in the current one-size-fits-all, top down direction sweeping the federal land management agencies. This approach serves all impacted poorly.

The proposed regulations direct managers to prioritize natural processes and support ecological connectivity to achieve refuge goals and objectives. The County would remind the Service that grazing, although it be by livestock rather than wild ungulates, is a natural process. It is also science-based. The only other method for removing old-growth wetland vegetation, besides haying and grazing, is burning.

The same paragraph encourages the establishment of wildlife corridors to facilitate the adaption of climate change. We have no problems with corridors within refuge boundaries. We become very concerned when the Service begins to look over the fence at neighboring properties. Refuge expansion, for whatever reason, especially without early and meaningful coordination with local government, is something the County takes very seriously. We recently were made aware of an expansion of a local refuge after a deal had already been brokered with the adjacent landowner. The Service acquired it, not because the potential acquisition had been carefully analyzed (there was no National Environmental Policy Act assessment) and found vital to the Refuge Systems mission, but because it was available. Our land use policy is that federal agencies should concentrate on better management of the land and resources they are already responsible for, rather than acquiring additional land. We see this proposal as encouraging additional acquisitions and urge that it be rewritten.

The County’s belief is that much stronger engagement with local government would be greatly beneficial to both the Service and the Refuge System. We strongly urge you to rewrite this section to not only include local government as one of the entities for consultation but also highlight its importance.

We will repeat again that refuge staff often feel they are under immense pressure from many directions to curb the use of haying, grazing, and farming as tools for producing wildlife habitat and food, regardless of whether or not that food and habitat can be duplicated another way. These new proposals will likely increase that pressure under the guise of climate change. We suggest support for the desirable end results and not to be dictating the means to get there. As it relates to climate change, our observations are that the unsatisfactory condition of federal lands is not due to climate change, but rather to the failure of federal land managers to adopt appropriate management strategies to address the challenges of climate change. Those decisions should be made locally, to address site-specific conditions, rather than be a one-size-fits-all approach.

Climate change management requires an aggressive approach that needs all the tools in a refuge manager’s toolbox. It means more effective and efficient use of available water, utilizing haying and grazing to produce more fire-resilient refuges as well as desired regrowth for late-season wildlife forage and appropriate upland grazing to provide species of concern with the heterogeneous mix of forages they require. These sorts of practices need policies and regulations that encourage their use if we are to have refuges with the resiliency to withstand the challenges that will come with climate change resource management. These include, but are not limited to, wildfire, flooding, and invasive weeds and insects.

Specific Comments

Your proposal summary states that these rules/policies would provide refuge managers with a consistent approach for evaluating and implementing management actions. In the whole, that may be true, but the County reminds the Service that there is a statutory exception to that statement; the Lower Klamath and Tule Lake refuges. To paraphrase George Orwell; all refuges are equal, but some refuges are more equal than others.

Public Law 88-567 (Kuchel Act) clearly states these refuges are to be managed for waterfowl but with full consideration to optimum agricultural use. This new proposal is clearly not compatible with the Kuchel Act. The County strongly urges direction be provided that emphatically states that the management direction for these two refuges comes from the law, not this new proposal, regardless of its final form. While this might seem to be a non-issue, the refuge managers have been under constant pressure since the inception of the Kuchel Act, both from within and outside the Service, to manage in such a way to minimize the importance of the mandated farming. The County has seen several attempts over the years to sidestep the intent of the law and attempt to make the viability of agriculture on these refuges difficult or impossible.

We suggest direction be developed that clearly delineates to all decision makers on these two refuges that agriculture is not optional. We also suggest selecting personnel in management positions that have the necessary background to understand the importance of refuge farming; for the refuge, the communities, and the impacted local governments.

We fully understand that the Refuge System does not have a primary obligation to consider the impacts their operations have on the surrounding local communities. The single mission is management for wildlife and their habitat. **However, this is not the case for the Lower Klamath and Tule Lake Refuges.** Because of the legislative mandate for agricultural activity, Congress made it quite clear that this required farming was there to benefit the local community, as well as indirectly the waterfowl.

The importance of these "lease lands" to the local economy cannot be understated. These acres provide a starting place for the next generation of farmers. They are an important component of the agricultural economy of the tri-county area, contributing significantly to the overall economic health of the basin. They help local government directly through the refuge revenue sharing program as a portion of the lease money goes to the three counties. Indirectly, they help contribute to both the secured and unsecured tax rolls. While these amounts may not seem significant from the Service headquarters 2800 miles away, but they are critical for providing essential services to our citizens.

The Clear Lake National Wildlife Refuge contains one of the last known Greater Sage Grouse leks in Northeastern California. It is maintained, at least in part, by the grazing that takes place there. This managed grazing is critical for the heterogeneity needed for proper Sage Grouse habitat. It cannot be produced any other way than by appropriate grazing. Again, we believe that this proposal provides additional pressure, on top of that already existing from the environmental community, to remove livestock from refuge land, regardless of the benefits.

The Modoc National Wildlife Refuge is almost entirely wetland. This habitat is ideal for many species of waterfowl. This habitat was primarily developed through the use of haying and grazing while it was in private hands. While these activities have continued in some form since the Service acquired the land, there has been continual pressure to change or discontinue the agricultural practices that created the desired short grass waterfowl habitat. Haying and grazing are the only mechanisms available to provide the short new-growth grasses that migrating waterfowl require for spring and fall migrations. There is no viable alternative. Because there are many that believe no commercial activity has a place on a wildlife refuge, there is constant pressure for cessation of the haying and grazing. The proposed regulations add to this pressure. They should be rewritten to provide support for local-level decision-making, ideally including the local expertise familiar with how agricultural activities can be managed to produce desired habitat.

Summary

The County views the direction of this proposal as detrimental to refuge management, as it re-enforces the push for the removal of agricultural practices that are already too prevalent. Using the challenge of climate change as the reason for this proposal does nothing to weaken the argument that many of the agricultural practices are the only way to maintain and enhance certain desired conditions. In fact, often climate change management would require an increased reliance on these practices as water applications must become more efficient and effective.

We again reiterate that the Lower Klamath and Tule Lake Refuges must be clearly separated from other refuges in the way they are to be managed. This proposal is in conflict with the Kuchel Act and separate guidance must be developed that fully complies with this legislation.

Finally, the County reminds the Service that local government must be a partner in refuge management. We can provide both support and local expertise for local refuge managers that will benefit all. We encourage a re-draft of this portion of the proposal.

The County appreciates consideration of our position and looks forward to an improved proposal.

Sincerely,

SHANE STARR,
Chair of the Board

**Wyoming Game and Fish Department
Cheyenne, WY**

March 4, 2024

U.S. Fish and Wildlife Service
Falls Church, VA

Re: National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health proposed rule change—FWS-HQ-NWRS-2022-0106

Dear Madam/Sir:

The Wyoming Game and Fish Department (Department) has reviewed the proposed National Wildlife Refuge System, Biological Integrity, Diversity, and Environmental Health (BIDEH) proposed regulations change. The Department is statutorily charged with managing and protecting all Wyoming wildlife (W.S. 23-1-103). Pursuant to our mission, we offer the following comments for your consideration.

The U.S. Fish and Wildlife Service (Service), propose new regulations to ensure that the BIDEH of the National Wildlife Refuge System (Refuge System) are maintained, and where appropriate, restored and enhanced, in accordance with the National Wildlife Refuge System Improvement Act of 1997. These proposed regulatory and policy revisions would support conservation throughout the Refuge System in response to both long-standing and contemporary conservation challenges, including the universal and profound effects of climate change on refuge species and ecosystems.

The Department encourages the Service to continue to work directly with the states, as well as with their regional associations, in an effort to enhance these proposed changes with language which recognizes the expertise and authority of the individual state fish and wildlife management agencies. There are several proposed changes which could substantially benefit from inclusion of direction for the Service to consult and collaborate with the affected state(s) in matters for which the states can provide a high level of expertise in addressing species or ecosystem specific issues. Areas within the regulations where inclusion of such language would be extremely meaningful include:

PART 29—LAND USE MANAGEMENT

§ 29.3 Biological integrity, diversity, and environmental health.

- (c) Management directives for ensuring BIDEH.
 - (2) Conserve and connect habitat
 - (3) Manage fish and wildlife populations
- (d) Management activities and uses with potential to ensure BIDEH.
 - (1) Native predator control
 - (2) Conservation translocations
 - (4) Invasive species management
 - (6) Agricultural uses

The above listed regulation sections are also proposed to be extremely restrictive in the potential management options which can be considered for the refuge system. This direction, in conjunction with no consultation with the respective state fish and wildlife agencies, will only exacerbate the Service's limited opportunity to develop successful management options to address BIDEH within the refuge system.

Thank you for the opportunity to comment.

Sincerely,

ANGI BRUCE,
Deputy Director

Idaho Cattle Association

March 4, 2024

Public Comments Processing
U.S. Fish and Wildlife Service
Falls Church, VA

Re: Docket No. FWS-HQ-NWRS-2022-0106; RIN 1018-BG78; National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health

To Whom It May Concern:

On behalf of Idaho's cattle ranching families, the Idaho Cattle Association submits the following comments regarding the U.S. Fish and Wildlife Service's (FWS) proposed rulemaking and policy revisions to ensure Biological Integrity, Diversity, and Environmental Health (BIDEH) on National Wildlife Refuge System (NWRS) lands. Ranchers are the stewards of the ecosystem on both the private and public land they use. They provide an effective line of defense against fire and noxious weeds, manage forage for optimum production, and are the primary protectors of open space in the private lands of the west. Because of this, we have a vested interest in this proposal and encourage you to consider the importance of continued livestock grazing on NWRS as tool that builds and supports healthy landscapes.

The rule calls for FWS to “*allow for and defer to natural processes on habitats within the Refuge System and promote conservation, restoration, and connectivity to meet refuge habitat objectives and landscape planning goals [. . .] When natural processes cannot meet habitat objectives or facilitate adaptation to anthropogenic change, we will use science-based management techniques [. . .]*” It is important the FWS acknowledges that livestock grazing is a “natural process” that provides many important benefits to the landscape.

As a wise and sustainable use of the land, managed livestock grazing fosters a good ecological balance as it promotes good grass growth, lessens the threat of catastrophic wildfires, and controls the spread of weeds. In terms of climate change concerns, grazing provides benefit here too. When cattle graze, they stimulate soil microbial activity, promoting good nitrogen storage, deeper roots, and healthier plants. Healthier soil also sequesters more carbon.

Idaho ranchers and livestock grazing permittees provide infrastructure vital to wildlife. Particularly on federal land, there are places in Idaho that, without developed water sources, wildlife would have no water for fifty miles or more. Because of water developments that grazing permittees have established and continue to maintain across public lands, wildlife have been able to flourish. Certainly, the federal government would not be able to maintain the wildlife's vital water supply on all this land without the efforts of the grazing permittees.

Livestock grazing ensures results in effective weed control. Grazing is an effective tool to manage a wide variety of forage, spurring growth of perennial grasses. Well-managed grazing has been scientifically proven to have a positive impact in decreasing invasive species like cheatgrass. The timing and intensity of grazing for such efforts requires flexibility in management that an overly prescriptive land use plans would prohibit, thereby blocking an effective conservation tool.

Foremost, livestock grazing on plays an essential role in fuels management and wildfire control. Grazing reduces the threat of catastrophic fire by reducing fine fuels. It removes the overgrowth of forage which is the primary fuel for many wildfires. Management flexibility is needed to manage the landscape in such a way to be responsive to reducing fuel loads—this rule may serve to stifle that needed flexibility. In Idaho, we have seen several areas closed to grazing and have witnessed the resulting environmental degradation. For example livestock grazing has been canceled on state Wildlife Management Areas (WMA), whose mission is to support wildlife species and serve as principal habitat for at-risk species, similar to NWRS lands. The Craig Mountain WMA has seen multiple devastating catastrophic fires since the state took over management and removed grazing. Given the proliferation of wildfire within the WMA, due in part to land management decisions and inaction, the state is clearly missing the mark. Rather than serving as a safe harbor for species, the WMA is a tinderbox just asking for repeated catastrophic fires. This is precisely the scenario that will occur if FWS removes grazing from NWRS lands.

Moving forward, it is critical that livestock grazing is both continued on NWRS lands and expanded as a tool to assist FWS in managing those lands. Any removal of these activities would put remaining habitat at great risk of being lost—if not by catastrophic fire, then to development of the surrounding landscape.

We are particularly concerned with this statement in the proposed rule: “*We prohibit the use of agricultural practices unless they are determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health, and where we cannot achieve refuge management objectives through natural processes.*” As enumerated above, livestock grazing is an important conservation tool in managing the landscape for the benefit of plant and wildlife species. It is essential that FWS acknowledges it to be an acceptable practice and natural process.

An additional concerning element of the rule is the goal to acquire more land to put in the NWRS system. The rule seeks to “*acquire lands when necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health*.” We are unequivocally opposed to the federal government’s acquisition of private lands. If opportunities for productive working landscapes are reduced or diminished through land acquisition, the resulting impact is the financial unsustainability of agriculture operations which causes the sale and development of intact landscapes and habitat. The best thing that FWS can do to support those intact landscapes is not to acquire those lands, but rather to partner with landowners in voluntary conservation efforts.

The Idaho Cattle Association appreciates the opportunity to provide comment on this proposed rule. The continued presence of livestock grazing on enhances wildlife habitat and native biological diversity and the cattle ranchers who manage the grazing provide an invaluable partner to the federal government in achieving its conservation goals. In addition to these comments, we also support the comments submitted by the Public Lands Council and National Cattlemen’s Beef Association.

Sincerely,

JERRY WROTEN,
President

March 1, 2024

Shannon Estenoz, Assistant Secretary
 U.S. Fish and Wildlife Service
 U.S. Department of Interior
 Washington, DC 20240

Assistant Secretary Estenoz:

We write to express concern with the proposed National Wildlife Refuge System's (NWRS) biological integrity, diversity, and environmental health (BIDEH) proposed rule and proposed policy updates (Docket Number: FWS-HQ-NWRS-2022-0106). We first ask that you extend the comment period to at least a 90-day period due to the complex nature of this proposal and the need for additional stakeholder input. Our organizations have the privilege of representing tens of thousands of hunters, anglers, and conservationists in each of our respective states.

Establishing a broad, top-down structure such as the proposed BIDEH rule, where widely accepted wildlife habitat management practices, such as cooperative agriculture, predator control, and use of pesticides, are first prohibited unless justified, will reduce the necessary flexibility to meet the goals of each unique refuge unit. Mechanical and chemical management practices are important tools that wildlife managers should be able to utilize in managing each Refuge and the current regulations are sufficient to prevent ecological harms.

Additionally, we are concerned that the BIDEH proposal does not safeguard the primary purpose of each individual NWRS unit. The Improvement Act requires that when conflict arises between the NWRS mission and the established refuge purpose, the purpose of the unit itself supersedes the NWRS mission. The BIDEH proposed rule appears contradictory.

Further, as the National Wildlife Refuge System presently needs more money from Congress to address deferred maintenance, chronic understaffing, and executing habitat improvement projects, this is not the time for new obstacles to this important work. Instead, the National Wildlife Refuge System could best advance its mission with greater clarity about projects, programs, and deferred maintenance.

We appreciate your consideration of additional time to comment on this proposal and look forward to working with the agency to make this proposed rule work for our members.

Sincerely,

Alabama Wildlife Federation	North Dakota Wildlife Federation
Arizona Wildlife Federation	Oregon Hunters Association
Idaho Wildlife Federation	Tennessee Wildlife Federation
Michigan United Conservation Clubs	Wyoming Wildlife Federation
Nevada Wildlife Federation	

February 26, 2024

U.S. Fish and Wildlife Service
Falls Church, VA

The undersigned organizations, which represent millions of America’s hunters, anglers, recreational shooters, and wildlife scientists and other professionals, write today to express strong concerns with the recently proposed National Wildlife Refuge System (NWRS) biological integrity, diversity, and environmental health (BIDEH) proposed rule and proposed policy updates (Docket Number: FWS-HQ-NWRS-2022-0106).

At the outset, the undersigned organizations strongly urge the U.S. Fish and Wildlife Service (FWS) to extend the comment period to at least a 90-day period. The policy changes contained in the BIDEH proposal represent significant and consequential changes to how the NWRS has managed and conserved its land and waters for the last century. Recognizing the magnitude of the proposed changes, the undersigned believe that a 30-day comment deprives partners and stakeholders of the time and attention necessary to formulate substantial comments to address the sweeping changes proposed in BIDEH. For example, in June 2023, FWS published the proposed 2023–2024 Hunt Fish Rule and provided the public a 90-day period for comments. Comparatively, the BIDEH proposal has the potential to have far greater impacts on fish, wildlife, and their associated habitats as well as the American public than the 2023–2024 Hunt Fish Rule. The BIDEH proposal in and of itself is a complex and marked change in direction for the NWRS, and the signatories believe that the BIDEH proposal requires a comment period that is equal to or greater than what was provided for the 2023–2024 Hunt Fish Rule.

We are concerned that the intent of the BIDEH proposal is inconsistent with the intent and the plain language of the National Wildlife Improvement Act of 1997 (Improvement Act). For example, BIDEH is only mentioned one time in the entire Improvement Act under Section 5, Administration of the System—and yet it’s singularly selected out of a list of 14 items to create this proposed policy to “ensure that the biological integrity, diversity, and the environmental health of the System are maintained for the benefit of present and future generations of Americans”. The plain language of the Improvement Act does not direct the NWRS to establish or propose broad, sweeping changes as identified in the BIDEH proposal.

Additionally, we are concerned that the BIDEH proposal does not prioritize the primary purpose of each individual NWRS unit. The Improvement Act requires that when conflict arises between the NWRS mission and the established refuge purpose, the purpose of the unit itself should take precedence over the NWRS mission. Unfortunately, the BIDEH proposal does not appear to reflect this requirement as the proposal states: “The law states that each refuge must be managed to fulfill both the Refuge System mission and the specific purposes for which that refuge was established”. While this statement is true, it makes a muddle of a clear part of the Improvement Act—that refuge purposes take priority over the mission of the NWRS rather being placed on equal footing. The BIDEH proposal has a single-minded focus on the overall mission of the NWRS and does not fulfill the need to support the purpose of each unique NWRS unit. This threatens to create a top-down approach that will undermine the distinctive purpose for which each individual refuge was established, and it could erode public support for the refuge system by disenfranchising those who have long fought for the establishment of refuges and sought to see the NWRS adequately funded. Furthermore, the proposal does not consider the distinctive challenges and varied conservation measures that are necessary to fulfil the purpose of each refuge. Establishing a broad, top-down structure such as BIDEH, where widely accepted wildlife habitat management practices, such as cooperative agriculture are first prohibited unless justified, will reduce the necessary flexibility to meet the goals of each unique refuge unit.

In summary, the undersigned organizations do not believe the BIDEH proposal is consistent with the Congressional intent and the plain language of the Improvement Act. We also strongly urge FWS to extend the comment period to a minimum of 90 days. The proposed direction contained in the BIDEH proposal is a significant departure from how the NWRS has traditionally managed its land and water in cooperation and partnership with the American public. With such a significant change in mind, the undersigned request more time to thoroughly examine the consequences and outcomes of the BIDEH proposal.

Finally, we request a meeting with the FWS Director to discuss implementation of the Refuge Improvement Act and the future of the NWRS.

Sincerely,

American Woodcock Society	National Shooting Sports Foundation
Archery Trade Association	National Wild Turkey Federation
Association of Fish & Wildlife Agencies	North American Falconers Association
Backcountry Hunters & Anglers	North American Grouse Partnership
Boone and Crockett Club	Orion: The Hunter's Institute
California Waterfowl	Pheasants Forever
Campfire Club of America	Pope & Young Club
Congressional Sportsmen's Foundation	Professional Outfitters and Guides of America
Conservation Force	Quail Forever
Council to Advance Hunting and the Shooting Sports	Rocky Mountain Elk Foundation
Delta Waterfowl	Ruffed Grouse Society
Ducks Unlimited	Safari Club International
Houston Safari Club	Sportsmen's Alliance
Izaak Walton League of America	Theodore Roosevelt Conservation Partnership
Masters of Foxhounds Association	Whitetails Unlimited
Mule Deer Foundation	Wild Sheep Foundation
National Bobwhite and Grassland Initiative	Wildlife Forever
National Deer Association	Wildlife Mississippi
National Rifle Association	

March 4, 2024

Shannon Estenoz, Assist. Secretary
 Martha Williams, Director
 U.S. Fish and Wildlife Service
 Washington, DC 20240

Re: National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health; Docket No. FWS-HQ-NWRS-2022-0106

Dear Assistant Secretary Estenoz and Director Williams:

The Montana Stockgrowers Association (MSGA), Montana Association of State Grazing Districts (MASGD), and the Montana Public Lands Council (MPLC) submit the following comments regarding the U.S. Fish and Wildlife Service's (USFWS) proposed rulemaking and policy revisions to ensure Biological Integrity, Diversity, and Ecological Health (BIDEH) on National Wildlife Refuge System (NWRS) Lands.

Since 1884, MSGA has been dedicated to finding proactive solutions to the most difficult challenges facing Montana's ranching families. MSGA represents land-owners who run cattle on private, state, and federal lands in Montana and have a significant and interminable commitment to long-held traditions of resource management that keep lands and wildlife healthy.

Since the earliest settlement of the West, and particularly Montana, the main responsibility of the Montana Public Lands Council has been to develop and coordinate unified policy positions and regulatory actions that most effectively represent Montana public lands grazing users. MPLC is a leading state organization in monitoring, initiating and coordinating actions on priority public lands issues in the state.

Of all the western states, Montana alone has a statutory network of State Grazing Districts, cooperative areas of diverse ownership that allow for the greatest use of range forage while conserving limited natural resources. Grazing districts are non-profit, cooperative associations of ranchers and farmers who raise cattle.

The value of livestock grazing for healthy lands.

We represent producers who graze livestock on public land across the state of Montana and our organizations work to protect grazing lands and permits. As such, we voice serious concerns regarding the proposed NWRS BIDEH policy revision because of the important and positive impact of cattle grazing on NWRS lands. Montana is home to many national wildlife refuges, including the well known Charles M. Russell National Wildlife Refuge, and our organizations include producers who have grazed cattle on refuge lands for generations. There is a mutually beneficial relationship between wildlife habitat and cattle grazing, one that is tended to by producers who prioritize land, soil, and habitat health. Further, cattle grazing is especially valuable in terms of fuel load reduction for fire prevention efforts. In the proposed policy revisions it is stated that agricultural uses are, "prohibited unless determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health, and where we cannot achieve refuge management objectives through natural processes." MSGA, MPLC, and MASGD are extremely concerned with the language that illustrates cattle grazing as a secondary or last ditch effort for management if natural processes do not work. As written, it appears that cattle grazing could legally be removed from NWRS lands and other species introduced to the landscape instead. Our organizations request that the final rule text includes explicit assurances that existing cooperative agriculture agreements will not be amended to preclude domestic livestock species like cattle and that cattle will not be indirectly, or directly, forced off allotments.

Translocation of species not currently present on refuge lands.

This rule change includes the ability for the agency to translocate species to the refuge, and consequently, increase their presence on surrounding lands. The proposed Service Manual revisions state "[The NWRS] may allow the introduction of a species outside its current range to avoid extinction or extirpation; restore a species; reestablish a specific ecological function lost to extinction or extirpation; or, in accordance with § 17.81(a) of this chapter, when necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health." While we recognize that the USFWS has the authority to manage refuge acres for the benefit of wildlife, including federally protected species, we request the agency to include extensive public engagement, concerted efforts to

mitigate depredation and appropriate coordination between state and federal agencies to ensure proper compensation for depredation losses, before translocating predator species to refuge lands. We further ask for the same diligence and public engagement process when the agency is considering the introduction of non-predator species translocation. It's important to note that when species are translocated to a wildlife refuge, there is a legitimate probability that these species will migrate off the refuge at one point or another, thereby affecting the communities, lands, and livestock operations of the surrounding areas.

Impact to local communities.

Not only will the above stated changes affect the communities surrounding the 580 NWR's in the United States, so will USFWS intent to "acquire lands when necessary." As land is absorbed into wildlife refuges it is removed from production and from the available private land base. Young and beginning producers, as well as producers looking to expand their operations in order to remain sustainable are already strapped in terms of access to land. Removing more acreage from the available land base will only exacerbate this issue, increasing the already climbing rate of producers leaving the industry. Without these ranches, employment will decrease, the tax base will decrease and rural communities will suffer, as will local, state, and federal economies. Additionally, food and fiber production will continue to decrease, driving prices up for consumers and creating avoidable commodity shortages. While we understand that there are many factors at play in this situation, regulations such as the one proposed often have a domino effect on the livestock industry. We encourage the USFWS NWRS to utilize every other possible option to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health, before ever considering land acquisition. This includes entering into new cooperative agriculture agreements to continue to ensure productive acres remain as such.

Economic Analysis and NEPA Review

The current rulemaking and revisions package is currently being viewed under the assumption these changes do not constitute as a major rule under 5 U.S.C. 804(2). Our organizations believe that there is the potential for a significant economic and environmental impact nationally if the rules are adopted. The rule changes open up a host of questions yet to be answered surrounding cattle grazing, protected species, land values and access on and around wildlife refuges. It would be prudent to study the potential economic impacts if all rules and policy revisions are carried out. It is noted that a NEPA process would be triggered on a case-by-case basis. We request clarification on what those cases would be and why a preliminary, overarching NEPA analysis should not be implemented before passage of the rule changes. Producers who graze cattle on national refuges take land health very seriously and manage resources for healthy soils and clean water. As land stewards, ranchers work hard to keep the location an excellent habitat for wildlife, knowing that wildlife and livestock have a mutually beneficial relationship when all are managed correctly. It is unwise to minimize a valuable tool for land health, fire suppression, and economic viability from the management of wildlife refuge lands.

MSGA, MASGD and MPLC appreciate USFWS for reviewing our comments and evaluating our concerns as your agency works through the rulemaking process surrounding biological integrity, diversity, and environmental health on refuge lands.

Sincerely,

Ellie K. Brighton
Government Affairs Specialist
Montana Stockgrowers Association

Executive Staff
Montana Association of State
Grazing Districts

Executive Staff
Montana Public Lands Council

Statement for the Record
National Mining Association

America's mining industry supplies the essential materials necessary for every sector of our economy—from technology and healthcare to energy, transportation, infrastructure and national security. The National Mining Association (NMA) is the only national trade organization that serves as the voice of the U.S. mining industry and the hundreds of thousands of American workers it employs before Congress, the federal agencies, the judiciary and the media, advocating for public policies that will help America fully and responsibly utilize its vast natural resources.

We work to ensure America has secure and reliable supply chains, abundant and affordable energy, and the American-sourced materials necessary for U.S. manufacturing, and national and economic security, all delivered under world-leading environmental, safety and labor standards. The NMA has a membership of nearly 300 companies and organizations involved in every aspect of mining, from producers and equipment manufacturers to service providers.

The NMA appreciates the opportunity to provide the subcommittee with written testimony on the U.S. Fish and Wildlife Service's (FWS) proposed rule and policy revision on the National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health (BIDEH).¹ The NMA is concerned that without significant changes, the proposals could impede mining activities and create further delays in the administration's stated goal of reducing vulnerabilities in U.S. supply chains.

Introduction

The NMA's members have a long-standing record of supporting biological integrity, diversity and environmental health in all of the areas in which they operate. They are routinely at the forefront of engagement in the conservation and recovery of threatened and endangered species and improvement of their habitats. These values are reflected in the sustainable land management practices used at the core of their business models. Additionally, the NMA's members have reclaimed millions of acres of land, much of which is restored to serve as prime species habitat, which prior to operations, were unsuitable for species. As such, our concerns with the proposed rule should not be read as opposition to conservation activities or the incorporation of BIDEH within the Refuge System.

The Proposals Will Cause Delays and Mission Creep by the FWS

The proposed rule and policy changes sought by the FWS would incorporate an overarching statement in support of the Refuge System's conservation mission and includes a legal standard for managing refuges that would apply when the FWS refers to a management action being necessary to ensure BIDEH. The NMA is concerned that the proposed rule and policy changes are directly related to the FWS's increased use of conservation areas to restrict development and therefore could have serious implications for mining projects. For example, the NMA recently commented on an unprecedentedly large proposed 5.7-million-acre conservation area in Montana where valid existing mining claims are within the proposed boundary.² Because conservation areas are managed as units of the Refuge System, this type of management can delay and even block domestic mining activities, leading to a further increase in our nation's reliance on foreign sources of mined materials.

This concern is substantiated by FWS's own assertions that conservation areas are managed as units of the Refuge System. As recently evidenced in the establishment of the Lost Trail Conservation Area (LTCA), management as a Refuge System can stymie mining activity.³ For example, in the LTCA, FWS would only allow mineral extraction or development on Refuge System lands if there is a valid existing right to engage in such activities.⁴ Yet, determining the presence of valid

¹ 89 Fed. Reg. 7,345 (Feb. 2, 2024).

² FWS, *Proposed Establishment of the Missouri Headwaters Conservation Area*. <https://www.fws.gov/project/proposed-missouri-headwaters-conservation-area>.

³ See, e.g., FWS, *Final Land Protection Plan for the Establishment of the Lost Trail Conservation Area* ("The Lost Trail Conservation Area" will be a new unit of the National Wildlife Refuge System . . . , as authorized by the Fish and Wildlife Act of 1956.).

⁴ 612 FW 1 at 1.7 (emphasis added); see also 1.7(C) ("The Service should work with BLM, the agency responsible for conducting formal mineral examinations, to verify that a valid mining claim exists.").

existing rights is a lengthy, cumbersome and expensive process.⁵ The NMA is concerned that the FWS underestimates the burden and difficulty of demonstrating valid existing rights by both the mining claim owners and the federal government.

Further, the NMA is concerned that this proposal will similarly lead to mission creep and the expanded use of conservation areas beyond the intended use, and put highly mineralized lands off limits. Caution is needed when assessing the use of conservation areas in the future under these BIDEH proposals.

As we are entering the most mineral-intensive era in human history, preventing new mining activities jeopardizes the Biden-Harris administration's objectives to secure our minerals supply chains to meet its clean energy goals. The NMA strongly urges the FWS to recognize that mining and mineral exploration and development can occur concurrently or sequentially with other responsible resource uses, including conservation of wildlife and their habitats. Given the vast amount of federal lands already closed to mining operations, the FWS should not use incorporation of BIDEH within the Refuge System as another way to block resource development activities.

The FWS has Limited Authority Outside of the Refuge System

Another troubling issue is that the proposed policy change would take a more aggressive approach to protecting units of the Refuge System from actions outside of refuges that may—even in some small part—impact refuge lands or waters. While there are various acts of Congress that correctly authorize FWS to acquire and manage areas of land, water, and interests to promote the conservation of wildlife, these acts have conditions and regulatory provisions which apply and oftentimes restrict the agency's purchasing and management activities. The FWS has no authority to manage land uses outside of units of the Refuge System and any attempt to do so would be unlawful. To allow FWS this authority could render the entire U.S. as a refuge under the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act).

The FWS policy change would also require the use of all available tools to protect refuge resources from unacceptable impacts to adjacent refuge lands. However, the term “unacceptable impacts” is undefined in both the policy change and the proposed rule. The policy further states that the FWS may take appropriate action within their legal authorities to obtain an appropriate remedy when an action outside of a refuge may result in those unacceptable impacts. Yet, the FWS provides no explanation or guidance as to what “appropriate actions” may be in this circumstance. Moreover, the policy change requires refuge managers to encourage compatible adjacent land uses by actively participating in the planning and regulatory processes of other federal agencies, and Tribal, state, and local governments that have jurisdiction over public or private property affecting the refuge.

Despite recent efforts to inappropriately control lands outside of the Refuge System,⁶ the FWS cannot act as the wildlife czar to control land activities on private lands or other lands outside of the Refuge System. The NMA is concerned that the new BIDEH proposals will only embolden Refuge System employees to criticize every land use project within an undefined radius of a unit of the Refuge System. Accordingly, the NMA urges the FWS to withdraw its proposal, provide the appropriate statutory authority (if one exists), and if it decides to proceed with a rule-making or policy changes, to provide clear definitions and explanations as to how these changes will be implemented. The FWS has not done so in this proposed rule and policy revisions, and therefore should not proceed with the BIDEH proposal.

The BIDEH Proposals Will Increase Regulatory Uncertainty

The BIDEH proposals are vast in scope and highly consequential. Given this expansive nature, it is almost certain to create regulatory uncertainty for both FWS and the regulated community—which the NMA is concerned could be by design.

⁵Am. Law of Mining §14.04[1] (2023); see also *Cameron v. U.S.*, 252 U.S. 450 (1920) (explaining the burdens imposed upon the federal government to provide mineral claim holders notice and an opportunity to be heard with respect to mining claim rights determinations).

⁶See letter from Secretary Deb Haaland to Governor Brian Kemp urging Georgia to not move forward with mining proposal near Okefenokee National Wildlife Refuge, available at <https://subscriber.politicopro.com/eenews/f/eenews/?id=0000018a-6b72-d88e-a7fa-7b7bfd00000> (last visited Mar. 4, 2024).

The concepts and priorities encompassed in the proposals represent a complete overhaul and stark departure from how lands are currently managed within the Refuge System. This will inevitably lead to permitting delays at a time where mining products are needed more than ever. Furthermore, changing the rules of the game will impact the U.S.' ability to attract investment in mining projects on federal lands. As the World Bank has cautioned, “[G]overnments need to adopt the fundamental principle of ‘no surprises’ if they are to avoid developing a reputation for sovereign risk, thus affecting investment in their countries.”⁷

Regulatory certainty must be the cornerstone of responsible minerals and land use policies to enable the ramping up of domestic production and processing under our rigorous environmental and safety standards. Doing so will ease our nation’s bureaucratic paralysis to provide for greater economic competitiveness and growth while maintaining environmental protections and safeguards.

Conclusion

The NMA appreciates the opportunity to provide written testimony to the subcommittee related to the FWS’s BIDEH proposals. The proposals will result in costly, speculative, and untimely decisions that will only obstruct the needed production of minerals and coal in the United States. These impacts will have a significant impact on the Biden-Harris Administration’s ability to pursue—let alone, reach—their climate goals. The NMA strongly urges the FWS to withdraw or significantly modify its proposals to address stakeholder concerns.

The NMA looks forward to working with Congress and the administration to support conservation solutions that support the responsible development of our nation’s mineral endowment—a goal that is not mutually exclusive.



⁷Mining Royalties: A Global Study of Their Impact on Investors, Government, and Civil Society, James Otto *et al.*, the World Bank (2006).