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March 4, 2024

Shannon Estenoz
Fish Wildlife & Parks, Assistant Secretary
U.S. Department of the Interior
Submitted via: Federal eRulemaking Portal

RE: National Wildlife Refuge System Proposed Rule (FWS-HQ-NWRS-2022-0106)

Dear Assistant Secretary Estenoz,

The undersigned submit these comments regarding the proposed rulemaking and biological integrity, diversity, and environmental health (BIDEH) policy updates for the National Wildlife Refuge System. In summary:

- **Wilderness trammeling:** We request an umbrella provision explaining that trammeling activities (e.g. interventions, mitigation and adaptation measures, translocations, and other active management activities to achieve desired conditions within Refuges) are presumptively inappropriate within designated Wilderness.
- **Translocations:** With respect to “conservation translocations” generally, we have concerns about how these species will be defined (e.g. “invasive,” “native,” etc.) and the resulting obligations to and management implications for translocated animals in Wilderness. We request a provision explaining that translocations and associated prohibited uses (e.g. helicopters, motorized uses, installations, active supplementation and control actions) are presumptively inappropriate in Wilderness.
- **Predator killing:** We support Section 29.3(d)(1) addressing “native predator control” and offer suggestions for making this provision stronger and ensuring that the exceptions (e.g. meeting statutory requirements, fulfilling refuge purposes, and ensuring biological goals) do not conflict with the mandates of the Wilderness Act.

TRAMMELING ACTIONS AND WILDERNESS
(e.g. interventions, mitigation and adaptation measures, translocations, etc.).

We request an umbrella provision explaining that trammeling activities (e.g. interventions, mitigation and adaptation measures, translocations, and other active management activities to achieve desired conditions within Refuges) are presumptively not appropriate within designated Wilderness.

The Wilderness Act establishes a National Wilderness Preservation System to safeguard our wildest landscapes in their “natural,” “untrammelled” condition. 16 U.S.C. § 1131(a). Wilderness is defined as “an area where the earth and its community of life are untrammelled by man” and an area “retaining its primeval character and influence... which is protected and managed so as to preserve its natural conditions....” *Id.* § 1131(c). Congress provided a clear mandate for administering agencies: “[E]ach agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.” 16 U.S.C. § 1133(b). As one Wilderness expert notes,

In contrast to other public land management statutes, which typically authorize agencies to consider and weigh diverse values through exercise of their scientific and policy expertise, the Wilderness Act required certain areas to be managed predominantly for one use: wilderness preservation....

Unlike all other land-management statutes, the Wilderness Act’s basic purpose was not to delegate authority to expert agencies, but rather, to exclude certain lands from the application of the agencies’ specialized expertise, to restrain agency flexibility, and to protect (with limited, narrow exceptions) certain lands from the impact of the sort of policy choices land managers typically make.¹

The Rule summary states that “the Service is proposing regulations to ensure that the biological integrity, diversity, and environmental health of the Refuge System are maintained and, where necessary *and appropriate*, restored and enhanced.”² It then notes that “climate change and other anthropogenic change can require intervention to carry out the Refuge System mission and achieve refuge purposes.”³ The rule should make expressly clear that while some activities may be appropriate to advance refuge goals and purposes, they may not be appropriate in Wilderness.

There is a growing trend whereby climate change is used as the shoehorn to justify wilderness-degrading activities, including those seeking to actively manipulate conditions within Wilderness. From fish poisoning and stocking projects to selective tree planting proposals, from projects geared toward actively interfering with some ecological successions while actively assisting others, wilderness-administering agencies are demonstrating a rapidly increasing desire to intervene in natural processes and manipulate Wilderness to achieve a desired condition. There is also an increasing conflation of “desired” conditions with “natural” conditions—an idea

¹ Sean Kammer, *Coming to Terms with Wilderness: The Wilderness Act and the Problem of Wildlife Restoration*, 43 ENVTL. L. 83, 100-101 (2013).

² Nat’l Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health, 89 Fed. Reg. 7345 (Feb. 2, 2024) (to be codified at 50 C.F.R. pt. 29).

³ *Id.* at 7347.

laden with value bias even in the best of times. Throw climate change and all of its uncertainties into the mix, and the urge to actively maintain static or desired conditions becomes all the more problematic. It necessarily shifts the focus to human preference, knowingly or not, and in the face of unprecedented change, it opens the door to a host of unintended consequences.

Fish and Wildlife Service policy eloquently reflects the value in setting Wilderness apart:

We influence wilderness character with every decision about refuge management activities and refuge uses, including public use and enjoyment of wilderness. Maintaining wilderness character requires an attitude of humility and restraint. In wilderness, we do not adjust nature to suit people, but adjust human use and influences so as not to alter natural processes. We strengthen wilderness character with every decision to forego actions that have physical impact or would detract from the idea of wilderness as a place set apart, a place where human uses, convenience, and expediency do not dominate. We preserve wilderness character by our compliance with wilderness legislation and regulation, but also by imposing limits on ourselves.⁴

Policy guidance across the wilderness administering agencies likewise reflects the value in keeping Wilderness untrammelled. Agency guidance states, “Wilderness areas are living ecosystems in a constant state of evolution[,]” and “[i]t is not the intent of wilderness stewardship to arrest this evolution in an attempt to preserve character existing” at some prior time.⁵ And, “A key descriptor of wilderness in the Wilderness Act, untrammelled refers to the freedom of a landscape from the human intent to permanently intervene, alter, control, or manipulate natural conditions or processes.”⁶ In Wilderness, we “[p]rovide an environment where the forces of natural selection and survival rather than human actions determine which and what numbers of wildlife species will exist.”⁷

In Wilderness, natural conditions flow from untrammelled conditions, and those conditions may change over time. Wilderness-administering agencies must appreciate the crossroads at which they stand. Climate change is now certain to have far-reaching environmental effects, but the ecological consequences of climate change are reactions by natural processes to anthropogenic influence. Attempts to coerce such reactions in preferable directions only serves to intensify the human signature on the environment and should never be appropriate in those areas we set aside as Wilderness precisely to let nature carry forward on its own—whatever hand it is dealt. The future of Wilderness depends on it.

As former Secretary of Agriculture Orville Freeman once said,

In the city, in the country, almost everywhere he goes, the American is confronted with an environment dominated by his own technology. This is new, no others before us have experienced it on the scale we experience today. The end result is not certain. For man, with all his ability to adapt, for all his domination of the “lesser” species, still is a child of the sea, the mountains, the very wilderness he is rapidly obliterating. We are a nation

⁴ FWS Wilderness Stewardship Policy 610 FW 1.13(D).

⁵ BLM Manual 6340(1.6)(A)(6)(iv).

⁶ FWS Wilderness Stewardship Policy 610 FW 1.5(DD).

⁷ Forest Service Manual 2323.31.1.

bedazzled by technology, and addicted to crash solutions. But there are no instant ecologies; no instant wilderness. And so, in the final analysis, we must devote much more of our attention in the future to assessing each new technological development for its ultimate impact on man's environment. I hope it is never said of this generation, as Stephen Vincent Benet once said of another: "They thought, because they had power, they had wisdom also." We now have the power, literally, to move mountains. The next few years will determine if we have the wisdom to refrain from doing so.

Climate change will continue to cause vast changes in the world as we know it, and there will be increasing pressure to mitigate the effects through ongoing, counterbalancing manipulations. The question will be whether we lose Wilderness in the process.

An expert panel commissioned by the U.S. Fish and Wildlife Service and the other three federal wilderness-administering agencies addressed this concern directly:

Recognizing the wild in wilderness distinguishes wilderness from other land classes

One of the truly distinguishing characteristics of wilderness is the wildness of places. Wilderness is a place where civilization is a stranger and where wildness prevails. It is a place that is [undominated by human culture] and unmanaged by humans, where plants and animals, and where natural forces such as landslides and fires prevail on their terms. It is a place where humans can sense the untamed and the wild, and where survival challenges are apparent and desired. Protection of the natural wild, where nature is not controlled, is critical in ensuring that a place is wilderness. Such protection recognizes and celebrates the value of wild animals and plants, and of earth phenomena such as landslides, fires, and floods. It recognizes that humans are visitors to such places and that they should leave no trace so that wilderness remains wild and so that others can experience that wildness. Since wild is a fundamental characteristic of wilderness that is not attainable elsewhere, if there is a choice between emphasizing naturalness and wildness, stewards should err on the side of wildness.⁸

Request: Because Refuge goals and the desire to achieve or maintain specific conditions cannot supersede the more restrictive mandates of the Wilderness Act, the Rule should include an umbrella provision noting some of the management directives and activities detailed in Sections 29.3(c) and (d) may not be appropriate in designated Wilderness.

⁸ Pinchot Institute for Conservation, *Ensuring the Stewardship of the National Wilderness Preservation System* (Sept. 2001).

TRANSLOCATIONS

Section 29.3(d)(2) *Conservation translocations*; Section 29.3(b) *Definitions*

Demonstrating inherent problems with interventions and definitions of “naturalness,” the Rule is unclear how translocated animals will be defined (e.g. “invasive,” “native,” etc.) and what the resulting obligations to and management implications for those animals will be, particularly where they end up in Wilderness.

The Rule allows for “conservation translocations” but the definition section states that an introduced species cannot be considered “native.” It also defines “invasive species” as a “non-native organism... whose introduction causes or is likely to cause ... harm” and is subject to “pest management” as well as “predator control” activities.⁹

What is “native” to an area, much like what is “natural” for an area, has long been a strained and inconsistent topic for administering agencies in Wilderness. For example, in one project, agencies used “the North American continent and the Northern Rocky Mountains” as the appropriate scale for the “native range” of mountain goats yet confusingly stated that “mountain goats will be considered part of the natural conditions present at the time of wilderness designation [in three Wildernesses in Utah], but it must be made clear that this does not imply that we believe mountain goats are native.”¹⁰

In another example, the Forest Service and the National Park Service executed a plan to eradicate via aerial gunning an “exotic mountain goat” population on the Olympic Peninsula due to “adverse impacts on the natural quality of designated wilderness.”¹¹ There, mountain goats were introduced in the 1920s—well before wilderness designations in the 1980s—but the Park Service and Forest Service do not consider them part of natural wilderness conditions.

In Montana, State agencies, authorized by Wilderness administering agencies, are implementing plans to poison Wilderness streams and lakes to remove “non-native” fish introduced roughly a century ago and replace them with cutthroat trout even though the waters were historically fishless. The agencies argue that cutthroat trout, while not historically found in these Wilderness waters, are native to regional watersheds, and high-elevation Wilderness lakes and streams could provide climate refuge for the species. But at what cost to other species? What climate variables are we missing? Wilderness protection is supposed to remove these bias-laden questions from administration, and many of these projects have been and will continue to be litigated.¹²

⁹ Nat’l Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health, 89 Fed. Reg. 7345, 7351, 7352.

¹⁰ U.S. Forest Serv., Uinta-Wasatch-Cache Nat’l Forest, *Wildlife Report-Bighorn Sheep and Mountain Goat Disease Study*, 10 (2017); U.S. Forest Serv., Uinta-Wasatch-Cache Nat’l Forest, *Minimum Requirements Analysis-Bighorn Sheep and Mountain Goat Disease Study*, 6 (2017).

¹¹ Nat’l Park Serv., Olympic Nat’l Park, *Draft Mountain Goat Management Plan / Environmental Impact Statement* (2017); Nat’l Park Serv., Olympic Nat’l Park, *Olympic National Park Minimum Requirements Analysis* (2017); Forest Serv., Olympic, Mt. Baker-Snoqualmie, and Okanogan-Wenatchee Nat’l Forests, *Minimum Requirements Analysis Mountain Goat Removal from Olympic National Forest Wilderness Areas* (2016).

¹² See *Wilderness Watch v. Marten*, No. 9:21-cv-82-DLC (D. Mt. filed July 22, 2021) (resolved without final order); *Wilderness Watch v. U.S. Forest Serv.*, No. 9:23-cv-133-DLC-KLD (D. Mt. filed Nov. 8, 2023).

In another example, the Park Service authorized the reintroduction of wolves to the Isle Royale Wilderness to reestablish predation pressure on the island’s moose population even though the wolf/moose era on Isle Royale represents an incredibly small window in the island’s ecological history. Moose arrived between 1905 and 1914, roughly fifty years before the arrival of wolves. The Park Service noted that under the no-action alternative, “the island ecosystem functions would continue to change, from the past predator influenced ecosystem, to an ecosystem primarily influenced by physical conditions and vegetation community structure[.]” It also noted that “[t]here is debate among scientists as to which is most viable or preferable” and admits “[w]hether this is beneficial or adverse for the system depends on whether there is a preference for an ecosystem more influenced by predation or an ecosystem more influenced by bottom-up controls.” Additionally, the Park Service’s analysis acknowledged potential for unintended consequences. For example, it noted the “continued existence of moose in the absence of wolves would likely lead to repeated boom and bust cycles over evolutionary time scales and a reduction in the size of large animals (insular dwarfism).... This is a natural process and can lead to evolution within a species over time.” One NPS reviewer noted that “[i]n essence we may be changing or altering the trajectory of evolution, interjecting wolves into the system and slowing the occurrences of limited food instances, thus inhibiting the dwarfing process.”¹³

This is precisely the type of biased-laden tinkering that the Wilderness Act prohibits, even if well intentioned. And, notably, these translocation projects are associated with a large amount of motorized use and subsequent, repeated intrusions and interventions. Ultimately, “whatever ‘wilderness character’ means, it cannot be something that depends upon the active manipulations of humans.”¹⁴ Restraint and humility are important values underpinning the Wilderness Act, and “[l]and managers should exercise this same humility in dealing with wilderness areas, lest they lead us down a path to where there are no longer any places that are truly ‘wild,’ no places beyond the control of human institutions and cultural imperatives.”¹⁵

The Wilderness Act is one of our nation’s most visionary and broadly supported laws, passed nearly unanimously by the U.S. Congress. Now, on the 60th anniversary of that visionary law, the U.S. Fish and Wildlife Service, through this proposed rulemaking, threatens to eviscerate the Act’s fundamental tenets and rob both present and future generations of their “enduring resource of wilderness.” To avoid this unacceptable consequence, the rule must make expressly clear that these provisions do not apply within designated Wilderness.

Request: Include a provision explaining that translocations and associated prohibited uses (e.g. helicopters, motorized uses, installations, active supplementation and control actions) are presumptively inappropriate in Wilderness.

¹³ Nat’l Park Serv., *Isle Royale Nat’l Park, Final Envtl. Impact Statement to Address the Presence of Wolves*, 6, 48, 69, 73, 74 (2018).

¹⁴ Sean Kammer, *Coming to Terms with Wilderness: The Wilderness Act and the Problem of Wildlife Restoration*, 43 ENVTL. L. 83, 86 (2013).

¹⁵ *Id.*

PREDATOR KILLING
Section 29.3(d)(1) *Native predator control*

We support Section 29.3(d)(1) addressing “native predator control” and offer suggestions for making this provision stronger and ensuring the exceptions (e.g. meeting statutory requirements, fulfilling refuge purposes, and ensuring biological goals) do not conflict with the mandates of the Wilderness Act.

Refuge goals, less restrictive statutory requirements, and the desire to fabricate or maintain specific conditions cannot supersede the more restrictive mandates of the Wilderness Act.

Request: As discussed above, the Rule should provide an umbrella provision explaining that trammeling actions, including actions aimed at controlling predators, are presumptively inappropriate in Wilderness.

Additionally, the definition of predator control in the proposed Rule focuses exclusively on actions taken to “alter predator-prey *population* dynamics[.]”¹⁶ It is unclear whether predator killing activities targeted at individual predators would be included in this definition and its associated provision at Section 29.3(d)(1) or what the threshold would be for such activities to affect population dynamics.

Request: Remove the word “population” from the definition of predator control.

Finally, and related to the above paragraph, the Rule must ensure that predator killing will not be authorized for domestic animal protection. While it *may* be implicit that predator control actions cannot be authorized to protect cows, sheep, and other farmed animals because protection of farmed animals is not “necessary to ensure biological integrity, diversity, and environmental health,” it is not clear whether killing predators to protect livestock is covered by this provision at all because of the above problem with the definition of “predator control.”

As stated in the Humane Society’s comment letter:

[T]he rule must also prohibit predator control for protecting cattle, sheep and other farmed animals who live and graze on the Refuge System. Millions of wildlife, particularly native carnivores, are killed annually in the purported service of protecting these domestic animals. This excessive and random killing of wildlife, especially native carnivores, including raptors, is neither cost effective nor efficacious. Excessive carnivore killing for the purpose of protecting domestic livestock contravenes the purpose of the rule, “to ensure that the biological integrity, diversity, and environmental health” of America’s Refuge System is maintained.

Request: Remove the word “population” from the definition of “predator control” as described above and make explicit that killing predators to protect farmed animals is prohibited.

¹⁶ Nat’l Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health, 89 Fed. Reg. 7345, 7351.

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