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November 9, 2020

Public Comments Processing, Attn: FWS-R7-NWRS-2017-0058
U.S. Fish & Wildlife Service
5275 Leesburg Pike, MS: PRB/PERMA (JAO)
Falls Church, VA 22041-3803

Submitted via regulations.gov

RE: Supplemental Comments on U.S. Fish & Wildlife Service Proposed Rule for Refuge-Specific Regulations; Public Use; Kenai National Wildlife Refuge (Regulation Identifier Number 1018-BC74)

Dear Mr. Loranger:

Thank you for this additional opportunity to comment on the U.S. Fish and Wildlife Service's (Service) Proposed Rule for Refuge-Specific Regulations; Public Use; Kenai National Wildlife Refuge (proposed rule). Trustees for Alaska submits these comments on behalf of

Alaska Wildlife Alliance, Alaska Wilderness League, Alaskans FOR Wildlife, Animal Legal Defense Fund, Center for Biological Diversity, Defenders of Wildlife, Friends of Alaska National Wildlife Refuges, Humane Society of the United States, Humane Society Legislative Fund, Kachemak Bay Conservation Society, National Wildlife Refuge Association, Northern Alaska Environmental Center, Rewilding Institute, Sierra Club and its Alaska Chapter, and Wilderness Watch. These comments supplement our comments submitted on August 10, 2020.¹ The Service should not adopt the proposed rule.

Two major components of the proposed rule — allowing brown bear baiting and

¹ All of the documents referenced in this letter have either been uploaded as attachments to this letter or were uploaded as attachments to our August 10, 2020 letter via regulations.gov.

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eliminating the requirement for trappers to obtain a federal trapping permit — undermine and are inconsistent with Refuge mandates and priorities. Further, the Service should reject the suggestions by other commenters to eliminate the Service’s black bear baiting permit and to eliminate environmental education as the Service’s management priority for the Skilak Wildlife Recreation Area (WRA).²

I. The Alaska Board of Game allows brown bear baiting on the Kenai Peninsula with the specific purpose of reducing the Kenai Peninsula brown bear population.

As detailed in our earlier comments, the Alaska Board of Game began allowing brown bear baiting on the Kenai Peninsula specifically to decrease the brown bear population.³ In addition to the materials we have already provided, this is also illustrated by citizen proposals requesting that the Board authorize brown bear baiting, most of which focused on baiting as a way to decrease the brown bear population.⁴ The Board embraced this reasoning. For example, Board Chairman Ted Spraker recalled:

² Opposition to these proposed changes does not indicate support for black bear baiting or trapping on the Refuge; but if those activities occur they must be subject to a federal permit.

³ See, e.g., Alaska Board of Game, Partial Transcript of Alaska Board of Game Meeting at 42 (Mar. 15, 2013) (in response to the Refuge manager stating that the Refuge did not intend to allow brown bear baiting, the Board chair stated that he “hoped the refuge would cooperate with the state and . . . reduce some of the predator impact on 15A to try to rebuild this [moose] population.”) (attached as Exhibit 6).

⁴ See Board of Game, Proposal 155 (Mar. 15, 2013) (referring to the expanded registration hunt as “a solid move on the boards [sic] part in regards to predator control” and noting that “we do want to see the brown bear population put into check”) (attached as Exhibit 3); Board of Game, Proposal 156 (Mar. 15, 2013) (proposing liberalized brown bear hunting, including incidental take of brown bear at black bear bait stations, as a way to “reduc[e] their numbers, [and] help improve the survival rate of adult and calf moose”) (attached as Exhibit 4); Board of Game, Proposal 172 (Aug. 28, 2014) (proposal to lengthen the brown bear season in GMUs 7 and 15 and to remove the meat salvage requirement for brown bear taken over bait because of a perceived “brown bear population explosion. Brown bear predation on moose is not sustainable.”) (attached as Exhibit 2).

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[W]hen we had our meeting in Kenai and Soldotna in March of 2013, we had 54 people testify. About 50 of them said we need to reduce bear numbers, I mean, that was very clear direction from the public. I think the Board and the Department, you know, has stepped forward and done that.⁵

The Alaska Department of Fish and Game shared the same understanding, noting that “the board directed us to reduce the population and stabilize at a lower level.”⁶

The Service would violate its statutory obligations if it allowed the Board to attempt to reduce the Kenai Peninsula brown bear population even further — or to maintain the artificially reduced Kenai Peninsula brown bear population — by opening the Kenai Refuge to brown bear baiting.

II. Eliminating the requirement that trappers obtain a federal permit will hamstring the Service’s ability to protect natural diversity.

The Refuge relies on conditions in the federal trapping permit to protect a natural diversity of wildlife. For example, prior to the Service implementing the Furbearer Management Plan and requiring a federal trapping permit, trappers overexploited lynx on the Refuge.⁷ Despite abundant food and habitat, the Refuge lynx population declined by 80% between the 1973–1974 season and the 1983–1984 season.⁸ Scientists attributed this steep decline to the “intense, persistent, prolonged harvest for >10 years that exceeded the capacity of the lynx population to compensate for natural and human mortality and to naturally fill in vacancies.”⁹ The harvest total in the early 1970s, just prior to the lynx

⁵ Alaska Board of Game, Partial Transcript of Alaska Board of Game Meeting at 8 (Mar. 17, 2015) (previously submitted as Exhibit 36 to our Aug. 10, 2020 comments).

⁶ Board of Game, Testimony of Larry Van Dale at 1–2 (Mar. 14, 2014) (attached as Exhibit 5).

⁷ Theodore N. Bailey, et al., *An Apparent Overexploited Lynx Population on the Kenai Peninsula, Alaska*, 50(2) J. WILDLIFE MANAGEMENT 286 (Apr. 1986) (attached as Exhibit 1).

⁸ Exhibit 1 at 2, 7.

⁹ Exhibit 1 at 9.

population cycle peak,¹⁰ was 327 lynx.¹¹ The harvest total for the early 1980s, just prior to the population cycle peak, was only 58 lynx.¹² Mortality for radio-collared lynx continued to increase, nearly doubling between the 1982-1983 and 1983-1984 seasons.¹³ Most of these mortalities were directly due to trapping.¹⁴ The remaining mortalities were likely indirectly caused by trapping — for example, juveniles and kits starved once their mothers were taken or due to injuries caused by trapping.¹⁵ The Service acknowledged that high trapping pressure resulted in an “unnaturally low” lynx population when it adopted the Furbearer Management Plan in 1988.¹⁶ In the Plan, the Service concluded that “under current management practices, [trapping pressure on lynx] will remain high and continue to suppress the refuge lynx population well below the habitat’s potential.”¹⁷ Accordingly, the Service included specific conditions in the federal trapping permit intended to protect lynx, in addition to reporting conditions that allow the Refuge to monitor the impacts of trapping.¹⁸ The lynx population in the Refuge has increased since the Service implemented these management measures.¹⁹ The Service would strip itself of its most effective management tool for monitoring and protecting lynx — and many other wildlife populations on the Refuge — if the Service no longer requires trappers to obtain a federal permit.

¹⁰ Lynx populations rise and fall cyclically in response to snowshoe hare population cycles. U.S. Fish and Wildlife Service, *Comprehensive Conservation Plan Kenai National Wildlife Refuge* at 3-75 (June 2010) (previously submitted as Exhibit 51 to our Aug. 10, 2020 comments).

¹¹ Exhibit 1 at 5.

¹² Exhibit 1 at 5.

¹³ Exhibit 1 at 6.

¹⁴ Exhibit 1 at 6.

¹⁵ Exhibit 1 at 7.

¹⁶ Kenai National Wildlife Refuge, Refuge Furbearer Conservation and Trapping Plan at 22–24 (1988) (previously submitted as Exhibit 26 to our Aug. 10, 2020 comments).

¹⁷ Exhibit 26 to our Aug. 10, 2020 comments at 24.

¹⁸ See, e.g., Exhibit 26 to our Aug. 10, 2020 comments at 57, 59, & 62; Exhibit 51 of our Aug. 10, 2020 comments at 192 (lynx are “highly vulnerable to trapping” such that the Service must monitor both lynx and hare populations to “maintain adequate numbers of lynx on the Refuge”).

¹⁹ Exhibit 51 of our Aug. 10, 2020 comments at 192.

III. The Refuge-specific black bear baiting permit is essential to protect wildlife and public safety.

Some commenters have asked the Service to eliminate the Refuge-specific permit for black bear baiting as part of this rulemaking and to not require a Refuge-specific permit for brown bear baiting.²⁰ The Service should reject both of these suggestions.

First, if the Service decides to authorize brown bear baiting on the Kenai Refuge — despite the overwhelming scientific, policy, and legal reasons why doing so would be arbitrary and inconsistent with its legal mandates — it must require all brown bear baiters to obtain a federal permit from the Service. Failure to impose this requirement would leave the Service unable to monitor brown bear baiting activity and to impose necessary conditions for protecting wildlife and public safety.

Second, eliminating the black bear baiting permit requirement in the final rule would be arbitrary as outside the scope of the proposed rule and because it would eliminate the Service’s ability to ensure compatibility with Refuge purposes. The Refuge-specific permit for black bear baiting reduces conflicts between users. For example, it requires that bait stations not be placed adjacent to roads or trails, to protect non-hunting users, and ensures that there is no more than one site per square mile, which reduces conflict between hunters.²¹ The Compatibility Determination authorizing black bear baiting found the permitting requirement necessary to ensure the program remains “tightly controlled . . . to ensure compatibility.”²² The current Compatibility Determination also notes that “[a]ttention will be given to the program in the future to determine if additional changes are warranted, in particular to any developing human safety concerns or noticeable impacts to the area’s brown bear population.”²³

Given that black bear baiting is only considered compatible with the Refuge-specific

²⁰ State of Alaska, Alaska Department of Fish and Game, Comments on FWS-R7-NWRS-2017-0058-0002 at 11 (Aug. 10, 2020); Safari Club International, Safari Club International Comments on Proposed Rule, Refuge-Specific Regulations; Public use; Kenai National Wildlife Refuge, 85 Fed. Reg. 35628 (June 11, 2020), RIN 1018-BC74 at 4 (Aug. 10, 2020).

²¹ U.S. Dep’t of Interior, Kenai National Wildlife Refuge, Compatibility Determination re Black Bear Baiting at 3 (Aug. 14, 2007) (previously submitted as Exhibit 23 with our Aug. 10, 2020 comments).

²² Exhibit 23 to our Aug. 10, 2020 comments at 8.

²³ Exhibit 23 to our Aug. 10, 2020 comments at 8.

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permit requirement, and that the Refuge would consider limiting black bear baiting should brown bears be impacted, it would be completely arbitrary for the Service to remove the black bear baiting permit requirement — let alone allow brown bear baiting without a Refuge-specific permit.

IV. The Refuge should continue to manage the Skilak WRA to prioritize wildlife viewing and environmental education.

Some commenters asked the Service to reverse its long-standing prioritization of environmental education and wildlife viewing in the Skilak WRA when issuing a final rule.²⁴ Such an action would be outside the scope of the proposed rule, frustrating public notice and participation.²⁵ The Service should reject the request.

Regardless of the public notice problem with this suggestion, it also lacks merit. The Kenai Refuge is the only National Wildlife Refuge with wildlife-oriented recreation, interpretation, and environmental education as priority uses.²⁶ To facilitate these uses, the Service manages the 44,000-acre Skilak WRA to “provid[e] road accessible opportunities for wildlife viewing, environmental education, interpretation, photography, and other non-conflicting wildlife-dependent recreational activities.”²⁷ The Skilak WRA is one of the most heavily used areas of the Refuge, if not the most used area, and also contains the Refuge’s first designated wildlife travel corridor.²⁸

The Service has long restricted hunting in the Skilak WRA “so wildlife would become

²⁴ State of Alaska, Alaska Department of Fish and Game, Comments on FWS-R7-NWRS-2017-0058-0002 at 2, 11, 16 (Aug. 10, 2020); Safari Club International, Safari Club International Comments on Proposed Rule, Refuge-Specific Regulations; Public use; Kenai National Wildlife Refuge, 85 Fed. Reg. 35628 (June 11, 2020), RIN 1018-BC74 at 4, 6–7 (Aug. 10, 2020).

²⁵ See 5 U.S.C. § 553(b)(3) (“ . . . notice shall include . . . either the terms or substance of the proposed rule or a description of the subjects and issues involved.”).

²⁶ U.S. Dep’t of the Interior, U.S. Fish & Wildlife Service, Kenai National Wildlife Refuge Skilak Wildlife Recreation Area Revised Final Management Plan at 1 (May 2007) (attached as Exhibit 7).

²⁷ Exhibit 51 of our Aug. 10, 2020 comments at 31, 59; *see also* Exhibit 7 at 11 (the Service manages the Skilak WRA “to provide enhanced opportunities for wildlife viewing”).

²⁸ Exhibit 51 of our Aug. 10, 2020 comments at 227.

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more abundant, less wary, and easily viewed.”²⁹ The Service continues to apply special restrictions on hunting and trapping in this area to further opportunities for wildlife viewing and environmental education.³⁰ Allowing increased hunting — especially programs specifically intended to reduce predators³¹ — within the Skilak WRA would conflict with the Service’s management priorities for the area.

V. Conclusion

The Service should not adopt the proposed rule, which conflicts with federal management priorities and statutory mandates. It should also decline to extend the already-flawed proposed rule by eliminating the Refuge-specific permit for bear baiting or allowing increased hunting in the Skilak WRA — the only part of the Refuge specifically managed to prioritize wildlife viewing and other non-consumptive recreation. We urge the Service instead to leave current Refuge regulations in place.

Sincerely,

/s Rachel Briggs
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²⁹ Exhibit 7 at 11.

³⁰ Exhibit 51 of our Aug. 10, 2020 comments at 59, 260.

³¹ Alaska Board of Game, Partial Transcript of Alaska Board of Game Meeting at 5–7 (Mar. 19, 2013) (referring to opening the Skilak WRA to coyote, lynx, and wolf hunting as “predator culling”) (attached as Exhibit 8).