

DRAFT

US Fish and Wildlife Service

Alaska Board of Game letter re: 2016 Proposed Rules

The Alaska Dept. of Fish and Game (ADF&G) and the Alaska Board of Game have been tasked with primary wildlife management authorities for the entirety of Alaska, as outlined in Alaska Statute and recognized in the Alaska Constitution, the Alaska Statehood Act, and both the expressed intent and specific laws established by the US Congress. The United States Supreme Court has also recognized through a variety of rulings over the last two centuries that the individual states maintain primacy in wildlife management responsibilities and authority, with few exceptions where Federal purposes are given special consideration. Recent actions to preempt state management authorities by both the National Park Service (NPS) and the US Fish and Wildlife Service (USFWS or service) in Alaska have been contrary to both federal law and Presidential directives that govern both our State and our nation. The NPS has formalized their own proposed rules in these matters already, giving them the force of law over the objection of Federal Regional Advisory Councils, Federal Subsistence Resource Commissions, the State of Alaska, a majority of Native Village Councils and Corporations, and the individual voices of numerous subsistence users here in Alaska. Federal law requires meaningful consultation with each of these affected parties, and yet these voices seemingly have had no effect on neither informing nor convincing the NPS nor the USFWS of how the proposed rules will truly affect subsistence uses and users in Alaska. The result of these “consultations” is that the USFWS is now following suit in publishing Proposed Rules that place substantially similar limitations on the ability of our State to meet the expressed needs of subsistence users and others who value access to our wildlife resources on Federal Lands.

The Board of Game recognizes that USFWS lands are unique in that they are the only Federal lands that have been specifically set aside to “conserve, protect and enhance fish, wildlife, and plants and their habitats *for the continuing benefit of the American people*” (emphasis added). “For the continuing benefit of the American people” has been further defined through law as meaning that the USFWS must prioritize management efforts that enhance and promote

Submitted by the Board of Game

wildlife dependent recreational uses by the public, including hunting opportunity, for all Americans on these lands. Additional laws have prioritized both rural subsistence and non-rural hunting among these wildlife dependent uses within Alaska (ANILCA, the National Wildlife Refuge System Improvement Act of 1997, and Executive Order 13443).

The Proposed Rules undermine these mandated priorities by defining “natural diversity” and “biological integrity” in a manner that implies that nearly all non-rural consumptive uses for wildlife has a negative effect on the “Biological Integrity, Diversity, and Environmental Health” (601 fw3 BIDEH policy of 2001) and that historical and fundamental goals of wildlife management in Alaska that allow for both stable populations and sustained human harvest are now able to be deemed incompatible with USFWS management purposes. The conclusion most easily drawn from these combined actions is that the USFWS views management efforts for the benefit of consumptive use of wildlife as an irresponsible activity that must be limited. The Proposed Rules seem intended to position the USFWS to use codified BIDEH policy and “professional judgment” to curtail any hunting activity it deems inappropriate based on undeclared values or because they are “particularly effective”, for example, and further closes off the very public processes the Board of Game requires for such serious management decisions.

1. The Alaska Board of Game has not been attempting predator control on USFWS lands through undeclared predator control programs, general hunting seasons, or method and means liberalizations.

The USFWS has asserted the need for preemption of state wildlife management based in part on a description of activities that the Board has authorized specifically under predator control programs. This includes, the same day airborne take of black bears, bear snaring, bear trapping, and other specific techniques that were employed in studies or actual programs that were intended to reduce predator populations in specific areas and circumstances under closely monitored programs. As the USFWS correctly notes in the Federal Register, none of these studies or programs were conducted on USFWS administered lands. Citing these programs in the justification for the proposed preemptive federal actions unduly gives the impression that the board had intended to manipulate

populations on USFWS lands through these programs. The Board has also extended the seasons for harvest of wolves and coyotes in certain areas, increased bag limits for wolves in some areas, and allowed for the harvest of Brown bears over registered black bear bait stations in other areas. The USFWS has cited these authorizations as being specific attempts by our Board to manipulate predator populations for the benefit of ungulate populations, ignoring both the public record of the Board of Game meetings and the unanimous assertion from Federal Regional Advisory Councils (RAC's) that these harvest methods and seasons were requested primarily by subsistence users to recognize changing uses of wildlife and also changing harvest opportunities on the land itself.

The Board of Game has liberalized season lengths and methods and means restrictions for a number of wildlife species over the last decade but these liberalizations have not been restricted to predators alone, an important point that has been overlooked by the USFWS. The USFWS cites only predator take liberalizations in the supporting arguments for the need of preemptive actions and especially since the authorizations are deemed to be "particularly effective" in allowing for harvest opportunities. Yet, the Board has liberalized season dates for a number of furbearers as well, including lynx, wolverine, and beaver. Beaver, for example are now allowed to be harvested with a rifle in open water conditions and when the fur is not at peak prime-ness in both early (September) and late (June) seasons in some areas of the State. These harvest opportunities were also granted at the request of rural hunters and trappers who had identified the need and desire for other uses of these animals that present regulations did not allow for. The Board has allowed for the harvest of two moose per hunter in portions of the state to both increase harvest opportunity and simultaneously attempt to address the risk of habitat degradation, disease potential, and potential population crashes in response to rapidly expanding moose populations. The Board has also authorized numerous antlerless hunts (including cows and calves) that are used throughout the state as needed to address population and habitat concerns. Cow and calf harvest opportunities are controversial and could be considered "particularly effective" in managing moose populations for the benefit of hunters. The USFWS has inconsistently applied its reasoning for the need preemptive federal takeover of state management authorities, and is selectively applying the BIDEH

policy in a manner that seems to be more influenced by political considerations than the biological or natural diversity of the landscape.

2. The State and Federal agencies have shared mandates to provide for Subsistence opportunity and to date the BIDEH policy has been to justify federal non-action to support subsistence hunting opportunity in Alaska.

In the effort to justify preemption of State authorities as outlined in the Proposed Rules, the USFWS has repeatedly noted that USFWS service lands are meant to be managed differently than state lands, that State and Federal agencies have differing mandates, and that current interpretations of the USFWS Mission, individual refuge purposes, and the 2001 BIDEH policy does not allow for preferring or managing one species to the “detriment” of another.

Elements of BIDEH policy have been cited over the last several years as a justification for federal non-action to actively provide for rural subsistence hunting opportunity in Alaska, and most recently the USFWS noted that the justification for such a policy is in part based on definitions one US Senator offered nine days *after* the passage of ANILCA, while ignoring contrary definitions that are a part of the actual record and Congressional members when they voted. Such a selective use of the record is misleading, especially consider that Mr. Udall’s late comments would have no legal standing in this case. Our board has asked the USFWS in the past to clarify which laws and mandates take precedent for refuge management. The USFWS answer on our record has changed over the years and has settled most recently solidly on the determination that “natural diversity” (though undefined) takes precedent over all mandates to provide for continued subsistence and other hunting opportunity on USFWS lands, even though the BIDEH policy would allow for a differing view.

- a. The BIDEH policy, contrary to assertion, does not require such priority by fiat, but does allow Federal managers to recognize that both the governing law of ANILCA and specific refuge purposes both recognize the mandate to provide for subsistence hunting opportunity as a priority management goal for most Alaskan refuges, that

subsistence uses are a natural process, and that this naturally occurring process at times is impaired by an imbalance of predator - prey ratios on individual refuges. Various laws and Congressional intent clearly recognize that federally qualified subsistence harvests may be considered as part of the natural processes on these lands, and the BIDEH policy allows for preference of one management goal in a specific unit or units to aid in the accomplishment of region wide and system wide goals. The USFWS service has these options available to them as a matter of choice and under the discretion of “professional judgment”, but have instead seemed to prefer eliminating some types of non-local uses without any supporting evidence that harm has or could result from the prohibited practices.

- b. The BIDEH policy itself was drafted as recently as 2001, and reflects an apparent change of vision and direction within the Service. Despite this change of direction, it can be argued that the policy leaves room for the Service to administer federal lands in a very nuanced manner, adaptive to the both the individual purpose for which each individual refuge was created while also striving to address broader scale concerns. However, the Proposed Rules also show that the policy is so broad and unspecific that it also allows the USFWS to justify nearly any action it desires, so long as it is in “the professional judgment” of service employees. In the case of the Proposed Rules it can be shown, and you have heard from other commenters on these actions, that it is now being interpreted in such a manner as that it is working to the contrary of the intent of several federal laws, including ANILCA and specific Presidential executive orders, and to the measurable detriment of rural subsistence users across our State. This is evidenced by the many hundreds of appeals to both our board and the Federal subsistence board over the years to address predator prey imbalances in various regions of our state, including on USFWS lands. These appeals have most recently been directed to the USFWS itself in response to the Proposed Rule making process, asking you not to move forward for these reasons and others. Our board believes that we have both a moral and legal responsibility to continue to address these subsistence issues where we can on lands that are under State management authority, and it is our hope that the USFWS will cooperate with the State in a meaningful manner and once

again take an active role in allowing for these national lands to be managed in a manner that shows respect for both the wildlife and the present generations who depend on them. A land without wildlife is a land without soul.

3. The Board of Game and USFWS have shared mandates and responsibilities. The USFWS has refused to cooperate with the State to meet these mandates.

Federal Law instructs both State and Federal agency actions, and that we work together to achieve these goals. The USFWS has often commented that there are differing mandates that guide the State and Federal management actions, yet has consistently overlooked that we have shared mandates in many areas. Providing for continued opportunity for subsistence uses in times of shortage is a primary mandate that guides the management of most wildlife refuges in Alaska and nearly all state lands, and a majority of Federal lands are mandated to provide continued opportunity for other hunting, fishing, and trapping uses, where appropriate.

A primary concern the USFWS has noted in the Proposed Rules has to do with perceived efforts of the State to manage predator populations to provide additional harvest opportunities of ungulates on or near refuge lands. It is important to note the Board of Game has not implemented any predator control efforts on USFWS lands and that requests to do so have been denied each time the State sought cooperation to address population declines. The liberalization of general hunting season opportunities was requested by rural subsistence users to aid them in their personal efforts to have reasonable opportunity to both harvest predators and to potentially aid in ungulate recoveries in their own areas. Attempts at predator removals for the benefit of local prey populations is well documented as being an integral component of past and present subsistence uses on an individual or community based level and the quality of fur is of secondary concern for the hunters in these circumstances.

However, the Board of Game does not consider liberalized bag limits and seasons or methods and means for predators implemented under general hunting regulations as part of Intensive Management Programs and it has been shown that they do not function in that manner.

having little detectable effect on to prey or predator populations, and pose no conservation concern.

Providing for continued opportunity for subsistence harvests is one area that both the State of Alaska and nearly all federal agencies in Alaska have very clear Congressional direction to prioritize in our management efforts:

- a. The USFWS and the Alaska Board of Game have been given both individual and shared mandates to provide for meaningful opportunity for the subsistence take of wildlife, and that providing opportunity for these harvests is to be prioritized. The USFWS itself has documented clearly in the Proposed Rule the emphasis that the US Congress has placed on maintaining and *providing* for these subsistence opportunities. While it is true the State and Federal managers do not share the same definition of “subsistence user”, it is undeniable that all subsistence uses, no matter how defined, fall within the State’s definition and the State of Alaska has made every reasonable effort to assure that these harvest opportunities are available. The state has been managing all wildlife in a sustainable manner for 57 years now, and have managed to provide opportunity for all uses while clearly establishing a priority for subsistence uses. The USFWS has not, and has actually publicly refused to actively manage any wildlife population to provide harvest opportunity for Federally recognized subsistence users. Providing a season is not the same as providing an opportunity.
- b. The cases are numerous in Alaska where both the need and opportunity were there for the USFWS to address these situations in a manner that the US Congress (and State law) says they should be. Despite State efforts to work with the USFWS to address these concerns, we have been told to stand down and allow the “natural processes” to occur as they had historically done. In the case of the caribou on Unimak Island, the caribou population was determined by the USFWS to have been historically absent at some point in history, which then justified the use of the BIDEH policy to do nothing in response to a rapid decline and potential for loss of the herd. In the end federally

qualified subsistence users on USFWS lands have often depended on state management efforts to meet their needs. On the southern Alaska Peninsula, for example, the resident caribou population decline was halted by State predator control efforts on State and private lands and harvest opportunity restored to meet rural subsistence needs for local residents - all of whom are federally qualified subsistence users.

4. The Proposed Rules will be destructive to the rural Subsistence community in Alaska

The USFWS has often stated that “the proposed rule would not change Federal subsistence regulations or restrict the taking of fish or wildlife for subsistence uses under Federal subsistence regulations.” An important point to consider in regards to this statement is that most Federally qualified subsistence users in Alaska meet their subsistence needs through State regulations and hunts, and it is not uncommon for a rural hunter who has traveled great distances to be unaware of who owns the land they are hunting on. Federal seasons often mirror state regulations, but many federal hunt regulations are limited to providing additional opportunity beyond state regulations. There is no guarantee that the Federal subsistence board will reauthorize the forbidden practices and seasons.

Most importantly, the rural priority preference was meant to be administered in times of shortage by law – ensuring that a rural hunter would be the last to go if a population or resource decline necessitated limiting hunting opportunity. To grant a rural priority in the absence of an established conservation concern, as the Proposed Rule seeks to do, and then to further dis-allow non-rural access to the same methods and means is potentially devastating to the ability of family members of federally qualified subsistence users to participate in these activities. Rural communities in Alaska have been struggling for many years with a sense of loss regarding to culture and the passing on of traditional activities, and the Proposed Rules will drive another wedge between college age youth, for example, and their ability to participate in community activities. Many other community members who have or will have to temporarily relocate for educational, health, or employment reasons will be

similarly affected. It has been said that Anchorage Alaska may be considered the largest native community in Alaska, and the USFWS is proposing actions that will build a wall of separation between these people and their connection to the land, their culture, and their heritage.

5. Subsistence activities are not static, but adaptive to change of circumstances.

The USFWS seeks to preempt state actions that have been in response to specific needs identified and requested by rural subsistence users. Rural economies and subsistence use patterns have changed in many ways in recent decades, and these changing subsistence uses and values continue to reflect the challenges that are faced daily. The use of willow fiber nets dramatically increased the harvest potential for subsistence fisherman on the Koyukuk River in the late 19th century as did the later introduction fish wheels in the early 20th century. Advancements in dogsled and dog team technologies allowed for subsistence users to reach far greater distances and disburse harvest efforts more evenly across the landscape as have the modern usage of outboard motors and snow machines. These changes are but a few examples of how both subsistence uses and non-subsistence uses have always been adaptive in both the methods of harvest, and the means used to accomplish these harvests. The question is not, and should not be whether it is “effective” but whether it is sustainable when the mandate is to provide continued opportunity for harvest.

The subsistence users of today are faced with new challenges. Our board has long recognized that there are far fewer trappers living on the land than there used to be and that suppressed fur values for several decades have also decreased the ability for rural Alaskan to afford the necessary gasoline and supplies to participate in the traditional harvest opportunities of predators. Rural hunters have asked for extended hunting seasons for this reason. Traditional bear denning has also had similar declines in recent decades, in part due to greater incidence of brown bears being found in traditional black bear denning areas. Traditional hunters have noted to our board that there is a dangerous difference between awaking a black bear in its den and awaking a grizzly. For this reason, the use of flashlights in the aid of this practice has been requested, as well as the opportunity to take grizzlies over bait in some areas of the

State. Baiting a grizzly may provide the only practical alternative to harvest them in many portions of the State where there is dense forest cover.

That non-local users may also participate in any of the hunts that the USFWS is proposing to ban is notably of low concern to the rural subsistence users who requested additional opportunities for wolf and bear harvests. These harvests have proven to be low in number and rural hunters recognize that when a non-local hunter comes to take a moose from the area, for example, it is to the benefit of rural subsistence users if they take a wolf or bear home with them as well.

6. The Board of Game is not anti-predator but is pro wildlife management

The State of Alaska has mandated that the Board of Game is to consider the long term viability of all wildlife species that we manage for sustained yield, including wolves, bears, and other predator populations. Our state laws and, arguably federal law, does not allow for the extirpation of any resident wildlife population, and especially so when there is an identified Customary and Traditional use for these wildlife populations and there is a corresponding subsistence need to be met.

Wolves and bears, even under authorized predator control programs, are given a minimum threshold for population reductions to both assure that a viable population remains on the landscape and also to allow them to rebound when the predator- prey imbalance has been adequately addressed. While the service may now be considering such reductions as “unnatural”, the reality is that we have maintained both healthy and balanced populations of all species through these management activities, and the broad ranges covered by both bears and wolves ensure their continued “natural” states through gene mixing. The USFWS seems to underestimate the mobility of these populations, despite available studies that document these sometimes remarkable ranges.

The USFWS assertion that preemptive closures to specific season extensions or limiting “particularly effective” methods of harvest are necessary to protect the “biological integrity,

diversity, and environmental health” of these populations, however defined, is neither founded on scientific method nor any accompanying data. To the contrary, it can be demonstrated that the harvests that have occurred under these regulations have been rare and of low occurrence – numbers that have been readily available to the USFWS through the ADF&G - and without lasting effect on the overall predator or prey populations or their long term relative ratios to one another. The Board of Game anticipated both the low of occurrence of harvest and the very minimal effect that these harvests would have on overall wildlife populations and often discussed these issues publicly in our deliberations related to these proposals.

7. Federal Law mandates that both rural and non-rural hunting continue to be facilitated on USWFS lands, when deemed compatible. The USFWS seems to be attempting to create a basis for determining that non-rural or “non-subsistence” hunting is incompatible with Refuge purposes, rather than having made such finding or a determination of detriment in advance of these proposed restrictions, as the law requires.

The USFWS is attempting to limit or eliminate certain non-subsistence uses of wildlife contrary to federal law that limits such differentiation between users to times of shortage or as the result of findings of detriment or incompatibility. The USFWS has not presented data supported conservation concerns or issues related to the limited harvests that have resulted from the identified methods of hunting or months of harvest. The main objection that the service has raised is that they are “particularly effect”, but harvest data does not support any of these practices or season have been “particularly effective” in increasing the harvest of wolves and bears, nor that they are unsustainable. To the contrary, the Brown bear-over-black bear bait authorization on the Kenai National Wildlife Refuge (KNWR) did not increase the annual allowable harvest rate of one adult bear per year, but it did turn the harvest away from sow bears to boars by allowing the hunters to be more selective in their harvest. The harvest of sows was noted to be of special concern for the KNWR and this provision was specifically allowed in that region as direct means to address those concerns, while simultaneously addressing other bear related concerns.

8. The Biological Integrity, Diversity, and Environmental Health (BIDEH) policy has not been adhered to already, and yet the USFWS seeks to codify it.

The BIDEH policy been presented as a primary justification for the need to preempt state management authority on Refuge lands throughout Alaska, since this policy informs your understanding of the USFWS organic act (National Wildlife Refuge System Improvement Act of 1997), ANILCA, and other laws. Yet, a close reading of the policy shows that is has not been fully considered or adequately applied in relation to the Proposed Rules.

The BIDEH policy has a wide range of considerations that are necessary to determine its applicability in any given circumstance; from local refuge scale to regional scale to system-wide scale, historical conditions, and external influences on an individual Refuges. The application of the BIDA policy is always to be balanced with both the broader Mission of the Refuge System and specific purpose for which each Refuge was created.

Broadly speaking, it could be argued that all wildlife removals resulting from hunting potentially affects the overall biological and natural diversity of a population, as defined in BIDEH, whether the focus of the hunter is on predators or not. All hunting, if applied consistently with the presented justification for these Proposed Rules, could therefore be considered as being incompatible. Is predator calling or calling in a moose with a birch bark horn “particularly effective”? Is trapping with the aid of bait “particularly effective”? It is obviously contrary to the explicit intent of Federal law that these practices would be forbidden on USFWS lands, yet the service now seeks to place similar limitations on hunters only because they are hunting under “new” authorizations that are substantially similar to existing regulations and historical practices.

To apply the policy correctly, the question is a matter of degree: hence the requirement in BIDEH for baseline studies and comprehensive analysis to inform the “professional judgment” of managers. None of the studies required by the policy have occurred in the case of the Proposed Rules. To the contrary; all baiting of Brown bears on the 78 million acres of USFWS managed lands in Alaska and all hunting of wolves and coyotes in certain months of the year has been deemed as incompatible with this policy and will be forbidden through the Proposed Rules, yet the harvest of these animals has been very limited in number. If the

animals are rarely harvested, how can their removal affect the Biological integrity or natural diversity of a population? If the animal is rarely harvested, does it matter if it is a rural or urban hunter who does the harvesting when both are considered priority uses on these lands?

The Proposed Rule circumvents the plan of implementation for the BIDEH Policy:

601 fw 3.9 states:

3.9 How do we implement this policy? The Director, Regional Directors, Regional Chiefs, and Refuge Managers will carry out their responsibilities specified in paragraph [3.8](#). In addition, refuge managers will carry out the following tasks:

- a. Identify the refuge purpose(s), legislative responsibilities, refuge role within the ecosystem, and System mission.
- b. **Assess the current status of biological integrity, diversity, and environmental health through baseline vegetation, population surveys and studies, and any other necessary environmental studies.**
- c. **Assess historic conditions and compare them to current conditions. This will provide a benchmark of comparison for the relative intactness of ecosystems' functions and processes. This assessment should include the opportunities and limitations to maintaining and restoring biological integrity, diversity, and environmental health.**
- d. Consider the refuge's importance to refuge, ecosystem, national, and international landscape scales of biological integrity, diversity, and environmental health. Also, identify the refuge's roles and responsibilities within the Regional and System administrative levels.
- e. Consider the refuge's importance to refuge, ecosystem, national, and international landscape scales of biological integrity, diversity, and environmental health. Also,

identify the refuge's roles and responsibilities within the Regional and System administrative levels.

- f. **Consider the relationships among refuge purpose(s) and biological integrity, diversity and environmental health, and resolve conflicts among them.**
- g. **Through the comprehensive conservation planning process, interim management planning, or compatibility reviews, determine the appropriate management direction to maintain and, where appropriate, restore, biological integrity, diversity, and environmental health, while achieving refuge purpose(s).**
- h. **Evaluate the effectiveness of our management by comparing results to desired outcomes. If the results of our management strategies are unsatisfactory, assess the causes of failure and adapt our strategies accordingly.**

None of the areas marked in bold above have been completed to ascertain the applicability of this policy in regards to any of the season, methods and means, and harvest limits that the Proposed Rule seeks to prohibit on USFWS lands in Alaska. The policy clearly establishes in section 3.9(g) that compatibility reviews and the CCP process is the required approach to addressing specific issues, rather than formal Rule making processes. The absence of required baseline studies and the failure to present any supporting biological or harvest data outlining the problems from the agency perspective is particularly problematic, as this policy was designed to help integrate science into decision making processes and inform the “professional judgement” of refuge personnel. The lack of supporting data as required by section 3.9 to support preemptive Federal action of State wildlife management authority would imply that these processes are incomplete and the “professional judgement” of the USFWS in these matters remains yet to be informed.

The Service has failed to provide a proper and detailed analysis of the issues and proposed actions as required under the National Environmental Policy Act (NEPA). NEPA requires that all provisions of the proposed rule be analyzed in the associated Environmental Analysis (EA). This means the Service should provide data and analysis in a manner that allows the public to understand why the Service is taking the actions they propose to do, such as prohibit state wildlife regulations that are “particularly efficient”, implement “natural diversity” as a closure criteria, eliminate state authorized subsistence harvests for fish and wildlife. The Service has either failed to do so in a manner that uses any decision criteria other than describing what are asserted to be speculative or likely effects of the action. In other words, the Service fails to show us the work they have done to reach the conclusions they have for either implementing federal regulations or for prohibiting state regulations, or for such actions as developing the definition of natural diversity. We are concerned that the Service has failed to show that any of the adverse impacts in the EA have been assessed for their intensity beyond such consideration as minimal, small or few. These are characterizations of intensity of the impact but not the actual intensity. There is not actual measure as should be provided and can only be considered speculative in nature.

-

As an example, though our expertise is more along the lines of four footed creatures, the EA completely fails to provide any consideration or analysis towards fish, yet they too must certainly be covered under concepts such as BIDEH or natural diversity, are used on both state and federal lands and are used for subsistence and non-subsistence uses. Such examples are prevalent throughout the EA and we believe the Service must reject any outcome that reaches a finding of no significant impact (FONSI) due to this and other failures of analysis.

9. The BIDEH policy is in direct conflict with more recent Federal law.

It is remiss for the USFWS to repurpose these lands through application of policy that was intended to primarily address climate change, and especially considering how the application

of this policy can be shown to be detrimental to how both present and future Americans, both rural and non-rural, will be able to interact with these lands.

The USFWS is now seeking to codify the BIDEH policy into law, whereas the more recent executive order 13443 (2007), specifically conflicts with this policy. That an un-amended policy should be to justify the Proposed Rules while more recent Federal law addressing these same topics has been ignored without reference within the proposed actions is hard to reconcile. That the USFWS has been silent in regards to the EO13443 undermines the requirements of this and other federal laws that instruct the USFWS to work cooperatively with state agencies and tribal entities. It also undermines Public Trust principles and introduces doubt that these lands are truly being managed for the benefit of the American people. It is our view that policy 601 fw 3 should not be codified and that the Proposed Rules should be reviewed in light of EO13443:

EO13443 – The Facilitation of Hunting Heritage and Wildlife Conservation

It is important to recognize the USFWS lands in Alaska, above all other federal lands in Alaska, have been mandated by federal law to allow for hunting as one of six wildlife dependent priority uses. While the USFWS correctly states that these six priorities were originally crafted as equals, the balance of priorities has been clarified by a more recent executive order (eo13443) that prioritizes hunting opportunity above all other wildlife dependent uses and directs the service to actively “foster” healthy and productive wildlife populations lands on USFWS managed lands. The USFWS does not have the legal option to ignore law that is so clearly expresses its intent.

EO13443 reads as follows:

Section 1. Purpose. The purpose of this order is to
direct Federal agencies that have programs and
activities that have a measurable effect on public land
management, outdoor recreation, and wildlife
management, including the Department of the Interior
and the Department of Agriculture, to facilitate the

expansion and enhancement of hunting opportunities and the management of game species and their habitat.

Sec. 2. Federal Activities. Federal agencies shall, consistent with agency missions:

(a) Evaluate the effect of agency actions on trends in hunting participation and, where appropriate to address declining trends, implement actions that expand and enhance hunting opportunities for the public;

(b) Consider the economic and recreational values of hunting in agency actions, as appropriate;

(c) Manage wildlife and wildlife habitats on public lands in a manner that expands and enhances hunting opportunities, including through the use of hunting in wildlife management planning;

(d) Work collaboratively with State governments to manage and conserve game species and their habitats in a manner that respects private property rights and State management authority over wildlife resources;

(e) Establish short and long term goals, in cooperation with State and tribal governments, and consistent with agency missions, to foster healthy and productive populations of game species and appropriate opportunities for the public to hunt those species;

(f) Ensure that agency plans and actions consider

programs and recommendations of comprehensive planning efforts such as State Wildlife Action Plans, the North American Waterfowl Management Plan, and other range-wide management plans for big game and upland game birds;

(g) Seek the advice of State and tribal fish and wildlife agencies, and, as appropriate, consult with the Sporting Conservation Council and other organizations, with respect to the foregoing Federal activities.

(emphasis added)

We believe that the scope and controversy of the proposed rule is much further reaching than the Service is considering and that the analysis under NEPA should also be unable to reach a FONSI because of it. We are aware that at the local level in Alaska many subsistence users have officially opposed the proposed rule because of its negative effects to subsistence use, either due to changes in management that will limit abundance for subsistence uses, or by limit bag limits and seasons under the state regulations they utilize in the field. At the March 2016 Federal Subsistence Resource Council Meetings (RAC) the majority of the RACs (chartered under Section 805 of ANILCA) voted to submit comments in opposition to the proposed rule. Several state Fish and Game Advisory Committee's (ACs) throughout Alaska have also submitted comments in opposition, for the same reasons. At the national level the Association of Fish and Wildlife Agencies, representing all 50 state wildlife management agencies, has testified before the U.S. Senate Energy and Natural Resources Committee regarding its members concerns that aspects (particularly BIDEH, natural diversity and changes to closure processes) of the proposed rule will be applied at the national level without adequate analysis of how they may affect the uses in other states. The American Wildlife Conservation Partners, an association of conservation organizations representing millions of hunter and angler conservationists, also submitted comments to USFWS Director Ashe of their serious objections to the proposed rule

and requested it be withdrawn. Our point is, that the scope and controversy of the proposed rule is far greater than the Service is considering as only applied to Alaska, and that the failure to consider this scope and controversy should cause the Service to fail to reach a FONSI.

In closing the Alaska Board of Board requests that the US Fish and Wildlife Service rescind the Proposed Rules as noticed in the Federal Register. As outlined in previous pages, there are many unaddressed issues and unforeseen consequences that will result from the implementation of these rules. We respectfully ask that the USFWS reply to the nine points and related issues we have outlined in this letter and in doing so enter into a meaningful dialog with the State of Alaska and tribal entities and ensure that these lands are being managed as intended: “working with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people.”