



THE STATE  
of **ALASKA**  
GOVERNOR MIKE DUNLEAVY

**Department of Natural Resources**  
OFFICE OF PROJECT MANAGEMENT AND PERMITTING

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National Wildlife Refuge System  
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Submitted online at [regulations.gov](https://www.regulations.gov) and via email to [julie\\_henning@fws.gov](mailto:julie_henning@fws.gov)

Re: US Fish & Wildlife Service Proposed Refuge System Planning Policies

Dear Ms. Henning,

The State of Alaska (State) reviewed the U.S. Fish and Wildlife Service's (USFWS) proposed rule "National Wildlife Refuge System Planning Policies (602 FW 1-4), FWS-HQ-NWRS-2023-0024," posted for public comment from September 15 to October 16, 2023. We appreciate our dialogue with the USFWS and the Association of Fish & Wildlife Agencies (AFWA) and the changes that were made to these policies based on our conversations and previous feedback. We request the USFWS also consider the following consolidated comments of the State resource management agencies in your ongoing process. We look forward to continued collaboration and responses to our inquiries before these policies are finalized and are available to assist with any questions or further consultation.

### **General Comments**

Our detailed comments below are organized by central theme.

#### **1. State management authorities and shared stewardship.**

These policies recognize the USFWS's responsibility to coordinate fish and wildlife management with the States, appropriately referencing the USFWS's existing policy 601 FW 7 (Coordination and Cooperative Work with State Fish and Wildlife Agencies). However, the policies fail to outline how this coordination and cooperation will work. This information is particularly critical given the major shift in USFWS policy to landscape scale management, including consideration of lands outside refuge boundaries, a new policy to create species management plans (though the policy is not yet available for review), as well as the shift to co-stewardship of lands and resources with Native Tribes, the Native Hawaiian Community, Alaskan Native Organizations (ANO), and Alaskan Native Corporations (ANC).

It is inappropriate for the USFWS to adopt management strategies for fish and wildlife species whose management is the primary responsibility of other agencies. The policies need to clearly state that for fish and wildlife management actions (including Species Plans), State fish and

wildlife management agencies will be consulted, coordinated with and cooperated with, in accordance with 601 FW 7. 601 FW 7 appropriately recognizes the importance of professional relationships between the USFWS and managers at the state level in achieving effective conservation of fish and wildlife and that state fish and wildlife management agencies have unique expertise and roles in the management of fish and wildlife. These policies must do the same. The policy also commits the USFWS to provide opportunities for state fish and wildlife management agencies to be involved in the development and implementation of program changes made outside the Comprehensive Conservation Plan (CCP) process. While the states were provided advance copies of the draft policies and meetings were held between state and USFWS staff this year, these actions occurred after the USFWS had been working on the revised policies for two years. Coming in as late in the policy development as the states/AFWA did, did not provide an opportunity to participate in the development of a set of policies that results in the major shift in the USFWS's management focus. The shift to landscape scale conservation, adding species plans, expansion of CCP planning actions beyond refuge lands, and increased co-stewardship of natural resources with Tribes, including of fish and wildlife, all warranted earlier inclusion of the States in policy development. Congress, the Department of the Interior, and the USFWS's own policies have been clear in reaffirming the authority of the states to exercise their broad trustee and police powers as stewards of the Nation's fish and wildlife species on public lands. This must be considered when contemplating shared stewardship policies.

The policies include substantial discussion of co-stewardship direction for tribal entities, Native Hawaiians, Alaska Native Corporations (ANC) and Alaska Native Organizations (ANO). This direction presumably results from Secretarial Order 3043 (Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters, 2021) and the USFWS's Director's Order 227 (Fulfilling the Trust Responsibility to Tribes and the Native Hawaiian Community and Other Obligations to Alaska Native Corporations and Alaska Native Organizations, in the Stewardship of Federal Lands and Waters, September 8, 2022). We are supportive of the USFWS meeting its Trust obligations; however, the policies fail to address the differences in management required for ANCs and ANOs due to the Alaska Native Claims Settlement Act (ANCSA) and the Alaska National Interest Lands Conservation Act (ANILCA). These differences need to be addressed in the final policies.

Co-stewardship implies coordination and cooperation among stakeholders and sovereign entities. Regarding fish and wildlife management responsibilities, as well as our adjacent landowner status, the State must be included as a stakeholder and as a sovereign entity. Coordination and cooperation with the State fish and wildlife management agencies should be a requirement for all policies impacting fish and wildlife. Management of fish and wildlife is a traditional state responsibility unless specifically modified by an Act of Congress. It involves more than just regulating harvest. The states should also be involved in design and implementation of studies and evaluations of fish, wildlife, and related population data leading up to the mutual development of population goals.

States are the primary fish and wildlife managers, and consultation is always appropriate. We reiterate our request from our previous comments that the USFWS develop a revised 601 FW 7 to outline the process it will use to work with the states in decision-making processes.

## **2. Alaska is different.**

Refuges in Alaska are the largest land-based refuges in the nation and already provide connectivity on an unprecedented scale as compared to refuges in the other 49 states. The size and remoteness of Alaska also reduces conservation pressures on refuges in Alaska as compared to refuges in the lower 48: we have fewer numbers of annual visitors; reduced development pressure and encroachment from urban development; and maintain relatively untouched natural ecosystems.

Alaska is also different from a statutory and policy perspective. Alaska is the only state with comprehensive land settlement legislation adopted by Congress dating back to the Alaska Statehood Act of 1958 through the ANCSA in 1971 and culminating in the ANILCA in 1980. The State of Alaska is deeply concerned about these national policies and their relationship to ANILCA.

ANILCA amended the Wilderness Act and many other laws. In these instances, ANILCA is the prevailing statute in Alaska. Therefore, ANILCA must be recognized in these policies or Alaska specific policies should be developed to ensure compliance with ANILCA. We request that this policy reference ANILCA where appropriate. We are available to provide guidance to the FWS in accomplishing this task.

Policy 602 FW 2 correctly recognizes that land protection planning as it appears it will be outlined in the Strategic Growth Policy (602 FW5, not yet distributed for public review) is precluded in Alaska, as Section 1326 of ANILCA limits the USFWS's ability to conduct administrative withdrawals of public lands and prohibits planning for new conservation system units in Alaska. ANILCA guides Alaska refuge boundary expansions and modifications. Because of the emphasis the revised policies place on management beyond refuge boundaries and on land protection planning, we recommend the creation of a separate set of policies directed solely at refuge management within Alaska.

Just as ANILCA 1326 requires different management in Alaska, ANILCA Section 1314 confirms ADF&G's fish and wildlife management mandate which originates with the Statehood Act and the Alaska Constitution. The only exceptions Congress noted in ANILCA to State fish and wildlife management are in Title VIII "or, to amend the Alaska constitution."<sup>1</sup> Congress also specifically recognized that ANILCA implemented a unique management situation for land managers in Alaska, calling out that, "except as specifically provided otherwise by this Act, nothing in this Act is intended to enlarge or diminish the responsibility and authority of the Secretary over the management of the public lands."<sup>2</sup>

ANILCA makes a separation between the management of fish and wildlife and the management of public lands and delegates those management responsibilities between the State and Federal governments. To be successful in managing both fish and wildlife and public lands, the State and Federal agencies must cooperate. We recognize that the USFWS considered some ANILCA-

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<sup>1</sup> ANILCA 1314(a)

<sup>2</sup> ANILCA 1314(b)

specific issues in the national policies; however, we continue to believe Alaska-specific policies are needed. We request the USFWS work with the State of Alaska to develop Alaska-specific policies.

ADF&G carries out the State's fish and wildlife management mandate by managing hunting in Alaska for the sustained yield of wildlife populations across all public lands and waters throughout the state no matter the landowner. The Alaska State Legislature enacts wildlife laws. The Governor of the State of Alaska appoints members to the Boards of Game (BOG) and Fish (BOF), and the Boards enact regulations to conserve and develop Alaska's wildlife and fish resources and provide hunting, trapping, and fishing opportunities. The Boards set seasons, bag limits, and methods and means via a transparent public process. ADF&G monitors fish and wildlife populations, conducts fish and wildlife research, and does the day-to-day work of fish and wildlife management to provide scientific information to the Boards and to carry out the Boards' decisions. Additionally, ADF&G Divisions have staff in area offices across the state to provide a local on-the-ground presence and to interface with area residents with local knowledge. As the fish and wildlife manager on all lands throughout Alaska, the State works in cooperation with private and federal land management agencies, including the USFWS, to monitor fish and wildlife populations. The policies must acknowledge that Alaska must manage its fish and wildlife resources under the sustained yield principle per the Alaska Constitution.

The State's sustained yield principle serves to conserve wildlife species. Sustained yield requires a surplus of harvestable game for both predator and prey species. The management of both predator and prey species under the sustained yield principle has allowed the State to maintain healthy populations unique to Alaska and not experienced in the rest of the nation.

The health of the population is the primary driver of the sustained yield principle. It is not possible to have a harvestable surplus of either a predator or prey species without having a stable and continually viable population.

### **3. Consultation and coordination with states**

While consultation on these revised policies began in February of this year with AFWA, and through AFWA, with the states, it is our understanding the USFWS has been working on these revisions for the past two years. While we appreciate the USFWS's efforts to modify the process and gather input from the states, we remain concerned that this process does not represent adequate consultation with the states as sovereign entities as described in our comment letters of March 8 and May 12, 2023. The efforts also failed to meet the USFWS's own policy in 601 FW 7 on how to coordinate with state representatives on the development of policy (see 601 FW 7.6). We provide these comments with the knowledge that everyone is working in the best interest of conservation, however, the short 30-day comment period for review of these new policies is distressing.

We appreciate the FWS adding emphasis on coordination and cooperation such as statements in 602 FW 1 Section 1.9 where the additions state:

In preparing each plan or plan revision and on every priority habitat and species determination as well as any Habitat and Species Step-down Planning (602 FW 6), we will coordinate with the appropriate State and territorial agencies in accordance with our policy on Coordination and Cooperative Work with State Fish and Wildlife Agencies (601 FW 7)...

The addition of the language “and on every priority habitat and species determination as well as any Habitat and Species Step-down Planning (602 FW 6)” and “in accordance with our policy on Coordination and Cooperative Work with State fish and wildlife management agencies (601 FW7) ...” was responsive to our previous comments.

#### **4. Relationship of these policies to step-down policies such as the habitat and species plan policy**

States cannot adequately review the Policies 602 FW 1- 4 because plans such as the proposed new Habitat and Species Plan (602 FW 6) policy is referenced, but not included in this Federal Register notice. The relationship between 602 FW 6 and the CCP policy included in this FR notice requires both policies be reviewed simultaneously to provide adequate comment. Without being able to review the additional referenced policy, it is difficult to prepare comments. We request that the Habitat and Species Plan policy be provided to the State for review and comment. We reserve the ability to comment on policies included in this Federal Register notice after we review the other plan policies referenced in this Federal Register notice.

<sup>3</sup>The proposed 602 FW 1 policy allows habitat and species plans to have different names depending on the plan’s content. In a step-down planning process, a consistent naming structure will help non-Federal government agencies, organizations and members of the public better understand the step-down planning structure and more easily find information when reviewing plans. We request that a naming convention be applied to these plans to improve transparency and communication with other agencies and the public. For example, “Habitat and Species Plan: [insert specific name here].” The step-down planning process will require many reviewers and members of the public to review multiple documents in order to understand the context of the information provided in a step-down plan. Naming documents with different titles will make this task unnecessarily difficult.

#### **5. Lack of emphasis on providing and enhancing opportunities to participate in wildlife-dependent recreation (hunting, fishing, wildlife observation and photography, and environmental education and interpretation)**

An important premise of the nation’s refuge system is facilitation of wildlife-dependent public uses managed consistent with the purposes of the individual refuge and sound principles of fish and wildlife conservation. The lack of discussion regarding the Service’s six priority public uses, and the USFWS’s goal to provide for the public’s enjoyment of these wildlife dependent activities (hunting, fishing, wildlife viewing, photography, public education, and interpretation) is inappropriate. The proposed rule fails to provide specific details on the scope and limitations

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<sup>3</sup> 16 USC 668dd(a)(3)(C)

these policies will have on the six wildlife-dependent recreational uses that make up the priority general public uses of the refuges. This information is especially critical to Alaskan refuges where the Improvement Act specifically directs the USFWS that wildlife-dependent recreation is a legitimate and appropriate general public use of the System, directly related to the mission of the System and the purposes of many refuges ...<sup>4</sup>” and that priority public uses “shall receive priority consideration in refuge planning and management.” In its failure to address potential impacts on public uses in greater detail, the USFWS prevents the public from determining if the public use component of the system-wide mission may compete with the landscape level approach advocated in the new vision presented in these policies.

## **6. Failure to conduct sufficient review under the National Environmental Protection Act (NEPA)**

The proposed rule exceeds USFWS statutory authority in seeking to extend its management beyond refuge boundaries and in adding species plans to its management framework. These are both novel and precedent setting decisions that may affect policy decisions, change prevailing practices for wildlife management, and/or create ecological controversy. These are all metrics for determining when a National Environmental Protection Act (NEPA) process is required. Additionally, the USFWS failed to include an economic analysis on the costs and benefits of the proposed rules to the various stakeholders involved nor did it address Federalism. The Improvement Act discusses providing “for the conservation of fish, wildlife, and plants, and their habitats **within** [emphasis added] the System;”<sup>5</sup> The Service must explain where their authority to manage outside the System derives from.

We request the USFWS prepare an Environmental Assessment (EA) prior to finalizing these policies; the Federal Register (FR) notice provided the policy documents for review but no EA.

## **7. Purpose of the revisions**

We understand the purpose of these policy updates is to “modernize the Refuge System's refuge management by incorporating landscape conservation planning and design and consideration of climate change and other anthropogenic forces in refuge management.”<sup>6</sup> We question the need to update the policies as the USFWS has been successfully managing for landscape conservation and climate change since 2006 when the USFWS adopted Strategic Habitats as the adaptive management approach it would use to achieve its mission and the implemented the Refuge Improvement Act in 1997.

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<sup>4</sup> 16 USC 668dd(a)(3)(B)

<sup>5</sup> 16 USC 668dd(4)(A)

<sup>6</sup> 88 FR 63547, September 19, 2023, National Wildlife Refuge System Planning Policies (602 FW 1-4) for the U.S. Fish and Wildlife Service,

### **Policy specific comments**

The State provides the following policy specific comments to assist the USFWS in better understanding the Alaska-specific issues raised by these policies and provide specific edits to the document that will better align these policies with ANILCA.

#### **Comprehensive Conservation Plans (CCPs) and Habitat and Species Plan policies**

The addition of species into the habitat planning process is a substantial change that should be coordinated with AFWA and the state fish and wildlife management agencies. It is impossible to adequately comment on the content in these policies regarding habitat and species planning without being able to review the USFWS's Habitat and Species Planning Policy at the same time. Including species in habitat planning leads us to anticipate several conflicts between the state wildlife management plans and national policies. For example, Alaska has always had healthy wolf populations while other areas in the lower 48 states have populations that are Endangered Species Act-listed populations.

The 1997 Refuge Improvement Act (Act) clearly directed the USFWS to work cooperatively with the states:

In administering the system, the Secretary shall ... ensure timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies **during the course of acquiring and managing refuges** [emphasis added].<sup>7</sup>

Species management plans should be developed in cooperation with state fish and wildlife management agencies and must consider the state wildlife action plans (also known as comprehensive wildlife conservation strategy) and other state management plans to operate at a landscape level. These plans are required by Congress for states to access State Wildlife Grants (SWG) funding from the USFWS. Incorporating these plans into landscape-level planning will inform decision-making within the refuge and provide an additional foundation for fish and wildlife management decisions on refuge lands. We request that species management plans be developed in cooperation with state fish and wildlife management agencies. These plans must consider the state wildlife action plans (also known as comprehensive wildlife conservation strategy) and other state management plans to operate at a landscape level. We request that the USFWS recognize these plans in their decision-making.

As previously stated, ANILCA Section 1314 makes a clear separation between management of public lands and fish and wildlife management. We request that the USFWS establish a framework for working with the State of Alaska that recognizes ANILCA and Alaska's sovereign authority to manage fish and wildlife given to the state under the Statehood Act.

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<sup>7</sup> 16 USC 668dd(a)(4)(M)

The USFWS needs to clearly define who will control the landscape-level planning process. State and local agencies cannot be subject to federal planning processes in areas outside of the Federal areas in Alaska.

Public review periods identified are not adequate. Policy 602 FW 4 and FW 3.4 define a minimum 30-day public review and comment period for step-down plans and CCPs. Given the extensive analysis found in habitat and species plans as well as CCPs, we request that the minimum 30-day public review period be extended to no less than 90 days for step-down plans and CCPs. The complexity of the step-down and CCP planning processes requires reviewers to read multiple, complex, and often lengthy documents and numerous appendices to provide substantive input during a public comment period.

### 602 FW 1 – Glossary

We request revision of the following definitions. Where possible, we recommend specific edits (underlined text indicates additions, strike-through text indicates deletions).

**Acquisition Boundary.** A defined area(s) within which we are authorized to acquire all the acreage. ~~The USFWS has identified as important for federal trust resources. Refuge acquisition boundary designation gives the USFWS approval to negotiate with willing landowners who may be interested in selling or donating their land now or in the future ...~~

**Biological Planning.** A component of the Strategic Habitat Conservation framework (see 602 FW 5), biological planning, conducted in coordination and cooperation with the relevant State fish and wildlife agency(s), is the process of identifying priority conservation species and measurable targets such as population objectives, assessing the current status of populations (increasing, decreasing, static), identifying threats and limiting factors, and building models to describe the relationship of populations to habitat and other limiting factors.

**Comprehensive Conservation Plan (CCP).** To align with statutory language, we propose these changes: A document, revised every 15 years, that ensures each refuge is managed to fulfill the purpose(s) for which it was established. The required contents for a CCP, except for Alaskan refuges, are found in 16 USC 668dd, Section 7. The required CCP contents for Alaskan Refuges are found in ANILCA Section 304(g). ~~describes the desired future conditions of a refuge or planning unit and provides long range guidance and management direction to achieve the purposes of the refuge; helps fulfill the mission of the Refuge System; maintains and, where appropriate, restores the ecological integrity of each refuge and the Refuge System; helps achieve the goals of the National Wilderness Preservation System; and meets other mandates.~~

**Conservation Design.** We request the addition of a final sentence, shown below:

... It is the integration of multiple objectives and the determination of how to efficiently apportion objectives across the landscape and among Refuge System units. In situations where fish and wildlife population goals and objectives are being set, the USFWS will work in close coordination, cooperation, and collaboration with the applicable State Fish and wildlife agency(s).



**Conservation.** Please add the following sentence to the end of the definition: ... protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking. In situations where fish and wildlife population goals and objectives are being set, the USFWS will work in close coordination, cooperation, and collaboration with the applicable State Fish and wildlife agency(s).

**Coordination Area.** States manage Coordination Areas, but they are part of the Refuge System. We do not require CCPs, nor compatibility determinations, for Coordination Areas.

**Finding of Appropriateness.** It is unclear why this term sends readers to 603 FW 1, so many of the other terms could send readers to other guidance or law for the definitions. Please include the definition here.

**Goal.** This definition should be changed to “Refuge System Goals.” Refuge System Goals are provided to the USFWS by Congress and guide its management activities. These goals, drawn from the current 601 FW, should be included in the definition. They are as follows:

A. Conserve a diversity of fish, wildlife, and plants and their habitats, including species that are endangered or threatened with becoming endangered.

B. Develop and maintain a network of habitats for migratory birds, anadromous and interjurisdictional fish, and marine mammal populations that is strategically distributed and carefully managed to meet important life history needs of these species across their ranges.

C. Conserve those ecosystems, plant communities, wetlands of national or international significance, and landscapes and seascapes that are unique, rare, declining, or underrepresented in existing protection efforts.

D. Provide and enhance opportunities to participate in compatible wildlife-dependent recreation (hunting, fishing, wildlife observation and photography, and environmental education and interpretation).

E. Foster understanding and instill appreciation of the diversity and interconnectedness of fish, wildlife, and plants and their habitats.

**Land.** We appreciate the edits to the definition to exclude waters and submerged lands that may be owned by the State based on our previous comments. Please add a specific definition to match the definition of “land” found in ANILCA for Alaska refuges. This is critical since over half of all NWRS lands are in Alaska and guided by the ANILCA definition.

Throughout Part 602, the term “land” means lands, ~~and waters, including terrestrial, aquatic, and marine environments, over which we have jurisdiction~~ and interests therein.

**Land acquisition.** The purchasing or other obtainment of fee title or less than fee title interests in land from willing sellers within approved acquisition boundaries. The USFWS works to

achieve the greatest conservation return on investment and acquires only the minimum interest necessary to meet fish and wildlife conservation objectives.<sup>8</sup>

**Habitat and Species Plan.** Management of species is a responsibility Congress has assigned to the states, except in certain situations such as the Endangered Species or Marine Mammal Acts. This is especially true in Alaska, where Congress reaffirmed State management over fish and wildlife. In addition, management of fish and wildlife is enshrined in the Alaska Constitution.

Including a definition regarding the creation of a “Species Plan” without outlining how these plans will be done in cooperation with state fish and wildlife management agencies is an extreme departure from traditional interactions with states and from the Act’s requirement to cooperate with state agencies. This will cause significant controversy between the USFWS and the states well into the future. Please delete any reference to management prescriptions requiring a “Species Plan” until proper coordination with states can occur.

**Land Protection Plan.** Please add a reference stating these plans are not prepared in Alaska, in accordance with ANILCA.

**Land Protection Strategy.** Please add a reference stating these strategies are not prepared in Alaska, as Congress has already established protected lands with the passage of ANILCA.

Regarding the various **Landscape** item definitions, managing on a landscape-scale that considers a "mosaic of ecosystems ... not defined by the size of the area, but ... by interacting elements, including watersheds and marine environments," calls for a partnership scenario. As described in these definitions, the USFWS chooses the players and the rules, with the potential to exclude others, including state management agencies either outright or in effect. We request that any landscape plans be developed by partnering with interested local, state, tribal and other federal agencies. The policies need to outline how high-level coordination with the USFWS’s partners will occur.

In Alaska, landscape planning and design must be carried out in accord with cooperative management agreements, as outlined in ANILCA Section 304(f), that the Secretary enters into with any Native Corporation, the State, any political subdivision of the State, or any other person owning land which is located within, or adjacent or near to, any national wildlife refuge.

The definition of “landscape planning and design” must identify this planning difference in Alaska and that any landscape planning and design conducted in Alaska will be carried out under established cooperative management agreements prepared in accordance with ANILCA 304(f).

**Major expansion.** What rule or other authority supports this definition? Regarding “major” expansions, in Alaska, only Congress can expand refuges, in accordance with ANILCA. Please include reference to ANILCA limitations.

**Manage.** Please include a definition for the term “Manage.” It should be taken from 668ee(4).

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<sup>8</sup> from: [Land Acquisition and Realty | U.S. Fish & Wildlife Service \(fws.gov\)](https://www.fws.gov/land-acquisition)

**Minor expansion.** What rule or other authority supports this definition? Regarding “minor” expansions, in Alaska, any expansions are subject to ANILCA’s limitations. Please include reference to ANILCA limitations.

**Planning Portfolios.** Please include a statement that each of these plans require public involvement and NEPA compliance documentation, as appropriate. ANILCA outlines the public process required for planning documents for Alaska Refuges. Please include reference to the management differences in Alaska and to ANILCA Section 304(g) CCP requirements in this definition.

**Priority Public Uses.** Please provide a definition that recognizes the priority public uses hunting, fishing, wildlife viewing, photography, environmental education, and interpretation.

**Priority Species and Priority Conservation Species.** Please add a definition for “Priority Conservation Species,” currently undefined in the glossary; we are unclear if this is a separate term from “Priority Species.” The Strategic Growth Policy calls out “Priority Conservation Species” as “Priority conservation species are those species requiring focused resource commitments due to legal status, management needs, vulnerability, and geographic areas of importance.” Except for these specific situations where Congress has directed the USFWS to provide management of certain species, the states are responsible for the overall management of fish and wildlife. Prior to finalizing these regulations, the USFWS should work with AFWA and the states to ensure a mutual understanding and set of procedures to determine priority species in conjunction with the state fish and wildlife agency. In Alaska, the Alaska Board of Game and the Federal Subsistence Board make decisions concerning the allocation of wildlife. The refuge provides information to these deliberative boards to aid in decision-making processes. We request the inclusion of the definition of Priority Conservation Species in this glossary and limit the definition to those species that Congress has given the USFWS authority to manage.

**Purpose(s) of the refuge.** Please add a sentence regarding ANILCA to this definition.

In Alaska, ANILCA identifies each Alaskan refuge’s purposes. These can only be amended or revised by an act of Congress.

**Step-Down Plan.** “A detailed plan guiding the protection, management, or use of refuge lands or resources over a multi-year timescale to achieve a refuge’s broad vision and goals outlined in a CCP. As with other USFWS planning documents, Step-Down Plans require public involvement and National Environmental Policy Act (NEPA) compliance documentation, as appropriate.”

**Predator.** During the AFWA review, states noted that the USFWS needs to define the term “predator” in order to understand the implications of these policies. We note that this definition remains absent from the glossary.

## **602 FW 1.1 What is the purpose of this chapter?**

The proposed policies fail to include a section describing the USFWS’s policy for managing refuges (existing policy 602 FW 1.3). Considering the extensive changes in policy direction, the

USFWS needs to include a section outlining where their authority to implement landscape conservation beyond refuge boundaries comes from.

### **602 FW 1.2 What are the authorities of this chapter?**

Please include a brief synopsis of each authority in the final version of the policies. These currently exist in 602 FW 1.4 and are extremely useful. Additionally, please include references to the Endangered Species Act, the Anadromous Fish Conservation Act and the National Wildlife Refuge System Volunteer and Community Partnership Enhancement Act of 1998, as these statutes are frequently referred to in CCPs.

The draft USFWS policies inappropriately remove important language regarding how to deconflict authorities that will lead to unnecessary confusion. The 1997 Refuge Improvement Act addresses any conflicts between it and ANILCA. Sec. 9(b) of the Refuge Improvement Act states,

(b) CONFLICTS OF LAWS. If any conflict arises between any provision of this Act and any provision of the Alaska National Interest Lands Conservation Act, then the provision in the Alaska National Interest Lands Conservation Act shall prevail.

The current USFWS policies at 602 FW 1.4 “What are our authorities?” notes that ANILCA prevails and this important deconfliction provision in statute needs to be retained in policy. We request the following edit to the draft authorities,

A. Alaska National Interest Lands Conservation Act (ANILCA) of 1980, as amended (16 U.S.C. 31 3101-3233). If any provisions of the National Wildlife Refuge System Improvement Act of 1997 conflict with the provisions of ANILCA, the provisions of ANILCA will prevail for refuges in Alaska.

### **602 FW 1.3 What is the scope of this chapter?**

State and private ANCSA Native lands are not federal lands and waters subject to this policy. This information is important for educating new federal staff. Regularly, we see federal register notices or NEPA documents that wrongly propose federal regulations or restrictions on activities on State and private ANCSA Native lands within the exterior or adjacent to the boundaries of refuges. Please revise this section to add the underlined text below.

The term “land” includes both land, water, and interests therein as defined in Exhibit 1. Non-Refuge lands (including State, Alaska Native corporations, and other non-Federal lands and waters) are not subject to this policy.

## **602 FW 1.5 What is the Service's overall policy for refuge planning?**

Congress has directed the USFWS to provide for outdoor recreation, especially the six wildlife-dependent outdoor recreational uses – hunting, fishing, wildlife viewing, photography, environmental education, and interpretation whenever it is compatible with a refuge's primary purposes. Please include a Subsection outlining this important element of the USFWS's refuge planning actions.

Subsection B. of this section states that "Refuge planning enhances conservation benefits beyond the refuge boundaries, by using landscape planning and design to inform refuge plans and management (see Exhibit 1 for a definition of "landscape planning and design") and promotes connectivity across the landscape."

In accordance with the planning provisions outlined in ANILCA Section 303(g), USFWS planning in Alaska is limited to actions within refuge boundaries unless cooperative management agreements, prepared in accordance with ANILCA Section 303(f). are established with any Native Corporation, the State, any political subdivision of the State, or any other person owning land which is located within, or adjacent or near to, any national wildlife refuge.

The State recognizes the need to coordinate with other federal land managing agencies, the State, and private landowners. We recognize that an appropriate landscape level plan can successfully guide USFWS in their mission and future land acquisitions. However, the State notes that it is not USFWS's role to attempt to influence or stop proposed developments or land uses on non-Refuge lands. Additionally, the USFWS should not use these plans to influence BLM Regional Management Plans or Classifications.

Please clarify in this section that any landscape planning and design conducted in Alaska will be carried out under established cooperative management agreements prepared in accordance with ANILCA. We suggest preparation of an Alaska specific version of this policy.

## **602 1.6 What are the goals of refuge planning?**

**A.** This needs to state the mission and goals of the National Wildlife Refuge System (NWRS) and that achieving refuge purposes has priority in the planning process.

**B.** Please revise as shown below to use the actual statutory language. Using the actual statutory language best captures Congress' intent for management.

~~Ensure that~~ Provide for the conservation of ... ~~receive the highest priority~~

**E.** Please add the following sentence to E in accordance with 602 FW 2.

In Alaska landscape planning and design outside refuge boundaries will be carried out in accordance with cooperative agreements enacted ANILCA 304(f).

**F.** Please revise as follows to ensure coordination and cooperation with State fish and wildlife agencies:

Ensure a collaborative and transparent refuge planning process with opportunities for participation by other USFWS programs, Federal and State agencies (for Coordination and Cooperation with State Fish and Wildlife Agencies see 601 FW 7),

K. Please delete and combine with F, these two subsections should be combined.

**602 FW 1.9 How does the Refuge System coordinate with the States and territories during refuge planning?**

States have the responsibility to manage fish and wildlife. In Alaska, Congress granted this authority to the State at Statehood on all lands, regardless of ownership. We request clarification of the authority that USFWS can prepare priority species plans and note that ADF&G must be involved in any species conservation planning and strategies.

The draft policies inappropriately diminished the state consultation requirements found in the current policies and described in 43 CFR Part 24 and Executive Order 133132 – Federalism. We request the following edit,

~~The Refuge System recognizes that we have joint responsibilities for managing wildlife with the States and territories. In preparing each plan or plan revision, we will coordinate with the appropriate State and territorial agencies in accordance with our policy on Coordination and Cooperative Work with State Fish and Wildlife Agencies (601 FW 7), and make it a priority to ensure that our conservation goals and strategies are providing the greatest conservation benefits possible across the landscape. USFWS and the States and territories have authorities and responsibilities for management of fish and wildlife on refuges as described in 43 CFR Part 24. Consistent with the Administration Act, as amended, the Director will, to the maximum extent practicable, consult with States and territories in the preparation of CCPs and coordinate the development of these plans or their revisions with relevant plans for fish and wildlife, plants, and their habitats that States and territories have developed (see 601 FW 7) (see 602 FW 1, Exhibit 1 for a definition of “revision”). We will provide representatives from appropriate State conservation agencies, and any public agency that may have a direct land management relationship with the refuge, the opportunity to collaborate in early phases of the planning process.~~

**602 FW 2.3 What is the scope of this chapter? (A)(1)**

The draft policies are not as clear as the current policies that non-refuge land including state and private ANCSA Native lands and waters within and adjacent to the refuge are not subject to this policy. We recommend the following language:

The term “land” includes both land and water, as defined in Exhibit 1. Non-Refuge lands (including State and other non-Federal lands and waters) are not subject to this policy.

**602 FW 2.3 What is the scope of this chapter? (A)(2)**

We appreciate the inclusion of this paragraph in the policy. It is important this section be included in the final version as ANILCA determines the process for Alaska refuge boundary expansions and modifications. We request retention of this language from an earlier draft.

(2) The scope also does not include areas in Alaska because 16 U.S.C. 3213 (a section of the Alaska National Interest Lands Conservation Act [ANILCA]) limits our ability to conduct administrative withdrawals of public lands and prohibits planning for new conservation system units in Alaska. ANILCA guides Alaska refuge boundary expansions and modifications.

**602 FW 2.6 What is the scope of this chapter? (B)**

As this policy does not apply in Alaska, please strike Alaskan references.

**602 FW 2.8 Major (B) and Minor (C) expansions**

As we stated in our comments on Glossary terms, what rule or other authority supports the definitions for major and minor expansions? Regarding “major” expansions, in Alaska, only Congress can expand refuges, in accordance with ANILCA. Please include reference to ANILCA limitations.

Acquisition greater than 50 acres or more than 15% of the original lands appropriated for a Refuge (whichever is greater) are major expansions, which would require development of land protection strategy (LPS)s and land protection plan (LPP)s. The State encourages increasing public involvement in such acquisitions beyond that outlined in LPSs and LPPs in part due to the large areas of ANCSA lands that could be acquired to expand existing Refuges.

The proposal to classify acquisitions of 50 acres or less, or 15% or less of the original lands appropriated for a Refuge (whichever is greater) as a minor expansion is concerning. The proposed policy indicates that minor expansions can be approved without completing a LPS or LPP, which would limit opportunities for public input. These minor acquisitions could include very strategic parcels of land that could have an adverse impact on local and statewide communities and interests, and the lack of a public planning and notice process seems to purposefully avoid public involvement. The State believes these acquisitions should have a robust public notice/input process.

Consistent with the appropriate exemption for Alaska from this section, no major or minor expansions through the addition of public lands should be considered in Alaska until all State and ANCSA selections have been adjudicated by BLM, to avoid potential land claim complications with areas that have been selected or topfiled already.

**602 FW 2.11 How does the Refuge System coordinate with the States and territories during land protection planning?**

The State supports greater public involvement when USFWS is creating plan documents, expanding Refuges using Public Domain lands, or acquiring parcels of privately held land within or adjacent to Refuges. Based on the proposed policy, USFWS would only have to engage in consultation with Native/Tribal Entities, adjacent landowners, non-profits or conservation groups, special interest groups, and ADF&G. This level of engagement seems to unnecessarily exclude the wider public that could be affected by a proposed planning action or land acquisition. The State recommends that USFWS seek input from all State entities and the general public on these actions. The State notes that some infrastructure projects are on a decade-plus planning and funding schedule that could be adversely impacted by limited public outreach and engagement. (Examples are Department of Transportation & Public Facilities (DOT&PF) airport plans that have been stopped or delayed by ANCSA Village/USFWS land exchanges that were completed with minimal notice—including the failure to reach out to the Alaska Department of Natural Resources and DOT&PF.)

Overall, the State supports increased efforts to engage with local and state-wide stakeholders and the general public about Refuge plans as they are developed, as well as when both Public Domain and privately held lands or interests are considered for acquisition.

**602 FW 2.14 How does the Refuge System conduct minor acquisition boundary modifications**

The State has concerns that there seems to be no defined mechanism to widely report on Refuge expansions post-acquisition or divestiture of Refuge lands. USFWS should clearly report on Refuge expansions in publicly available reports, Refuge specific publications and webpages, and other public media.

If USFWS considers divesting Refuges of lands, the State recommends such actions undergo a rigorous public notice and engagement process. These lands and interests are held in trust for all US citizens—as such USFWS should have a clear and transparent mechanism to notify the public when divesting trust interests.

**602 FW 3 Comprehensive Conservation Planning**

ANILCA identifies specific requirements for CCPs for Alaskan refuges in Section 304(g) of ANILCA. Please provide a separate policy for Alaska CCPs. The State of Alaska ANILCA Program is available to help with this effort.

**602 FW 4.3 What is the scope of this chapter?**

The draft policies are not as clear as the current policies that non-refuge land including state and private ANCSA Native lands and waters within and adjacent to the refuge are not subject to this policy. We recommend the following language:



The term “land” includes land, waters, and interests therein as defined in Exhibit 1. Non-Refuge lands (including State and other non-Federal lands and waters) are not subject to this policy.

#### **602 FW 4.5 What is the Service’s overall policy on step-down planning?**

The following change is needed to ensure the USFWS follows the appropriate NEPA process on step-down plans and coordinates, cooperates, consults with, and uses available data from state fish and wildlife management agencies and other cooperating agencies. The second paragraph is needed to ensure, in accordance with the Improvement Act, the Refuge’s purposes remain the primary objective during the preparation of step-down plans.

Through step-down planning, carried out with appropriate NEPA review and in consultation with cooperating agencies, we develop the specific objectives and strategies necessary to fulfill the USFWS mission, visions, and goals, and refuge purposes identified in CCPs.

In step-down planning, as in CCP preparation, the Refuge System mission, vision, goals and refuge purpose(s) are symbiotic in nature; however, we give priority to achieving a refuge’s purpose(s) when we identify conflicts with the Refuge System mission, vision, or goals. The Improvement Act states that “if a conflict exists between the purposes of a refuge and the mission of the Refuge 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.” Therefore, our first obligation in the preparation of step-down plans is to fulfill and carry out the purpose(s) of each refuge.

#### **602 FW 4.6 What are the goals of step-down planning?**

The following changes are needed to ensure achieving refuge purposes and the overall USFWS mission is not lost by only referencing the CCP’s visions and goals.

**B.** Be consistent with and contribute to the refuge purposes, mission, vision and goals expressed in the CCP for the refuge or planning unit (i.e., group of refuges) and contribute to the implementation of applicable landscape conservation plans and designs. (see 602 FW 1, Exhibit 1 for definitions of “revision” and “landscape planning and design”). In Alaska, implementation of any landscape conservation plans and designs are carried out in accordance with ANILCA.

The following change is needed to ensure the USFWS consults with and uses available data from state fish and wildlife agencies.

**D.** Incorporate the best available science in accordance with 305 DM 3, Integrity of Scientific and Scholarly Activities; 212 FW 7, Scientific Integrity and Scholarly Conduct; 274 FW 1, Data Management; the USFWS’s information quality guidelines; State fish and wildlife management; and Indigenous Knowledge (IK) including and consideration of safeguarding the treaty, religious, subsistence and cultural interests of any affected

Tribes, ANCs, ANOs, and the Native Hawaiian Community (502 DM 1; DO 227). In Alaska, ANILCA Title VIII provisions prevail.

#### **602 FW 4.7. Who is responsible for step-down planning? Table 4-1 F. Refuge Managers**

The following changes are needed to ensure achieving refuge purposes and the overall USFWS mission is not lost by only referencing the CCP's visions and goals.

(2) Ensuring that step-down plans support the Refuge's purposes, USFWS mission, vision and goals in a CCP; ...

The following revisions are needed to ensure the provisions of ANCSA and ANILCA, especially Title VIII, prevail Alaska.

(5) Ensuring that planning records document treaty, trust, cultural, natural resource, and other interests within the planning areas where Tribes, ANCs, ANOs, and the Native Hawaiian Community have an interest (see DO 227 Sec. 5d); In Alaska, the provisions of ANCSA and ANILCA prevail.

#### **602 FW 4.8 Why does the Refuge System write step-down plans?**

We request the USFWS incorporate reference to working with state fish and wildlife management agencies in accordance with the Improvement Act, 43 CFR Part 24 and 601 FW 7.

(1) Conserve, manage, and where appropriate, restore fish, wildlife (in cooperation, coordination, and consultation with the applicable State fish and wildlife agency), plants, and their habitats;...

We request the USFWS revise the proposed 602 FW 4.8 (A)(4) as shown. This information related to conservation and wildlife dependent recreation and subsistence is needed for educating new federal staff. Too often, conservation is thought to be synonymous with preservation, yet, as outlined in the Improvement Act, Congress directed that wildlife dependent uses, including fishing and hunting, are critical to the USFWS's conservation mission.

Engage visitors and the community in conservation, including providing opportunities for wildlife dependent recreation and continued subsistence uses by local, rural residents in Alaska. (see 602 FW 1, Exhibit 1 for a definition of "wildlife dependent recreational use" and "subsistence uses").

#### **602 FW 4.9 Can a planning unit combine content spanning different program areas into one step-down plan?**

The following revisions are needed to reinforce that CCP, and thus step-down, planning in Alaska has different mandates under ANILCA and that the refuge purposes and USFWS mission must be considered in step-down planning.

Except in Alaska, where refuge planning is statutorily mandated (ANILCA Section 304) to occur on a refuge specific basis, we may also decide that some refuges or groups of

refuges within a distinct planning unit would benefit from a combined step-down plan on a particular topic (e.g., a visitor services plan for a refuge complex or a habitat and species plan for a group of refuges covered by the same CCP) (see 602 FW 1, Exhibit 1 for definitions of “planning unit” and “habitat and species plan”). This decision should consider the refuge purposes, Service mission and the vision and goals of the relevant CCP(s), the relationship between program areas, the possibility of shared program or resource management objectives and strategies, and the complexity of the programs under consideration.

**602 FW 4.10 What if, during the process for preparing a step-down plan, staff determine that the step-down plan is not consistent with an applicable CCP?**

The following changes are needed to ensure achieving refuge purposes and the overall USFWS mission is not lost by only referencing the CCP’s visions and goals.

... However, if a step-down plan is not consistent with the refuge purposes, USFWS mission and the vision and goals of the applicable CCP, a CCP revision is required (see 602 FW 3)

**602 FW 4.14 How does the Refuge System coordinate with Federal and State agencies, Tribes, Alaska Native Corporations (ANC), Alaska Native Organizations (ANO), the Native Hawaiian Community, local agencies, territories, partners, and other stakeholders during step-down planning? (C)**

We do not support how the draft policy weakens federal coordination and cooperation with State agencies. 43 CFR 24 and Executive Order 13083, the principles of federalism still apply. Please revise this section as shown.

C. In preparing each plan or plan revision, we will coordinate, interact, and cooperate with the appropriate State and territorial agencies in accordance with our policy on Coordination and Cooperative Work with State fish and wildlife management agencies (601 FW 7) ~~and make it a priority to ensure that our conservation goals and strategies are providing the greatest conservation benefits possible across the landscape.~~ We will provide state and tribal fish and wildlife agencies, and any other public agency that may have a direct land management relationship with the refuge, timely and meaningful opportunities to participate in the development and revision of step-down plans, as appropriate.

**602 FW 4.16 When and how does the Refuge System review step-down plans?**

The following changes are needed to ensure achieving refuge purposes and the overall USFWS mission is not lost by only referencing the CCP’s visions and goals.

We review step-down plans to determine if they need to be changed to achieve refuge’s purposes, the Service’s mission and the CCP’s vision and goals or, alternatively, if the CCP needs to be changed based on new information or changing conditions.

**602 FW 4.17 When and how does the Refuge System make changes to step-down plans? A. Step-down plan revisions.**

The change below is necessary as ANILCA provisions on CCP preparation and public outreach results in different requirements.

The refuge staff must release step-down plan revisions for public review and comment for a minimum of 30 days. In Alaska, because step-down plans are in effect the CCP, plan revisions require consultation with State agencies and Native Corporations, public hearings and public notice in the Federal Register, in accordance with ANILCA Section 304(g)(4) and (5).

**610 FW 1.3 What are the authorities for this chapter? (A.)**

The draft USFWS policies have inappropriately removed an important provision regarding conflicting authorities that will lead to unnecessary confusion. The 1997 Refuge Improvement Act addresses any conflicts with it and ANILCA where Sec. 9(b) of the Refuge Improvement Act states,

(b) CONFLICTS OF LAWS. If any conflict arises between any provision of this Act and any provision of the Alaska National Interest Lands Conservation Act, then the provision in the Alaska National Interest Lands Conservation Act shall prevail.

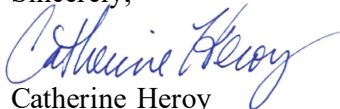
The current USFWS policies at 610 FW 1.4 “What are our authorities?” notes that ANILCA prevails and this important deconfliction provision in statute needs to be retained in policy. We request the following language be carried forward from the existing policies into the new policies,

A. Alaska National Interest Lands Conservation Act (ANILCA) of 1980, as amended (16 U.S.C. 31 3101-3233). If any provisions of the National Wildlife Refuge System Improvement Act of 1997 conflict with the provisions of ANILCA, the provisions of ANILCA will prevail for refuges in Alaska.

**Closing**

The State appreciates the opportunity to review these planning documents. Please contact me at (907) 269-0880 or by email at [Catherine.heroy@alaska.gov](mailto:Catherine.heroy@alaska.gov) to coordinate any follow up discussions.

Sincerely,



Catherine Heroy  
Acting State ANILCA Program Coordinator