



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

**Department of Fish and Game**

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Sarena Selbo  
Division of Natural Resources and Conservation Planning  
National Wildlife Refuge System  
U.S. Fish and Wildlife Service  
4401 North Fairfax Drive, Room 600A  
Arlington, VA 22203

Dear Ms. Selbo:

The Alaska Department of Fish and Game (Department) is taking this opportunity to provide comments on the US Fish and Wildlife Service (Service) Draft Strategic Growth Policy (Draft Growth Policy). The Service has developed the Draft Growth Policy to provide direction related to the expansion of the National Wildlife Refuge System (Refuge System), taking guidance from the 1997 Refuge Improvement Act (Act), which required the Service to:

*(C) plan and direct the continued growth of the System in a manner that is best designed to accomplish the mission of the System, to contribute to the conservation of the ecosystems of the United States, to complement efforts of States and other Federal agencies to conserve fish and wildlife and their habitats and to increase support for the System and participation from conservation partners and the public;*

This direction from Congress was developed during a prolonged review of the function of the Service with the overall intent to provide it with an "Organic Act" that integrated the nation's many refuges into a cohesive system managed under a consistent process. The goal of the Act was to meet the Mission of the Service:

*Working with others to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.*

The Act also directed the Service to work cooperatively with the States:

*(M) ensure timely and effective cooperation and collaboration with Federal agencies and State fish and wildlife agencies during the course of acquiring and managing refuges*

These components of the Act are worthwhile to repeat here as they provide the basic direction from Congress on how the Service should be going about its day to day work. Were the Draft Growth Policy to stay strictly within these parameters it could provide reasonable guidance that would ensure refuges are conserved for the benefit of the American people in a manner efficient for both conservation and funding in close partnership with the States. However, there is a drift in the Draft Growth Policy that encompasses not only the growth of the Refuge System but additional and significant issues regarding their management and coordination with the States. Our concerns, elaborated below, cause us to caution the Service from further work on the Growth Policy until acceptable resolutions have been achieved regarding our concerns, and additional opportunities for review have been provided to the public and the Service's many partners, especially the individual States, on the future direction of the Service's refuge program.

The State of Alaska takes a keen interest in the development of Service policies since sixteen of the refuges within the Refuge System are in Alaska. At nearly 80 million acres, they comprise well over half of the lands in the Refuge System and nearly a quarter of the state's landmass. Refuge management in Alaska has the ability to influence the individual lives of our residents as they hunt, fish and conduct subsistence activities, as well as economic factors. It is imperative that the reasons for refuge establishment and management are well understood, mutually acceptable, and implemented in as transparent a manner as possible.

The Alaska National Interest Lands Conservation Act (ANILCA) established or expanded the refuge system in Alaska and included many unique provisions to balance the national interest in Alaska's resources, including scenic and wildlife resources, with recognition of Alaska's developing economy and infrastructure, and its distinctive rural way of life. The Refuge Improvement Act includes an explicit savings clause to ensure that in the event of a conflict between *any* provision of the Act and *any* provision of the ANILCA, the provisions of ANILCA prevail (Section 9, Refuge Improvement Act).

ANILCA does not contemplate additions to the Refuge System, nor the expansion of existing refuges, in Alaska. Relevant provisions of ANILCA include but are not limited to:

- Section 1302 of ANILCA, which establishes Secretarial authority and restrictions for land acquisitions and exchanges within the boundaries of conservation system units (other than National Forest Wilderness) within the State of Alaska, which includes any unit in of the National Wildlife Refuge System in Alaska – either existing, established, designated or expanded under ANILCA and any unit established, designated, or expanded hereafter (ANILCA Section 102(4)).
- Section 101(d) states that ANILCA represents a proper balance and that “*Congress believes that the need for future legislation designating new conservation system units...has been obviated thereby.* (italics added)”
- Section 1326(a) establishes that executive branch actions, which withdraw more than five thousand acres in the aggregate, of public lands within the State of Alaska will not

become effective until notice is provided in the Federal Register and to both Houses of Congress, and will terminate if Congress does not pass a joint resolution of approval within one year.

- Section 1326(b) requires Congressional authorization to conduct further studies of federal lands in the State of Alaska for the single purpose of considering establishing a conservation system unit, or for related or similar purposes. National Wildlife Refuges in Alaska are defined as conservation system units under ANILCA.

The Draft Growth Policy is silent on these and other provisions of ANILCA that apply in Alaska. To ensure consistency with ANILCA, the Draft Growth Policy either needs to be modified or regional policy needs to be developed (similar to Chapter 5 of Part 610, Special Provisions for Alaska Wilderness) to recognize the savings clause in the Refuge Improvement Act and address the specific provisions in ANILCA that modify the policy for refuges in Alaska.

Opportunities for the Refuge System to grow may be appropriate when accomplished in a cooperative manner with the States, consistent with existing law and policy (i.e.; The Act and ANILCA), and determined necessary for conservation purposes and promotion of outdoor oriented public use, which was a key component of Congressional intent for refuge purposes as referenced in the Act. The Service should not seek opportunities for growth simply to increase the size of the Refuge System or to reduce inholdings. Significantly, while criteria for expansion is presented in the Draft Growth Policy at sections 5.8 and 5.9, it is generally vague and so subject to discretionary interpretation by Service personnel that it is difficult to determine what lands would not meet a successful approval process. In Alaska, for instance, nearly the entire landmass of the state (and its coastal offshore areas) include critical habitat for threatened or endangered species, or species being considered for listing, meeting a key selection criteria of Section 5.8. Other states, particularly in the West, would likely meet the same criteria. (The Service is cautioned that the Endangered Species Act must not be used by the Service to inappropriately expand or enhance the permanent growth of the Refuge System or the authorities of the Service. Rather, it should be employed as a management tool in which “threatened or endangered” species are husbanded with temporary, cooperative conservation efforts, as Congress intended.)

Criteria used in prioritizing expansion of the Refuge System must be narrowly focused and be able to demonstrate that the areas under consideration are of such critical value to conservation or public uses that they need to become part of the federal estate. It is also unclear how adding this additional planning layer will be more cost-effective, as stated in Section 5.5, especially considering the recent and drastic reductions in the Service’s planning budgets, and the controversial internal shifting of funds from traditional, proven, refuge inventory and monitoring programs to unproven surrogate species based programs.

Additionally, Section 5.9 focuses on implementation of the Services’ Strategic Habitat Conservation framework, which is not widely applied or accepted by the individual States, nor widely practiced by the

Service. This then leads to our second concern, management of refuges and how the Draft Growth Policy addresses concepts related to surrogate species. Section 5.9 identifies the use of surrogate species and the subsequent setting of population objectives as appropriate mechanisms for identifying priority additions to the Refuge System. Problematically, these terms and their identification and use have not been finalized by the Service or the partner States. In fact, the Draft Technical Guidance for Surrogate Species has been under review by the Service since early 2013, and remains in draft form while this policy is also under review. In regards to selecting or using surrogate species, the Framework for Joint Selection of Surrogate Species (Framework) by the U.S. Fish and Wildlife Service and State Fish and Wildlife Agencies, June 6, 2013 noted:

*Additional Considerations*

- *We acknowledge that existing efforts around the country are moving forward at different paces, and we are comfortable with those moving forward as long as the framework outlined here is followed.*
- *We desire some sort of formalized mechanism for FWS and States to move forward together in this context and make decisions together (a possible example might be a “decision council” patterned after the flyway councils). A joint State-FWS team could address this need further, including discussing details that need to be worked out. The desire is for a forum(s) that could be seen as a way that the States and Service make decisions over time that is more formal than single personal contacts and can transcend changes in people and relationships over time. Another example of a potential mechanism is agenda time specifically put into each of the regular regional meetings of the State and Service directors of the Fish and Wildlife Associations.*

*This mechanism should address the following decision points:*

*scale(s) for selecting surrogates  
 selection of surrogates  
 setting population goals for surrogates  
 agreement on monitoring protocols  
 evaluating the approach taken and determining if adjustments are needed*

*This mechanism will define roles and responsibilities, including potential roles for LCCs. The team should plan to report out no later than the September 2013 AFWA meeting.*

- *This joint surrogate species approach might inform, or could be a first step in, a larger joint approach to the Strategic Habitat Conservation paradigm for landscape scale conservation.*

As of February 2014, the joint State-FWS Team referenced above has not met and no steps have been taken to define or otherwise address the decision points above.

The Framework also committed to respecting the authorities of the States regarding the selection of surrogate species and the setting of population objectives:

Framework

- *The Service and States will work together to decide the initial pool of species to be represented and the initial pool of surrogates. While input may be obtained from others, the decision on the final suite of surrogate species selected rests with the States and the Service. State Wildlife Action Plans are a valuable starting point and resource for discussions.*
- *The Service will not select State trust species as surrogates without concurrence from the State(s) involved.*
- *The initial scale for selection of surrogate species could be within the geographic boundaries of Landscape Conservation Cooperatives (LCC's). Sometimes the scale will need to be smaller than an LCC boundary and sometimes species and landscapes will transcend multiple LCC geographies. When the appropriate scale is determined, whether smaller or larger than an LCC geography, the Service and States will work together to coordinate across all administrative boundaries.*
- *If a State or group of States agrees on using a State trust species as a possible surrogate, the surrogate population objective will be identical to the State population objective or combined State objectives. If population objectives do not exist, the State(s) will develop population objectives in a consistent and coordinated manner with the Service. If the State(s) do not choose to develop population objectives, the State(s) and the Service will discuss.*

The commitment of the Service in the Framework that they will not use State trust species as surrogates without the concurrence of the State must be clearly recognized in the Draft Growth Policy. Failure to do so would be a departure from the Framework and the Act's requirement to cooperate with State agencies, and cause significant controversy between the Service and the States well into the future.

It is helpful to the discussion to consider that there is concern both within the Service and from outside entities regarding the application of Landscape Conservation Cooperatives (LCCs) and the associated surrogate species concept. The Committee report for the FY2014 DOI Appropriations Bill states:

*Landscape Conservation Cooperatives (LCC).-The Committees are concerned about a recent Inspector General report finding "areas of concern that could potentially place millions of dollars at risk and jeopardize future funding and support for LCC activities overall." From within the funds provided for LCC activities, the Service is directed to contract with the National Academy of Sciences to evaluate: (1) the purpose, goals, and scientific merits of the program within the context of other similar programs; and (2) whether there have been measurable improvements in the health of fish, wildlife, and their habitats as a result of the program.*

We share the Committee's concern and support their direction for the Service to contract with the National Academy of Sciences to evaluate these programs and, similar to our request above, request that concepts of surrogate species not be included in the Draft Growth Policy until the evaluation is completed.

The Draft Growth Policy indicates a high level of coordination with the States should occur, subject to direction from existing policy (43 CFR Part 24 State-Federal Relations, the Refuge Improvement Act) and direction within the policy itself. However, based on our experience with the Refuge System in Alaska, this does not occur in a meaningful manner. In repeated instances when the State and the Service do not agree on management actions, particularly those affecting wildlife population goals and objectives, or management actions, the Service routinely "trumps" decisions by the State through use of existing Service Policy, particularly the Biological Integrity, Diversity and Environmental Health Policy (BIDEH) 601 FW 3. The Service routinely uses broad, discretionary interpretations of this policy to justify restrictions of State authorized hunting and trapping seasons, bag limits and management actions, often leaving little recourse for elevation and resolution outside of litigation. This is not indicative of a cooperative process but a process in which the States are held subservient to the Service, with their positions often dismissed. While there is direction in numerous Service policies and statements to coordinate and cooperate, there is no incentive to do so. The Draft Growth Policy should require meaningful consultation with the States before the Service proceeds with acquisition projects.

We also have significant concerns about the choice of terminology in the Draft Growth Policy. For instance, "Priority Conservation Features" actually means priority conservation species, and it is unclear why the word "features" is used instead of "species." Moreover, the use of the term "Priority Conservation Features" is confusing because of its carryover from Landscape Conservation Cooperatives (LCCs). "Priority Conservation Features" have already been identified for some LCCs, but the LCC steering committee members in Alaska who identified them were unaware that they would be used as justification for refuge expansion or creation of new refuges, as the Draft Growth Policy indicates. This has occurred within several Alaska LCCs, as well as in the process for completing Science Investment and Accountability Schedule 2.0 responses, and for strategic action planning and science and operating planning. None of these documents made any reference to refuge growth, yet it is clear that they are components of processes that could lead to refuge expansion.

Further, the Service's Draft Technical Guidance for the Selection of Surrogate Species (Draft Technical Guidance) document has not yet been approved nor edited with respect to comments received in 2013, but its guidance is currently being used within the geography of the Arctic LCC to test its application on selecting priority resources. This direction was decided upon by the Service and implemented outside of the scope of the Arctic LCCs multi-agency steering committee. Since priority resources in LCCs are identical to the Draft Growth Policies "priority conservation features" it appears that the Service is using the Draft Growth Policy to institutionalize controversial components of the Draft Technical Guidance related to surrogate species that may not gain approval otherwise. If this is the case, the Service needs to revise these documents to very clearly denote what they are doing and how the two documents (Draft

Technical Guidance and Draft Growth Policy) relate to each other, particularly in regards to surrogate species.

To note another example of a need for clarity in the document, “Project Proposal” in the Draft Growth Policy actually means a proposed new refuge or refuge expansion, but “project proposal” on its face could also mean any number of proposed science or management based projects. At best these terms are confusing and an unnecessary use of specialized terminology where the plain meaning of the term would suffice. At worst they are misleading with the intent to draw attention away from the actual intent to expand refuges.

We question the objective at 5.2(F), “*Ensure the future growth of the Refuge System is based on a species-based, landscape-scale conservation design...*” Considering species’ range, this objective could be mutually exclusive. In many ways landscape-scale conservation design (as through LCCs) has developed as an alternative to species-based management. By basing the growth of the Refuge System on species-based, landscape conservation management, the Service conflicts not only with the intent of LCCs, but with the responsibilities of the States as the recognized managers of fish and wildlife, as well as other federal and private land managers who may not share the Service’s intent, whatever that may be.

Section 5.6(E) Population Objectives, does not include any specific reference to the States, yet the States traditionally have set population objectives. Additionally, population objectives are an unrealistic metric of the Service’s success when the Service generally manages only small portions of a population’s range.

In reference to Section 5.9(A), it is unclear why a surrogate species would be used to represent another species (i.e. “priority conservation feature”), when generally surrogate species are used to represent habitat or ecosystem conditions. In the case of Section 5.9(A), it seems the Service should simply identify the priority conservation feature (i.e. species) of interest and link it to habitat or ecosystem conditions. To identify a surrogate species for another species simply adds an unnecessary layer, and one that may not be related to the degree necessary to understand or monitor the species of interest.

Regarding Section 5.9(B)(2), identifying population objectives without explicit cooperation of the States oversteps Services’ authority. Using a team of experts through a cooperative decision making process to identify population objectives is inappropriate. In that scenario the Service chooses the players and the rules, with the potential to exclude state management agencies either outright or in effect.

A similar example of the Service overstepping its authority is shown in Section 5.9(C), Identify Priority Conservation Areas, where the strategic use of “or” in the decision making process steps eventually leads to the Service holding the decision making authority:

***Section 5.9 C. Identify priority conservation areas.*** Using the best available science, the project proposal must identify priority conservation areas that support priority conservation features and contribute toward achieving measurable targets, such as stated population objectives. The project

proposal must consider lands and waters identified in national, Regional, State, or species-specific conservation, management, or recovery plans, or a LCC-sponsored or developed landscape conservation design. The project proposal must incorporate elements of conservation design to ensure projects are arranged in a geographically efficient manner to safeguard ecological processes across the landscape and to complement the resiliency of other conservation areas.

This is particularly problematic in those instances where the State is not participating in an LCC, as is the case in Alaska, where the State is not participating in 2 of the 5 Alaska LCCs due to unresolved procedural issues. We are concerned the Draft Growth Policy could be used to force States to participate in individual LCCs, when doing so may not be in their best interest, or in the best interest of the resources they manage. States would be faced with the option of participating in LCCs and having some say in the setting of population goals and objectives, or not participating and having no input. This would be regrettable for all involved.

Section 5.11 should succinctly describe the respective roles of the States and the Service, as well as an elevation process. Considering the central role of setting population objectives, a traditional responsibility of the States, plays in the Draft Growth Policy, it is imperative the Service address and resolve this issue. Section 5.11 should also be revised to recognize that the more appropriate level for cooperation between the States and the Service regarding Strategic Growth is at the level of the Regional Director, not individual Refuge Managers.

We are also concerned about the potential application of the Draft Growth Policy to state navigable waters and other state submerged lands, particularly those in marine waters. The State holds title to many miles of rivers that flow through refuges and to the near shore submerged lands adjacent to refuges. We will object to any attempt by the Service to assert its authority over these state owned resources.

Significantly, it is unclear how this proposed new chapter to Part 602 will interface with the existing process for land acquisition planning under Part 602 FW 1.7C. The existing process for Land Protection Plans (LPP) requires NEPA and the Director's approval before entering into detailed planning. It is unclear whether the Draft Growth Policy is intended to replace or modify the LPP process, a process the public is familiar with and which has been in place since at least the 1980s. The Draft Growth Policy makes no mention of public input, and seems to advance the Service's initiative for refuge growth without public input. By the point at which public input may be sought, the Service's investment in the project proposals may be great enough to have created its own momentum, making it difficult for the Service to step back and objectively consider public input. As written, the Draft Growth Policy appears to supplant the public input currently included in the LPP process with input from LCCs or other cooperative decision making processes. This effectively provides some members of the public, i.e. those individuals or groups able to participate in LCCs or cooperative decision making, with more influence than others. Overall, this has the effect of disenfranchising the general public.



Except in ANILCA, which requires Congressional approval for withdrawals exceeding five thousand acres in the aggregate, there is little, if any, Congressional oversight regarding the growth of the Refuge System and no such references in the Draft Growth Policy, or in the Act for that matter. It is unclear why the growth of the system is not addressed in the Act or in the accompanying House Report (HR 105-106). Regardless, it is troubling that the Service is left to its own devices of determining expansion priorities without at least informing Congress of its intentions. We recommend that the Service provide Congress with potential additions to the Refuge System prior to their inclusion, with sufficient information to allow the Congress to determine the value to the American people, how it meets the intent of the Act, and the costs to the Service for managing those lands. We recommend that the Service commit to informing Congress of these actions for their approval, and that it be integrated as part of the Draft Growth Policy.

To rectify these concerns, we request the Service work with the States to integrate specific language into the Draft Growth Policy that not only recognizes the need to coordinate and cooperate with the States, but to do so in a meaningful manner that has incentives and requirements for the Service and the States to commit to fulfill them in a mutually beneficial manner. We note that a revision of the BIDEH Policy may be necessary to implement this so that the discretionary decision making authority of Service staff, often with little understanding of the unique aspects of species management at the local level, cannot unilaterally overrule management objectives of the States. The final Strategic Growth Policy should include a clear commitment by the Service to gain its acceptance by the States, including recognition of the States' management authority for fish and wildlife, and for the use of lands acquired by the Service to allow hunting, fishing and other outdoor oriented recreation, consistent with the intent of Act. Experience has shown that without such a firm commitment to clarify ambiguous language, years of unproductive interaction seeking clarification between the Service and the States may result.

We also request the Framework between the States and the Service be finalized, and the Draft Technical Guidance be approved, with consideration for the comments received from States and others, *before* additional action is considered for the Draft Growth Policy. To proceed otherwise would inappropriately finalize policies and processes without the full coordination and cooperation with the States, to which the Service has previously committed.

The Draft Growth Policy also needs to address the applicability of the National Environmental Policy Act (NEPA) when considering the expansion of the Refuge System, either by purchasing or receiving lands from another government agency or private entity. We reason that such acquisitions trigger NEPA by tying the Service to long term commitments of federal funding for either acquiring lands or in managing them. It is in the interest of the public to understand what commitments will be incurred by any growth of the Refuge System.

In closing, we recognize that we have identified numerous concerns with the Draft Growth Policy, which may seem to indicate that we are opposed to the growth of the Refuge System. This is not the case. We believe that the Service has a specific role intended by the Congress in the conservation of America's lands and waters for the benefit of the American people. However, the current Draft Growth

Policy does not meet that intention, and instead takes multiple steps to avoid the clear authorities that Congress intended for the individual states to hold, particularly in their role as managers of fish and wildlife. The Draft Growth Policy, through the application of surrogate species management where the Service sets its own population goals and objectives, inappropriately reduces the ability of the States to manage fish and wildlife, both on and off Service administered lands. Alaska contains the greatest acreage of refuge lands in the national system, and as such, is potentially the most affected by this policy. It is important for us to mutually resolve the identified issues prior to this policy being finalized otherwise no recourse for resolution may be available outside of litigation.

We believe the concerns noted in these comments can be rectified through close coordination with the States, both at the individual level and through work with organizations that represent the States. We urge the Service to work closely with all to resolve these issues and provide clear and useful direction for furthering the conservation interests of the nation in a cooperative and coordinated manner.

Sincerely,



Douglas Vincent-Lang  
Director

cc: Cora Campbell, Commissioner, ADFG  
Geoffrey Haskett, Regional Director, USFWS  
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