



**ENVIRONMENTAL LAW  
& POLICY CENTER**



National  
Wildlife Refuge  
Association

**COMMENTS OF THE ENVIRONMENTAL LAW & POLICY CENTER, AND  
NATIONAL WILDLIFE REFUGE ASSOCIATION ON THE**

**U.S. FISH & WILDLIFE SERVICE'S  
NATIONAL WILDLIFE REFUGE SYSTEM;  
BIOLOGICAL INTEGRITY, DIVERSITY, AND ENVIRONMENTAL HEALTH  
FWS-HQ-NWRS-2022-0106 -- 89 FR 7345**

The Environmental Law & Policy Center and National Wildlife Refuge Association (“ELPC/NWRA”) commend the U.S. Fish and Wildlife Service (“FWS”) for the proposed Biological Integrity, Diversity, and Environmental Health (“BIDEH”) Rule. The Proposed Rule will help to better ensure that National Wildlife Refuge managers follow principles and adhere to practices that improve protection of wildlife and habitat on Refuge lands. ELPC/NWRA support the Proposed Rule and provide two recommendations below to further strengthen the Rule and help to ensure that BIDEH principles continue to guide management of the National Wildlife Refuge System.

**Recommendations**

The Proposed Rule includes both a proposed regulation to appear in the Code of Federal Regulations at 50 CFR § 29.3 and an amendment to FWS’s internal guidance for the BIDEH policy, which will appear at 601 FW 3. The Proposed Guidance and the Proposed Regulation are improvements on the status quo. For example, the Proposed Regulation identifies “[a]ddress[ing] climate change” as the number one management directive that will serve as a framework for refuge managers. Proposed Regulation at § 29.3(c)(1). The Proposed Regulation also places limitations on activities that may cause harm to wildlife on Refuge lands, including pesticide use

and agriculture. *Id.* § 29.3(d)(5) – (6). These are important steps toward improving and protecting the health of Refuge lands and waters, and the ecosystems they support.

ELPC/NWRA observe that the Proposed *Guidance* contains provisions for at least two critical policies—habitat connectivity and Tribal consultation—that do not appear within the Proposed *Regulation*. While those policies may inform management of Refuge lands, they might also lack the legal force of provisions that FWS includes in a codified regulation. Therefore, ELPC/NWRA recommend adding provisions to the Proposed Regulation that specifically address these two policies.

### **1. Tools to Improve Habitat Connectivity.**

Habitat fragmentation, which is “the division of habitat into smaller and more isolated fragments separated by a matrix of human-transformed land cover,” presents a major threat to wildlife in the National Wildlife Refuge System. Research shows that habitat fragmentation reduces the abundance of wildlife and “strongly reduce[s] species richness of plants and animals.” Habitat fragmentation also contributes to extinction of endangered species. Haddad, *et al.*, “Habitat Fragmentation and its Lasting Impact on Earth’s Ecosystems,” *Science Advances* (Mar. 20, 2015). Available at <https://www.science.org/doi/10.1126/sciadv.1500052>.

Aspects of the Proposed Rule recognize the importance of reducing habitat fragmentation. The Proposed Regulation identifies “conserv[ing] and connect[ing] habitat” as one of the five “management directives” the rule provides to managers of Refuge lands. The Proposed Guidance (at page 8) expands on that management directive by explaining how Refuge managers can “avoid and minimize habitat fragmentation.” The Proposed Guidance identifies a number of specific practices to improve habitat connectivity, including “prescribed fire,

silvicultural practices, reforestation, conservation translocation, provision of habitat structures, [and] moist soil management.”

Those specific habitat connectivity practices, however, do not appear within the Proposed Regulation. Section 29.3(d) of the Proposed Regulation sets forth a number of specific “activities and uses” that Refuge managers may rely on in their management of Refuge lands, including native predator control and conservation translocation. But none of these “activities and uses” are tools that can specifically mitigate habitat fragmentation.

ELPC/NWRA encourage FWS to consider authorizing specific habitat connectivity practices under section 29.3(d) of the Proposed Regulation. The list of practices that the Proposed Guidance identifies is a good starting point for the activities that should be added to the Proposed Regulation. We further recommend another practice that can meaningfully and rapidly reduce fragmentation: the removal of lateral barriers and disturbances that break up habitat, including fences, roads and utility rights-of-way. While removing lateral disturbances to habitat is not always feasible, it can be a powerful solution when it is available because it directly addresses the cause of habitat fragmentation.

## **2. Consultation with Tribes and Indigenous Communities**

The Proposed Rule’s background discussion states that “[t]he Proposed regulations and policy updates additionally comply with and uphold the Service’s continued commitment to cooperate and coordinate with federally recognized Tribes.” Proposed Rule, 89 FR 7348-49. Consultation with Tribal partners also appears as a “principle underlying” the BIDEH policy in the Proposed Guidance. The Proposed Regulation, however, does not contain any requirement to consult with Tribes when considering potentially disruptive activities such as pesticide use and agriculture. ELPC/NWRA encourage FWS to add explicit Tribal consultation requirements to

the Proposed Regulation. To the extent that particular management activities may affect Tribal interests, consultation with affected Tribes should not be left to the discretion of managers, but should be a necessary part of the decision-making process.

**Conclusion**

ELPC/NWRA commend FWS for proposing the Biological Integrity, Diversity and Environmental Health rule. With many serious threats facing wildlife today in the United States, National Wildlife Refuge lands and waters serve as a bulwark for biodiversity and ecosystem health. FWS's proactive approach to protecting those resources will help to better ensure that the National Wildlife Refuge System continues to serve its important statutory purpose. We appreciate FWS's consideration of these ELPC/NWRA comments.

Dated: February 19, 2024

Respectfully Submitted,

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