



# United States Department of the Interior

NATIONAL PARK SERVICE  
1849 C Street, N.W.  
Washington, D.C. 20240

IN REPLY REFER TO:

Memorandum

JUN 30 2017

To: Legislative Counsel

Through: Acting Assistant Secretary for Fish and Wildlife and Parks

From: Acting Director, National Park Service *Walter R. Boyer*

Subject: Views on H.R. \_\_\_\_\_, Sportsmen's Heritage and Recreational Enhancement Act

This memo is in response to a request from your office for views regarding the draft bill, H.R. \_\_\_\_\_, Sportsmen's Heritage and Recreational Enhancement Act. While the National Park Service (NPS) supports the goal of promoting hunting and fishing, where authorized within National Park System units, there are substantial issues with several titles. We have outlined our comments below and attached the redline markup of the draft bill with our recommended changes to it.

## **Title I - Fishing Protection Act**

*CA*  
The NPS recommends striking Title I.

This title would preclude Federal agencies from having a stricter standard than a state for lead content in ammunition and fishing tackle used on public land and thus in some instances, may conflict with NPS responsibilities to preserve wildlife under the NPS Organic Act. Hunting and fishing are currently managed at the local park unit level in coordination with states, and, in most of the NPS units where hunting and fishing are authorized, state regulations and rules are used to govern the overall management of those uses. Under this title, the NPS and other Federal agencies will be prevented from addressing impacts to public safety, wildlife, and habitats from lead if state standards are less strict than Federal standards.

## **Title IV - Wildlife and Hunting Heritage Conservation Council Advisory Committee**

The NPS recommends striking Sec. 10 (d)(1)(D) related to committee membership eligibility.

This title would codify the existing Wildlife and Hunting Heritage Conservation Council Advisory Committee (Council). The language changes the composition of the Council by removing the following: Sportsmen and sportswomen community at large; Hunting and shooting sports outreach and education organizations; and habitat conservation organizations. Each of the specific constituents represented on the Council is chosen to ensure that all key voices from all aspects of the conservation and wildlife and hunting communities are at the table. As an ex-officio member of the Council, the NPS believes it is important to have members that provide the

full range of views to ensure that we and the Department are able to meet our wildlife conservation obligations through partnerships with the sportsmen's community. The NPS has no objections to new members that are proposed to be added to the Council.

#### **Title V - Recreational Fishing and Hunting Heritage Opportunities Act**

The NPS recommends striking Sec. 503 (c)(2).

This section exempts actions taken under this title, either individually or cumulatively, from consideration under the National Environmental Policy Act (NEPA). Although this section only exempts actions taken by the Bureau of Land Management, the US Forest Service, and the United States Fish and Wildlife Service, the exemption may impact the ability of the Department to fully assess the potential impacts of decisions regarding management of Departmental lands. NEPA reviews also provide key opportunities for public engagement. Finally, NPS resources and values may be negatively impacted by actions taken by our sister bureaus. Eliminating NEPA reviews removes the ability for the NPS to participate in the planning process (for projects that may directly impact park resources) as a cooperating agency or to provide key data or information during the comment period, which may help to inform the ultimate agency decision. For example, since wildlife freely crosses jurisdictional boundaries, actions on adjacent lands may reduce wildlife viewing opportunities for visitors or impact ecosystem health. In addition, actions that may impact a fishery upstream of a park could impact recreational fishing opportunities within that park. LA

#### **Title VII - Transporting Bows Across NPS Lands**

The NPS recommends striking the entire title as it is not necessary as the activity is already currently allowed. As an alternative, the NPS recommends amending Title VII.

This title would prohibit the Director of the NPS from prohibiting, or requiring a permit for the transport of bows across NPS lands, and would allow the Director of the NPS to establish hunter access through NPS lands. LA

NPS regulations at 36CFR 2.4 allow for the transport of a bow in a motor vehicle and the NPS has no intentions of changing this regulation. The legislation would require the NPS to write new regulations to also currently allow Superintendents to issue permits to individuals to carry or possess a bow in a park to "provide access to otherwise inaccessible lands or waters contiguous to a park area when other means of access are otherwise impracticable or impossible."

Even though under this title, bow hunters would no longer need to obtain a permit to cross park lands, the NPS recommends that the bill adopt the language of the existing NPS regulation regarding the limited reason for hunters to traverse park lands: to reach otherwise inaccessible lands. That language from the regulation is included in the NPS recommended amendments.

The following issues are also of concern to the NPS:

*Wildlife management or visitor experience benefits* - Section (c)(2) introduces the process of determining "wildlife management or visitor experience benefits," as a step prior to establishing hunter access corridors. However, the types of potential benefits are undefined and, as a result, could make analysis of benefits complex and inconsistent. For example, should a hunter access corridor exclusively benefit hunters, or should benefits to visitors who do not hunt also be considered in the determinations? The NPS recommends clarifying what types of potential benefits should be considered in these determinations. As written, this section could elevate hunting over all other types of visitor use.

*Hunting within hunter access corridors and mandatory opening of hunter access corridors during hunting season* - Section (c)(3) implies that hunter access corridors would be open to hunting and other activities. Section (c)(3) also requires mandatory opening of hunter access corridors during hunting seasons. However, there may be situations in which the Director would need to close hunter access corridors during hunting seasons (e.g., emergencies, special events). The NPS recommends allowing the Director to have the discretion to close these corridors. CH

*Barriers on hunter access corridors* - Section (c)(4) would limit the NPS authority to erect barriers for closures, which may include "gates, chains, walls, or other barriers on the hunter access corridors". In some cases, hunter access corridors may be designated on trails or roads that have existing barriers erected for a variety of valid purposes. For example, a hunter access corridor may be designated on an administrative road normally closed to the public because it is used by employees to access non-public maintenance facilities, housing, equipment caches, etc. While barriers on roads like these would need to remain, hunter access corridor users would still be allowed to pass through the barriers. In hunter access corridors designated on roads or trails normally open to the public, there may also be situations that would require barriers to be temporarily erected during hunting seasons, for public safety (e.g., emergencies, special events, as in Section (c)(3)). The NPS recommends allowing the Director to have the discretion to maintain or erect barriers on hunter access corridors.

CA  
*Nonmotorized conveyances in wilderness* - Section (c)(6)(C) would allow nonmotorized conveyances to be used within hunter access corridors that are otherwise not allowed in wilderness areas. The NPS recommends clarifying this section to confirm that nonmotorized conveyances are not allowed to be used on hunter access corridors within wilderness areas.

*No major federal action* - Section (e) would exempt construction of new trails and other actions authorized under this title from NEPA. By limiting or eliminating the consideration of impacts of actions under this title, the actions could negatively impact NPS resources and values because impacts may not be adequately analyzed and minimized and actions would occur without public input. For example, re-routing a trail as part of designating a hunter access corridor may have impacts on hydrology, erosion, archeological resources, or visitor use preferences which may not be considered and mitigated during the project planning without full NEPA analysis and public engagement. The NPS recommends striking this section. CH

### **Title IX State Approval of Fishing Restriction**

The NPS recommends striking Title IX. CH

This title would prohibit the Secretaries of the Interior and Commerce from restricting fishing in Federal waters, unless the relevant state agency approves the restriction. NPS has the responsibility to manage fishery resources to protect those resources and associated ecosystems and provide for recreational opportunities. State agencies often have different priorities and removing management authority from the NPS may result in higher levels of fishing pressure, which may reduce opportunities for recreational fishing and impact other recreational experiences (whale watching, snorkeling, etc.) within the park unit. For example, if commercial fishing in NPS units in Alaska depletes stocks of the fish species that eagles, whales and other marine mammals feed on, visitors would be less likely to see intact, wild ecosystems, with the full complement of wildlife that drive tourism.

NPS regulations allow for recreational fishing with reasonable and minimal restrictions, incorporate non-conflicting state fishing regulations, and require consultation with states prior to restricting or closing park areas to fishing. NPS has a mandate to conserve parks unimpaired, using the best available science, but states have their own objectives in managing fishing, which sometimes do not align with NPS mandates. This title would significantly reduce the ability of NPS to protect fish populations and restore habitats within NPS units.

As required by Federal law and the Department of the Interior and NPS policies, NPS already consults with the states, both formally and informally, and prior to any fishing closure or regulation through the NEPA and rulemaking processes. It is important to note that NPS fishing management has a fractional impact on overall fishing access within a state. Within the coastal states of this country, there are millions of water acres managed by states for fishing, such as territorial waters, coastal bays and sounds, and inland waters. CH

NPS regulations allow for commercial fishing only in park units if specifically and directly authorized by Federal statute. This bill would allow states to disapprove Federal regulatory restrictions on commercial fishing. It is also unclear whether and how this title would affect existing fishing restrictions in the National Park System. To the extent it does, it could open parks to commercial fishing where it is currently prohibited.

Additionally, this title appears to conflict with the Alaska National Interest Lands Conservation Act (ANILCA), which creates a Federal preference for rural subsistence fishing in Alaska. The State of Alaska once managed that Federal requirement, but since the mid-1990s, the Departments of the Interior and Agriculture assumed that responsibility because the State was unable to comply with the Federal law due to conflicts with the State constitution. The State has been unable to come into compliance since then. The Secretaries of the Interior and Agriculture likely would be unable to fulfill their responsibilities under ANILCA if state approval of fishing restrictions were required.

This title also creates potential conflicts with commercial fisheries management in Glacier Bay National Park and Preserve (Alaska), which is subject to P.L. 105-277 and P.L. 106-31, as amended. Managing commercial fishing in Glacier Bay has been controversial for several decades. Congress has directed the State of Alaska and the Secretary of the Interior to cooperate and has authorized and funded compensation for the commercial fishing industry negatively

affected by restrictions on fishing in Glacier Bay. Commercial fishing has also been phased out over time through limited Lifetime Allocation Permits. The reason for restricting commercial fishing in Glacier Bay is to prevent decreases in fish stocks that eagles, whales and other marine mammals feed on in order to maintain opportunity for visitors to view eagles, whales, and other wildlife, which is essential to the tourism industry. Over 500,000 visitors experience Glacier Bay each year and this visitation is a cornerstone of the Alaska cruise tourism industry. Phasing out commercial fishing has also enabled the development of unparalleled sport fishing opportunities in Glacier Bay, which have less impact than commercial fishing. Local communities depend on the vital economic opportunities created by cruise tourism and sport fishing. If the state disapproved of commercial fisheries management in Glacier Bay, the NPS would be unable to continue to restrict commercial fishing, and the local communities, the tourism industry, and wildlife would decline.

### **Title XIII Miscellaneous Provisions Sec. 1301. Withdrawal of Existing Rule Regarding Hunting and Trapping in Alaska**

The NPS recommends striking Title XIII.

This title requires the Director of the NPS to withdraw the NPS rule (80 Fed. Reg. 64325) that restricts certain sport hunting practices in national preserves in Alaska. This is separate from the subsistence hunting regulations in Alaska, which are not affected by these regulations or this title. The NPS published the sport hunting rule on October 23, 2015, after a multi-year public process which included extensive consultation with the State, tribes, subsistence users, and others. CH

This title, which subordinates Federal law to state law, would prevent the NPS from managing hunting and trapping in Alaska on national preserves. It would prohibit NPS regulations restricting some harvest methods that have been adopted by the State of Alaska. These methods include: using bait to take wildlife, except furbearers under trapping regulations, taking wolves and coyotes (including pups) during the denning season when their pelts have little trophy, economic, or subsistence value, and taking bear cubs or sows with cubs with artificial light at den sites.

The NPS legal and policy framework applicable to national preserves is different from the framework application to state lands. For example, national preserves are closed to taking wildlife except as specifically authorized by Federal law. NPS regulations are based on specific authority provided in ANILCA § 1313, which states that national preserves “shall be administered and managed as a unit of the National Park System in the same manner as a national park . . . except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve under applicable State and Federal law and regulation.” This same section states that “within national preserves the Secretary may designate zones where and periods when no hunting, fishing, trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment.” Further, NPS policy prohibits activities that reduce the numbers of native species for the purpose of increasing the number of harvested species (i.e., predator control) on lands managed by the NPS.