

Congress of the United States
Washington, DC 20510

May 20, 2016

Howard Shelanski, OIRA Administrator
The Office of Management and Budget
Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, DC 20503

RE: Proposed Rule on Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska, FWS-R7-NWRS-2014-0005

Dear Administrator Shelanski:

We write to express our concerns with the proposed rule and draft environmental assessment on *Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska*, FWS-R7-NWRS-2014-0005 (Proposed Rule) and the rulemaking process more generally as conducted by the U.S. Fish and Wildlife Service (Service).

Because agency rules have significant impacts, the procedures used to engage in rulemaking are themselves significant. In this instance, the Service's procedures have failed to provide stakeholders and the public in Alaska and nationally with an adequate voice.

As you are aware, Executive Order 12866 addresses how the regulatory system of the Federal Government shall work and assigns to the Office of Information and Regulatory Affairs (OIRA) the responsibility of coordinating interagency Executive Branch review of significant regulations before publication. "Significant" regulatory actions are subject to interagency review by OIRA. Section 3(f) of Executive Order 12866 defines what constitutes a "significant regulatory action." A "significant regulatory action" means any regulatory action that is likely to result in a rule that may "have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities." Where OIRA determines a regulation is "significant," the Executive Order directs agencies to provide (among other things) a more detailed assessment of the likely benefits and costs of the regulatory action, including a quantification of those effects, as well as a similar analysis of potentially effective and reasonably feasible alternatives.

Without any substantial analysis, consultation, or justification, the Service has unilaterally deemed this Proposed Rule to be "not a major rule" and stated that it "would not have an annual effect on the economy of \$100 million or more." The State of Alaska has provided documentation to OIRA that strongly indicates this is not the case. The Alaska Congressional delegation respectfully requests that OIRA examine the economic impacts the proposed rule on Alaska Refuges would have on subsistence and non-subsistence activities. It is our belief that this qualifies as a major rule and a significant regulatory action.

NEPA provides that major Federal actions significantly affecting the quality of the human environment require an Environmental Impact Statement (EIS) and a consideration of alternatives. We understand that the Service has prepared a draft Environmental Assessment, but feel that this is insufficient in face of the material and economic impact the proposed rule will have on Alaska Native communities, as well as the hunting, fishing, recreation, and tourism industries in Alaska. The Alaska Federation of Natives (AFN) filed comments expressing concerns about the impact of the rule.

Changes to the allowed manners and means and effectively removing the State's ability to ensure there is harvestable surplus available for subsistence activities on Refuges will have considerable economic impacts on subsistence activities and the overall state economy. The Alaska Department of Fish and Game, Division of Subsistence in their "Subsistent in Alaska: A Year 2012 Update" estimates that 36.9 million pounds of usable wild food are harvested annually by rural residents and 13.4 million pounds by urban residents in noncommercial fisheries and hunts. The works out to about 295 pounds per person per year for residents of rural areas (about .08 pounds a day per person) and 22 pounds per person per year for non-rural residents. The State then assumes a replacement expense of \$4 to \$8 dollars per pound, which leads to a simple "replacement value" of wild food harvests of communities in rural areas at \$147 to \$295 million annual and \$201 to \$402 million for all Alaska communities.

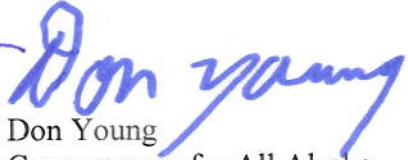

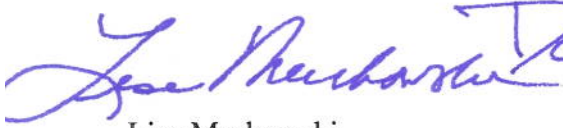
The Proposed Rule would have deep effects on both rural and urban Alaskans. Despite cleverly titling the rule "non-subsistence" it is clear to Alaskans that this proposed rule *will* impact subsistence activities. It is our understanding that the majority of the Federal Subsistence Regional Advisory Councils (RACs) that operate under the Office of Subsistence Management within the Service have met and are opposing the Proposed Rule. The concerns of the RACs and AFN should be given great weight and attention in order to fully understand the economic impacts of the Proposed Rule. Their letters are attached and show serious concerns about the "consultation" process including failures of tribal consultation, late receipt of documents for them to review, and a failure to account for the limited or lack of internet access in rural Alaska.

Non-rural Alaskans are currently eligible to participate in subsistence activities under State regulations. Of particular concern to many Alaskans are changes the Proposed Rule would make to the subsistence status quo. For example, if a young person moves to Anchorage to go to college and start their career, if this rule is finalized that person may no longer be able to go back and help their grandparents with subsistence activities on refuge lands – not even to help pull in a fishing net. These changes threaten not only State jurisdiction, but also the preservation and promotion of cultural activities and food security. The long term continuity of cultural activities is of utmost importance for Alaska's economy.

For these reasons, we request that OIRA examine the Proposed Rule to determine whether it is a significant regulatory action in light of the information recently provided by the State of Alaska and other applicable information. If deemed a significant regulatory action, OIRA should return the rule to the Service for reconsideration as the analysis currently provided is insufficient for a significant regulatory action.

Thank you for your consideration and we look forward to a prompt response.

Sincerely,



Lisa Murkowski
United States Senator

Dan Sullivan
United States Senator

Don Young
Congressman for All Alaska