

(4) Establish and maintain a database of all third-party skills testers and examiners, which at a minimum tracks the dates and results of audits and monitoring actions by the State, the dates third-party skills testers were certified by the State, and name and identification number of each third-party CDL skills test examiner;

(5) Establish and maintain a database of all State CDL skills examiners, which at a minimum tracks the dates and results of monitoring action by the State, and the name and identification number of each State CDL skills examiner; and

(6) Establish and maintain a database that tracks skills tests administered by each State and third-party CDL skills test examiner's name and identification number.

(b) To ensure the integrity of the CDL knowledge testing program, the State must:

(1) At least once every 2 years, conduct unannounced, on-site inspections of third-party knowledge testers' and examiners' records;

(2) At least once every 2 years, conduct covert and overt monitoring of examinations performed by third-party CDL knowledge test examiners;

(3) Establish and maintain a database to track pass/fail rates of applicants tested by each third-party CDL knowledge test examiner, in order to focus covert and overt monitoring on examiners who have unusually high pass or failure rates;

(4) Establish and maintain a database of all third-party knowledge testers and examiners, which at a minimum tracks the dates and results of audits and monitoring actions by the State, the dates third-party knowledge testers were certified by the State, and name and identification number of each third-party CDL knowledge test examiner; and

(5) Establish and maintain a database that tracks knowledge tests administered by each State and the name and identification number of each third-party CDL knowledge test examiner.

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,
Administrator.

[FR Doc. 2024-01710 Filed 2-1-24; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 29

[Docket No. FWS-HQ-NWRS-2022-0106; FXRS1261090000-212-FF09R20000]

RIN 1018-BG78

National Wildlife Refuge System; Biological Integrity, Diversity, and Environmental Health

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; proposed policy updates.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose new regulations to ensure that the biological integrity, diversity, and environmental health (BIDEH) of the National Wildlife Refuge System (Refuge System) are maintained, and where appropriate, restored and enhanced, in accordance with the National Wildlife Refuge System Improvement Act of 1997. In addition, the Service is proposing updates to the existing BIDEH policy, which will be available for public comment concurrently with the proposed regulations in this docket. These proposed regulatory and policy revisions would support conservation throughout the Refuge System in response to both longstanding and contemporary conservation challenges, including the universal and profound effects of climate change on refuge species and ecosystems. Together, these proposals would uphold BIDEH across the Refuge System by providing refuge managers with a consistent approach for evaluating and implementing management actions to protect vulnerable species, restore and connect habitats, promote natural processes, sustain vital ecological functions, increase resilience, and adapt to climate change.

DATES: We will accept comments on the proposed rule and proposed revisions to the Service Manual chapter at 601 FW 3 that are received or postmarked on or before March 4, 2024.

ADDRESSES:

Document availability: This proposed rule and the draft Service Manual chapter 601 FW 3 are available at the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-HQ-NWRS-2022-0106, which is the docket number for this rulemaking. Then, click on the Search button. To access the Service Manual chapter, go to the tab for Supporting & Related Material.

Comment submission: You may submit comments on this proposed rule or the proposed revisions to 601 FW 3 by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-HQ-NWRS-2022-0106, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting screen, find the correct document and submit a comment by clicking on "Comment."

- *By hard copy:* Submit by U.S. mail or hand delivery to: Public Comments Processing, Attn: FWS-HQ-NWRS-2022-0106; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041-3803.

We will not accept email or faxes. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Request for Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Katherine Harrigan, (703) 358-2440, katherine_harrigan@fws.gov.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

In compliance with the Providing Accountability Through Transparency Act of 2023, please see docket FWS-HQ-NWRS-2022-0106 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Background

The National Wildlife Refuge System is the only network of Federal lands and waters in the United States dedicated to fish and wildlife conservation and, at more than 850 million acres, the largest system of its kind in the world. The National Wildlife Refuge System Administration Act of 1966 (Administration Act; 16 U.S.C. 668dd-668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act; Pub. L. 105-57), is the primary statutory authority under which the Secretary of the Interior, acting through the Service, administers the Refuge System. The Alaska National Interest Lands Conservation Act of 1980 (16 U.S.C. 3111-3126), the Wilderness Act of 1964

(16 U.S.C. 1131–1136), and various other mandates also provide direction and authority for refuge management. The implementing regulations for Refuge System mandates are found in title 50 of the Code of Federal Regulations (CFR) at subchapter C.

The Improvement Act established the mission of the Refuge System to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. (16 U.S.C. 668dd(a)(2)). It set forth policy direction, management standards, and stewardship requirements for administering the more than 560 national wildlife refuges in the Refuge System, prioritizing conservation while ensuring public access to compatible, wildlife-dependent recreational opportunities and ensuring effective coordination with adjacent landowners and State fish and wildlife agencies. The law states that each refuge must be managed to fulfill both the Refuge System mission and the specific purposes for which that refuge was established. It additionally requires that, in administering the Refuge System, the Secretary shall ensure that the biological integrity, diversity, and environmental health of the Refuge System are maintained for the benefit of present and future generations of Americans. (16 U.S.C. 668dd(a)(4)(B)).

The Improvement Act is recognized as a visionary legislative charter for managing a system of wildlife reserves in part due to its mandate to ensure BIDEH. The terms comprising the BIDEH mandate are grounded in conservation biology and demonstrate congressional intent to conserve Refuge System fish, wildlife, plants, and habitats in accordance with the latest scientific understanding. This directive for a comprehensive, science-based approach to refuge management is critical to ensuring that imperiled species and diverse wildlife populations in North America are secure and thriving, sustained by a network of healthy lands and waters.

Need for New Regulations and Updated Policy

In 1998, the Service announced our intent to issue policy and regulations to administer the Improvement Act (63 FR 3583, January 23, 1998). In 2000, we published a draft policy on maintaining the ecological integrity of the Refuge System (65 FR 61356, October 17, 2000). After considering the comments received on the draft policy, the Service

issued its BIDEH policy in 2001 (66 FR 3810, January 16, 2001). Included in the Service Manual at 601 FW 3, the policy provides internal guidance for agency implementation of the statutory requirements.

At the time the Service adopted the BIDEH policy, we did not promulgate BIDEH regulations as authorized in the Improvement Act. (See 16 U.S.C. 668dd(b)(5)). The Service did not anticipate the extent of climate change impacts on refuge species and habitats or the need to clarify in regulations our interpretation of and authority to implement the BIDEH mandate. However, in the nearly 25 years since enactment of the Improvement Act, refuges have begun to experience the effects of climate change while continuing to contend with the myriad of other anthropogenic stressors affecting fish, wildlife, plants, and their habitats. Climate change is transforming historical species composition and ecological function of habitats, creating new challenges to traditional wildlife management strategies that were based on stable, stationary baseline conditions. As the Refuge System becomes increasingly vital to addressing the dual threats of biodiversity loss and climate change, the Service recognizes the need to codify both existing and new practices for maintaining BIDEH to assist refuges in responding to these contemporary conservation challenges. Therefore, the Service has identified the need to propose new BIDEH regulations and updates to the existing BIDEH policy to accomplish these goals.

The purpose of this proposed rule and policy revision is to clarify the Service's authority to maintain the biological integrity, diversity, and environmental health of the Refuge System; ensure consistency in evaluating refuge management activities that affect BIDEH; and provide transparency in how we implement one of the most fundamental mandates in the laws governing the Refuge System. The proposed rule would codify longstanding refuge management principles and further empower refuge managers to uphold the Refuge System's conservation mission and achieve refuge purposes in the face of complex threats to wildlife and their habitat. The proposed policy revision would modernize the BIDEH policy and support the new regulations by providing further guidance for refuge managers to ensure the BIDEH of the Refuge System.

The Service currently operates and has always operated in accordance with the same Refuge System-wide principles for maintaining BIDEH represented in

these proposed regulations and policy updates. However, the Service has determined that this proposed rule and policy revision is warranted to clarify Refuge System policies and practices; better prepare refuges to confront future impacts from climate change and other anthropogenic change; and provide the opportunity for public input on the Service's interpretation of the Improvement Act's BIDEH mandate, including its application in the context of predator control, conservation translocations, genetically engineered organisms, invasive species, pesticide use, agricultural practices, and mosquito control.

Proposed Additions to Existing Regulations

This proposed rule would amend the Refuge System regulations at 50 CFR subchapter C, part 29 (Land Use Management), subpart A (General Rules). The proposed regulatory changes would not modify any existing regulations but would add regulations regarding BIDEH at a new § 29.3.

Consistent with the Administration Act as amended by the Improvement Act, the Service is proposing regulations to ensure that the biological integrity, diversity, and environmental health of the Refuge System are maintained and, where necessary and appropriate, restored and enhanced. As shown in the rule portion of this document, the proposed regulations set forth an overarching statement in paragraph (a) describing what it means for the Service to ensure BIDEH; definitions for biological integrity, diversity, environmental health, and other key regulatory terms in paragraph (b); and overall directives for ensuring BIDEH on refuges in paragraph (c). Together these proposed regulations would provide a consistent framework within which refuge managers would consider potential management actions that may affect BIDEH. In addition, in paragraph (d), the proposed regulations also provide more specific direction for certain management activities that the Service has identified as having a particular propensity to affect BIDEH.

Notably, the proposed regulatory standard repeated throughout the regulations—requiring refuge managers to consider how management actions are necessary to meet statutory requirements, fulfill refuge purposes, and ensure BIDEH—flows directly from the Improvement Act. In the statute's requirements for administering the Refuge System, Congress elevated ensuring the maintenance of BIDEH to a similar level of importance as ensuring that the Refuge System mission and

refuge purposes are carried out, challenging the Service to implement these integral directives together to provide the greatest conservation benefits for fish and wildlife. (See 16 U.S.C. 668dd(a)(4)). The content of the proposed regulations and policy revision is further described below.

Proposed BIDEH Regulations and Accompanying Policy Updates

The Service is concurrently proposing updates to the BIDEH policy, 601 FW 3, which accord with and provide additional internal guidance for implementing the proposed regulations. We have decided to provide these documents for public comment concurrently because the proposed policy revision supplies further explanation for the application of the proposed regulations and therefore provides additional context for reviewing the proposed regulations.

Ensure Biological Integrity, Diversity, and Environmental Health

In § 29.3(a), the Service is proposing an overarching statement in support of the Refuge System's conservation mission defining what it means to ensure BIDEH on refuges, which is a concept integrated throughout the proposed BIDEH policy revision. The regulatory statement would promote management of the Refuge System as an interconnected network of lands and waters with functioning ecological processes to maintain the composition, activity, and resilience of the Refuge System over time. This concept means recognizing the Refuge System as an expansive complex of plant communities, habitats, and ecosystems representative of variable conditions and supporting a diversity of fish and wildlife, including viable populations of rare and imperiled species. This proposed regulation would codify the Service's continued commitment to managing refuge ecosystems holistically as components of larger landscapes and seascapes and supporting natural processes to meet our conservation goals, while also acknowledging that climate change and other anthropogenic change can require intervention to carry out the Refuge System mission and achieve refuge purposes. This commitment and acknowledgement are further distilled in the proposed policy updates.

The proposed regulatory statement includes a legal standard for managing refuges that would apply to each of the subsequent management directives and activities in the proposed rule when the Service refers to an action as being necessary to ensure BIDEH. This

proposed legal standard would instruct refuge managers to use their sound professional judgment, informed by the best available scientific information, to ensure that management actions benefit wildlife conservation by contributing to, and not diminishing, BIDEH. The Service uses the term "sound professional judgment" as defined in the Improvement Act and existing Refuge System regulations, directing refuge managers to make their finding, determination, or decision to conduct an activity consistent with principles of sound fish and wildlife management and available science and resources, as well as their field experience and knowledge of the particular refuge's resources. This proposed requirement would foster defensible science-based management decisions, strengthen management actions that support ecological integrity, bolster decision making that avoids putting BIDEH at risk, and help prevent further degradation of environmental conditions on refuges. The proposed updates to the BIDEH policy would incorporate this legal standard throughout the policy revision as well.

Definitions

In both the new regulations and policy revision, the Service is proposing updated definitions for biological integrity, diversity, and environmental health based on definitions used in the Service's existing BIDEH policy, 601 FW 3, that were vetted through public notice and comment in 2000 and 2001 (66 FR 3810, January 16, 2001). The Service is proposing to revise these definitions to acknowledge that historical conditions may need to serve as a reference point, rather than an end goal, for managing refuges where climate change and other anthropogenic change are significantly altering ecosystems. This proposed language would untether current and future management actions from sustaining historical conditions that may no longer be possible on many refuges, while continuing to recognize the value of a contextual historical baseline for developing management goals. The Service also proposes to update the definitions by explicitly recognizing the impacts of climate change and other anthropogenic change on refuge ecosystems, which is critical to understanding the three BIDEH terms in their proper context, both now and in the future.

The Service is also including proposed definitions for other terms helpful to understanding the proposed regulations and policy. These terms all have established meanings either in

wildlife biology, in existing Service policy, in other Federal law and policy, or in some combination of these. The Service has not departed from the accepted meanings in crafting these regulatory definitions, but we did find it necessary in the interest of greater clarity to tailor them to the BIDEH context. The proposed updates to the BIDEH policy also include some additional proposed definitions that would provide further context for the content expanding on the proposed regulations in the policy itself.

Management Directives for Ensuring Biological Integrity, Diversity, and Environmental Health

Proposed § 29.3(c) would include Refuge System-wide directives for maintaining BIDEH in refuge management. These directives—concerning universal concepts of climate, habitat, species, water, soil, and air—would create a framework within which refuge managers can determine and implement management activities. These fundamental directives are common to all refuges and would provide basic sideboards to guide management decisions consistent with other applicable law, regulation, and policy. They are central to the Service's ability to meet our statutory obligations and policy goals under the Improvement Act and are specifically relevant to fulfilling refuge purposes and ensuring BIDEH. The Service proposes further guidance for these management directives in section 3.10 of the proposed BIDEH policy accompanying these proposed regulations.

In the proposed regulation at paragraph (c)(1) and associated policy updates, the Service acknowledges that climate change and other anthropogenic change are affecting refuge fish, wildlife, plants, and habitats. The proposed language would direct refuge managers to address these threats through adaptation and mitigation strategies as necessary to meet statutory requirements, fulfill refuge purposes, and ensure BIDEH. This proposed regulation and accompanying policy revision recognize that climate change is a major driver in species decline and biodiversity loss, while ecosystem conservation can serve an essential role in both climate change mitigation and adaptation, as well as species survival and recovery. They would therefore allow refuge managers flexibility to implement a combination of responses to address climate change impacts and other anthropogenic stressors, providing discretion for managers to choose the most appropriate mitigation and adaptation strategies on a particular

refuge, so long as they meet the proposed regulatory standard.

The proposed regulation at paragraph (c)(2) and associated policy updates would prioritize deference to natural processes and support ecological connectivity as a means of achieving refuge habitat objectives and landscape planning goals. However, when natural processes are insufficient to meet refuge habitat objectives, the proposed language would direct managers to intervene with science-based management techniques that mimic natural processes in accordance with the proposed regulatory standard. Examples of such management techniques are provided in the accompanying policy. The proposed regulation and associated policy updates would also instruct managers to use such techniques and encourage establishment of wildlife corridors to facilitate adaptation to climate change and other stressors.

The proposed regulation at paragraph (c)(3) and associated policy updates would similarly codify the Service's ability to supplement natural processes to meet fish and wildlife population objectives, sustain ecosystems, and restore or recover imperiled species on refuges when habitat conditions and natural processes are insufficient. It would work in tandem with the regulation under proposed paragraph (c)(2) to prioritize deference to natural processes as the default for determining sustainable populations, while also providing flexibility to take actions to conserve and manage species when necessary to meet statutory requirements, fulfill refuge purposes, and ensure BIDEH. The associated policy updates provide examples of such supplemental management actions and guidance for maintaining native populations.

The regulation regarding refuge water rights at proposed paragraph (c)(4) stems directly from Improvement Act mandates, as reiterated in the associated policy updates. The proposed regulation and policy would incorporate these legal requirements, directing the Service to maintain and exercise refuge water rights in accordance with local, State, and Federal laws and to acquire, transfer, or lease water rights in accordance with the proposed regulatory standard. The proposed policy updates would provide substantive guidance for refuge managers to follow to uphold refuge water rights and would further empower them to pursue and secure critical water assets to support the myriad of migratory birds, fish, and other wildlife that rely on refuge habitats.

Finally, the proposed regulation at paragraph (c)(5) and associated policy updates would direct refuge managers to promote and maintain soil health and air quality as other abiotic components vital for sustaining and restoring refuge habitats in addition to water quantity and quality. The regulation would instruct the Service to conserve and manage these essential resources within our jurisdiction in accordance with the regulatory standard and address threats to them through appropriate management actions. The proposed policy updates provide additional guidance to explain how refuge managers would maintain these foundational resources to support healthy ecosystems and ensure the BIDEH of the Refuge System.

Management Activities and Uses for Ensuring Biological Integrity, Diversity, and Environmental Health

The regulations in proposed § 29.3(d) would guide specific management activities and uses that can especially influence BIDEH, including predator control, conservation translocations, use of genetically engineered organisms, invasive species management, pesticide use, agricultural uses, and mosquito control. These proposed regulations are not intended to cover the range of management practices conducted on refuges that may affect BIDEH. Rather, the Service carefully selected these topics to codify and clarify our existing policies regarding these management activities and uses, improve our ability to respond to climate change and other anthropogenic factors, and empower refuge managers to consistently analyze and apply these tools—or refrain from applying them—as appropriate, to better support BIDEH. The Service proposes further guidance for these management activities and uses in section 3.13 of the proposed BIDEH policy accompanying these proposed regulations.

The management activities and uses included in these proposed regulations and associated policy updates would be implemented on Refuge System habitats in conformance with the overall management directives in proposed § 29.3(c) and section 3.10 of the policy. This would mean that these activities and uses are all subject to the underlying conservation principle that defers to natural processes and favors management that mimics natural processes. When natural processes alone are insufficient to support ecological functions, refuge managers would be required to evaluate the necessity for and potential environmental effects of a proposed management activity or use in accordance with the National

Environmental Policy Act (NEPA) before authorizing it, including considering reasonable alternatives, scientific support, and potential risk of unintended consequences. This approach is consistent with current Service policies.

Additionally, while each of the regulations in proposed paragraphs (d)(1)–(7) would direct a default position regarding use of a particular management practice, they simultaneously would provide flexibility to implement them as conservation tools when determined, based on comprehensive analysis, that they are necessary to meet statutory requirements, fulfill refuge purposes, and ensure BIDEH. Notably, NEPA analysis of management activities and uses could occur as part of development of a refuge's comprehensive conservation plan (CCP) or other approved management plan or could be conducted as a standalone analysis. Regardless, such activities and uses must be consistent with the CCP. Refuge managers must also fulfill other policy and legal requirements prior to implementing a management activity or use when applicable. This could include conducting scientific peer review (see section 3.14(C) of the proposed policy for more information on peer review requirements) or conducting a compatibility determination for refuge management economic activities or activities that involve use of a refuge by the public or other non-Refuge System entity (see the Service's Compatibility policy at 603 FW 2 and regulations at 50 CFR parts 25, 26, and 29 for more information). See the proposed regulations and associated policy updates for further substantive details and instruction for the management activities and uses contained in this proposed rule and policy revision.

Coordination With Adjacent Landowners, State and Tribal Partners

The Service recognizes that ensuring the BIDEH of the Refuge System necessitates a landscape-level perspective for managing an interconnected network of lands and waters involving collaboration with our State and Tribal partners, adjacent landowners, and other stakeholders. These proposed regulations and policy updates comply with and incorporate the Service's commitment to cooperate and coordinate with State partners, as appropriate, in accordance with 43 CFR 24.4(e) and 601 FW 7. They also encourage effective interaction and coordination with other owners of land adjoining refuges. The proposed

regulations and policy updates additionally comply with and uphold the Service's continued commitment to cooperate and coordinate with federally recognized Tribes and other Indigenous Peoples, consistent with the Service's Native American Policy at 510 FW 1, to protect treaty, religious, subsistence, and cultural interests in the Refuge System. Further, the Service proposes to identify and define Indigenous Knowledge in the policy updates as an appropriate source of historical information that would support best available scientific information about historical conditions as a reference point for management decisions.

Request for Comments

You may submit comments and materials on this proposed rule by either one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. We will not consider comments that are not postmarked by the date specified in **DATES**.

We will post your entire comment on <https://www.regulations.gov>. Before including personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <https://www.regulations.gov>.

Required Determinations

Clarity of This Proposed Rule

Executive Orders 12866 and 12988 and the Presidential Memorandum of June 1, 1998, require us to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too

long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this proposed rulemaking action is not significant. The proposed rule would simply serve to codify longstanding refuge management principles and further empower refuge managers to uphold the Refuge System's conservation mission and achieve refuge purposes in the face of complex threats to wildlife and their habitat.

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for "significant impact" and a threshold for a "substantial number of small entities." See 5 U.S.C. 605(b). The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the

factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would govern the actions taken by the Service but would not create any requirements for or place any regulatory compliance burden on private entities. The Service also does not anticipate the requirements to promote BIDEH to alter the current practices of the Service's cooperative agriculture and water rights programs. The Service currently operates and has always operated in accordance with the same Refuge System-wide principles for maintaining BIDEH represented in these proposed regulations. The Service has determined that this proposed rulemaking is warranted to clarify our policies and practices, better prepare refuges to confront future impacts from climate change and other anthropogenic change, and provide the opportunity for public input on our interpretation of the Improvement Act's BIDEH mandate, including its application in the context of predator control, species introductions, genetically engineered organisms, invasive species, pesticide use, agricultural practices, and mosquito control. As a result of the internal nature of these proposed regulations, this rulemaking action would have no impact on small entities.

Therefore, the Service certifies that this rule, as proposed, would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

Congressional Review Act

The proposed rule is not a major rule under 5 U.S.C. 804(2). The Service anticipates no significant employment or small business effects. This proposed rule:

- a. Would not have an annual effect on the economy of \$100 million or more.
- b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.
- c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

Since this proposed rule would apply to management of refuges by the Service, it would not impose an

unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. This proposed rule would affect only management of refuges by the Service.

Federalism (E.O. 13132)

As discussed under *Regulatory Planning and Review and Unfunded Mandates Reform Act*, above, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement under E.O. 13132.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Department of the Interior has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the E.O.

Energy Supply, Distribution or Use (E.O. 13211)

E.O. 13211 requires agencies to prepare statements of energy effects for regulations that significantly affect energy supply, distribution, and use. Because this proposed rule would uphold and enforce existing management principles and practices by the Service on refuges, it is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, the Service has evaluated possible effects on federally recognized Indian Tribes and has determined that there are no effects. Before taking actions, the Service coordinates our activities on Service lands and waters with Tribal governments having adjoining or overlapping jurisdiction.

Paperwork Reduction Act of 1995 (PRA)

This rule does not contain information collection requirements,

and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. The Service may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The Service is required under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) to assess the impact of any Federal action significantly affecting the quality of the human environment, health, and safety. The Service has determined that this proposed rule falls under the class of actions covered by the following Department of the Interior categorical exclusion: Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case (43 CFR 46.210(i)). Under the proposed rule, the Service would take future actions guided by the requirements to support BIDEH, but these future actions would be determined and taken at the individual refuge level and their environmental impacts assessed on a case-by-case basis. Therefore, the environmental impacts of the proposed rule are too speculative to lead to meaningful analysis at this time. The Service would assess the environmental impact of any potential management action mentioned in these regulations prior to taking that action on Service lands or waters.

Primary Author

Katherine Harrigan, Division of Natural Resources and Conservation Planning, National Wildlife Refuge System, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 29

Public lands mineral resources, Public lands rights-of-way, Wildlife refuges.

Proposed Regulation Promulgation

For the reasons set forth in the preamble, we propose to amend part 29, subchapter C of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 29—LAND USE MANAGEMENT

■ 1. The authority citation for part 29 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 685, 690d, 715i, 725, 3161; 30 U.S.C. 185; 31 U.S.C. 3711, 9701; 40 U.S.C. 319; 43 U.S.C. 315a; 113 Stat. 1501A–140.

■ 2. Add § 29.3 to read as follows:

§ 29.3 Biological integrity, diversity, and environmental health.

We will maintain and, where necessary and appropriate, restore and enhance the biological integrity, diversity, and environmental health of national wildlife refuges, both individually and as a network of intact, functioning, and resilient habitats for fish, wildlife, and plants, for the benefit of present and future generations of Americans.

(a) *Ensure biological integrity, diversity, and environmental health.* To ensure biological integrity, diversity, and environmental health means to holistically conserve refuge ecosystems and all their components and processes across multiple spatial scales; promote natural processes; and address ecological transformation caused by climate change and other anthropogenic change to accomplish the mission of the National Wildlife Refuge System (Refuge System). We will seek to achieve the highest measure of biological integrity, diversity, and environmental health on refuges, which is represented by diverse, functioning, and self-sustaining ecosystems that are resilient to emerging or future conditions. We will use sound professional judgment, informed by the best available scientific information, to ensure that refuge management contributes to and does not diminish the biological integrity, diversity, and environmental health of refuges and the Refuge System for the benefit of fish and wildlife conservation.

(b) *Definitions.* In addition to relevant definitions in § 25.12 of this subchapter C, the following definitions apply to this section:

Adaptation means an adjustment in natural or human systems to a new or changing environment that uses beneficial opportunities or moderates negative effects.

Anthropogenic change means environmental change that humans cause or influence, either directly or indirectly.

Biological integrity means the capacity of an ecological system to support and maintain a full range of biotic composition, structure, function, and processes over time that exhibit diversity, connectivity, and resilience at genetic, organism, population, and community levels. We evaluate biological integrity by referencing historical conditions, recognizing that

climate change and other anthropogenic change are influencing refuge ecosystems.

Climate change mitigation means measures taken to reduce the amount and speed of future climate change by reducing emissions of heat-trapping gases or removing carbon dioxide from the atmosphere, including by improving ecosystem capacity for biological carbon sequestration.

Connectivity means the degree to which landscapes, waterscapes, and seascapes allow species to move freely and ecological processes to function unimpeded.

Conservation translocation means deliberately moving organisms from one site to another for release, with the intention of yielding a measurable conservation benefit at the levels of a population, species, or ecosystem.

Diversity means the variety of life and its processes, including the richness and abundance of living organisms, the genetic differences among them, and communities and ecosystems in which they occur. We evaluate diversity by referencing historical conditions, recognizing that climate change and other anthropogenic change are influencing refuge ecosystems.

Ecological transformation means the shift in an ecosystem, resulting in a new system that deviates from prior ecosystem structure and function or species composition.

Ecosystem means systems comprised of biota (living organisms), the abiotic environment (e.g., air, light, soils, water), the interactions within and between them, and the physical space in which they operate.

Environmental change means an alteration or disturbance of the environment caused by humans or natural processes that generates differences in the function or characteristics of an ecosystem.

Environmental health means composition, structure, and functioning of soil, water, air, and other abiotic features, including the abiotic processes that shape the environment. We evaluate environmental health by referencing historical conditions, recognizing that climate change and other anthropogenic change are influencing refuge ecosystems.

Historical conditions means composition, structure, and function of ecosystems that existed prior to ecological degradation caused by anthropogenic change, based on best available scientific and historical information.

Invasive species means with respect to a particular ecosystem a non-native organism, including its seeds, eggs,

spores, or other biological material capable of propagating that species, whose introduction causes or is likely to cause economic or environmental harm, or harm to human, animal, or plant health.

Native means with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem, including when such a species expands or shifts its range as a result of natural processes in response to environmental change.

Natural processes mean interactions among plants, animals, and the environment that occur without substantial human influence.

Predator control means actions or programs with the intent or potential to alter predator-prey population dynamics on a refuge by reducing a population of native predators through lethal or nonlethal methods, except for actions necessary to protect public health and safety and those enumerated under paragraph (d)(1) of this section.

(c) *Management directives for ensuring biological integrity, diversity, and environmental health.* The following regulations serve as a framework for determining and implementing refuge management actions to meet our statutory obligations and policy goals:

(1) *Address climate change.* Within the Refuge System, we will manage species and habitats affected by climate change and other anthropogenic change by using climate change mitigation and adaptation strategies when necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health.

(2) *Conserve and connect habitat.* We allow for and defer to natural processes on habitats within the Refuge System and promote conservation, restoration, and connectivity to meet refuge habitat objectives and landscape planning goals. We will avoid and minimize habitat fragmentation to sustain biological integrity and diversity. When natural processes cannot meet habitat objectives or facilitate adaptation to anthropogenic change, we will use science-based management techniques or acquire lands when necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health.

(3) *Manage fish and wildlife populations.* We conserve fish and wildlife populations within the Refuge System to meet refuge population objectives, sustain functioning ecosystems, and, where appropriate,

restore or recover imperiled species. When habitat conditions and natural processes are insufficient to meet these goals or facilitate adaptation to anthropogenic change, we may pursue actions to supplement natural processes when necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health.

(4) *Uphold water rights.* We will maintain and exercise our water rights on habitats within the Refuge System in accordance with local, State, and Federal laws. Where necessary, we will acquire, transfer, or lease water rights to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health.

(5) *Promote and maintain healthy soil, water, and air.* We promote and maintain soil health, water quality and quantity, and air quality as vital to sustaining and restoring habitats within the Refuge System through conservation and management to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health. We will address threats to these abiotic components by pursuing appropriate actions, including when such threats to refuge resources arise outside refuge boundaries.

(d) *Management activities and uses with potential to ensure biological integrity, diversity, and environmental health.* The regulations in this paragraph (d) provide guidance for certain management activities and uses that may support the maintenance of biological integrity, diversity, and environmental health. These activities and uses will be implemented within the Refuge System only as consistent with the management directives set forth in paragraph (c) of this section. Proposed activities and uses will be evaluated in compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and other legal requirements, as applicable.

(1) *Native predator control.* We prohibit predator control unless it is determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health. We may implement lethal predator control only when all other feasible methods have been fully evaluated and such control is considered the only practical means of addressing a specific, significant conservation concern and ensuring biological integrity, diversity, and environmental health. We do not consider the following actions to be predator control:

(i) Agency removal of native predator(s) solely to protect public health and safety;

(ii) Use of barriers or nonlethal deterrents to protect the public, property, or vulnerable species, but that are not intended to reduce native predator populations;

(iii) Compatible, refuge-approved taking of fish and wildlife for subsistence uses under Federal or State subsistence regulations that do not compromise maintaining biological integrity, diversity, and environmental health on the refuge;

(iv) Compatible, refuge-approved recreational hunting and fishing opportunities that do not compromise maintaining biological integrity, diversity, and environmental health on the refuge; and

(v) Removal of invasive species.

(2) *Conservation translocations.* We may allow the introduction of a species outside its current range to avoid extinction or extirpation; restore a species; reestablish a specific ecological function lost to extinction or extirpation; or, in accordance with § 17.81(a) of this chapter, when necessary to meet statutory

requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health.

(3) *Use of genetically engineered organisms.* We prohibit the use of genetically engineered organisms unless their use is determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health.

(4) *Invasive species management.* We pursue actions to control invasive species as part of an integrated pest management plan when necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health.

(5) *Pesticide use.* We may allow the use of pesticides, following review and approval of their use as part of an integrated pest management plan, when necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health. Such use must not result in adverse effects on populations of nontarget species.

(6) *Agricultural uses.* We prohibit the use of agricultural practices unless they are determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health, and where we cannot achieve refuge management objectives through natural processes.

(7) *Mosquito control.* We prohibit control of native mosquitoes unless it is determined necessary to meet statutory requirements, fulfill refuge purposes, and ensure biological integrity, diversity, and environmental health or protect human health and safety. In these situations, chosen control methods must be the least injurious to fish, wildlife, and their habitats. We may coordinate with public health agencies or mosquito control organizations to implement the most effective control methods that minimize risk to refuge ecosystems and public health.

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