



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Natural Resources

CITIZENS' ADVISORY COMMISSION ON
FEDERAL AREAS
Wes Keller, Chairman

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August 27, 2014

Mr. Andy Loranger
Refuge Manager
Kenai National Wildlife Refuge
PO Box 2139
Soldotna, AK 99669
kenai@fws.gov

Dear Mr. Loranger,

The Citizens Advisory Commission on Federal Areas (CACFA) opposes the U.S. Fish and Wildlife Service's (USFWS) August 12, 2014 proposed September 1, 2014 through May 31, 2015 temporary closure of brown bear sport hunting on the Kenai National Wildlife Refuge.

The USFWS argues the proposed closure is due to concerns that the Alaska Department of Fish and Game's (ADF&G) current sport hunt harvest of 70 brown bears with no more than 17 being adult sows will negatively impact the resident bear population and is inconsistent with the established purposes of the Kenai Refuge.¹ The documentation listed on the USFWS website posits four general reasons to justify the temporary hunting closure. First, brown bears have a low reproductive and population growth rate. Second, the estimated population density of 42 bears per 1,000km² is noticeably lower than the population densities of other Alaska coastal brown bear populations. Third, the 2013 hunting season was a likely contributor to an 18% decline in adult sows and an overall downward trajectory in the bear population. Finally, the USFWS is concerned that the number of unreported harvested brown bears will likely lead to harvest limits being exceeded and resulting in an unsustainable sport hunt.

CACFA shares the USFWS and ADF&G's commitment towards wildlife conservation and healthy and sustainable Kenai National Wildlife Refuge brown bear populations. However, while CACFA recognizes the Service's legal authority to close the refuge to hunting for periods of time, the evidence provided by the USFWS lacks rigor, the proposed action conflicts with the principles of cooperative federal-state wildlife management, and it is therefore improper and

¹ Specifically, the USFWS states: "The Service is proposing this Temporary Closure of sport hunting of brown bears on the Refuge as a resource protection measure to ensure consistency with Refuge establishment practices. The Service's legal responsibilities on the Refuge include conserving a healthy brown bear population in its natural diversity, ensuring continued opportunity for visitors to hunt, view, and photograph brown bears and maintaining wilderness character in the Congressionally-designated Kenai Wilderness."

unwarranted. A threat to conservation and the purpose of the Kenai Refuge do not appear to be the real issues at hand, but rather a difference in management styles and visions between state and federal agencies.

It is CACFA's opinion based on consultation with ADF&G that the USFWS's data and assumptions regarding Kenai brown bear mortality and the population impact caused by sport hunting are deficient in at least five areas. First, the allowable harvest of adult sow brown bears actually appears to be the result of discussions between ADF&G and USFWS. ADF&G has implemented robust harvest reporting requirements and intends to close the season once approximately 67 bears or 15 adult sows are taken in order to minimize going over the targeted quota. The State of Alaska actually projects the total mortality cap will be reached before the limit on sows and thus is more in line with the USFWS's preseason agreement with ADF&G to manage the hunt to ensure no more than 12 adult sows were taken. This should alleviate any USFWS concerns regarding the overharvest of adult sows. Furthermore, the number of bears killed in defense of life or property has been significantly reduced. ADF&G believes the 2014 harvest quota has positively contributed in reducing unwanted encounters between man and beast.

Second, comparing the Kenai brown bear population density to those of other coastal bear populations may not be an apples-to-apples comparison. It is our understanding that bears on the Kenai Peninsula lack some of the rich nutritional resources available to other populations and thus it is unrealistic to expect the higher bear densities cited in the USFWS's "Background Information" paper. We strongly urge the USFWS to make available for public review the data and methodology upon which the Service is basing its population density conclusions.

Third, the USFWS does not appear to posit what population level or male-female ratio is proper for conservation purposes. Statements such as "...conserving a healthy brown bear population in its natural diversity" are vague and difficult to objectively measure given the meager online information made available. We also are uncertain as to what "natural diversity" means. How does the Service define "natural diversity?" Do all brown bear populations share the same "natural diversity?" The term's vagueness seems to allow for open-ended and expansive agency determinations without the need to cogently justify such positions. The USFWS has a civic duty to clearly define such terms and readily provide the scientific data used to derive such definitions so the public can make informed comments on proposed agency actions. Failure to do so casts a poor light on transparency and legitimacy of the actions taken by the Service.

Fourth, CACFA similarly fails to see why the proposed closure is necessary to preserve the wilderness character of the Kenai Wilderness. It seems a stretch of the imagination that the 2014- 2015 brown bear hunting season represents a threat to the Kenai Wilderness, especially given that Kenai bears have been harvested in the area prior to its designation as Wilderness with the passage of ANILCA.

Finally, the proposed closure appears to affect only sport hunting and exempts subsistence hunting of the same bear population. The USFWS does not explain why subsistence hunts will be allowed to continue or how it can be confident that subsistence hunters will not harvest the very bears the Service is trying to protect.

CACFA further opposes the proposed closure because it end-runs the long established principle that states have primary management authority of fish and game populations. One of the primary reasons Alaska sought statehood was to assert management control of its wildlife resources. The

principles of conservation and sustainable yields are embedded in Article 8 of the Constitution of the State of Alaska:²

Sec. 1: **Statement of Policy** ~ It is the policy of the State to encourage...the development of its resources by making them available for maximum use consistent with the public interest.

Sec. 2: **General Authority** ~ The legislature shall provide the utilization, development, and conservation of all natural resources belonging to the State...for the maximum benefit of its people.

Sec. 3: **Common Use** ~ Wherever occurring in their natural state, fish, wildlife, and water are reserved to the people for common use.

Sec. 4: **Sustained Yield** ~ Fish, forests, wildlife, and grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintain on the sustained yield principle...

Federal law recognizes that states have the primary authority regarding wildlife management and that federal agencies are to work cooperatively with the states.

- ANILCA, Title XIII, sec. 1314 (Taking of Fish and Wildlife):³
 - (a) Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in title VIII of this Act, or to amend the Alaska constitution.
 - (b) Except as specifically provided otherwise by this Act, nothing in this Act is intended to enlarge or diminish the responsibility and authority of the Secretary over the management of the public lands.
- 43 CFR Part 24 – Department of the Interior Fish and Wildlife Policy: State-Federal Relationships:⁴

§ 24.1: "...a number of Congressional enactments and court decision have addressed State and Federal responsibilities for fish and wildlife with the general effect of expanding Federal jurisdiction over certain species and uses of fish and wildlife traditionally managed by the States...Nevertheless, Federal authority exists for specified purposes while State authority...remains the comprehensive backdrop applicable in the absence of specific, overriding Federal law." "...the effective stewardship of fish and wildlife requires the cooperation of the several States and the Federal Government. It is the intent of the Secretary to strengthen and support...the missions of the States and the Department of the Interior to conserve and manage effectively the nation's fish and wildlife. It is, therefore, important that the Department of the Interior Fish and Wildlife Policy be implemented to coordinate and facilitate the efforts of Federal and State agencies in the attainment of this objective."

§ 24.2: "...This policy is intended to reaffirm the basic role of the States in fish and resident wildlife management, especially where States have primary authority and responsibility, and to foster improved conservation of fish and wildlife."

§24.3: "In general the States possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on Federal lands within a State."
- Refuge Improvement Act: Public Law 105-57:⁵

² *The Constitution of the State of Alaska*; available from <http://ltgov.alaska.gov/treadwell/services/alaska-constitution.html>; accessed 27 August 2014.

³ Robert D. Bae, ed., *Alaska Statutes* (The Alaska Legislative Council, November 2012), 1:302.

⁴ *43 CFR Part 24 – Department of the Interior Fish and Wildlife Policy: State-Federal Relationships*; available from <http://www.law.cornell.edu/cfr/text/43/part-24>; accessed 26 August 2014.

⁵ *National Wildlife Refuge System Improvement Act of 1997, Public Law 105-57*; available from <http://www.gpo.gov/fdsys/pkg/PLAW-105publ57/pdf/PLAW-105publ57.pdf>; accessed 26 August 2014.

Sec. 8 (m): “Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area with the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans.”

Successful wildlife management demands scientific data and cooperation by all sides. Conservation and multiple use principles are an integral part of Alaska’s wildlife management policies. While the relationship between the State of Alaska and federal wildlife management agencies continues to degrade, Alaska remains committed to working together with our federal partners to ensure future generations continue to enjoy Alaska’s bountiful wildlife resources.

The proposed temporary closure of the Kenai National Wildlife Refuge brown bear sport hunt is inconsistent with cooperative management and infringes upon the authority of the State of Alaska as the primary wildlife manager. Closure is not cooperation; It is using the power of the state to impose its will upon another. The backup material accompanying the public notice fails to provide clear and convincing evidence that ADF&G’s brown bear harvest plan threatens the conservation principles or the purpose of the Kenai Refuge. Nor does the Service provide the public with a meaningful cost-benefit analysis as to whether the proposed closure will achieve the agency’s goals. Wildlife management is inherently complex and we believe the USFWS is overemphasizing the 2013 brown bear hunt to justify the proposed closure.

The Citizens Advisory Commission on Federal Areas urges the U.S. Fish and Wildlife Service to repeal its proposed closure of the fall 2014 and spring 2015 Kenai Refuge brown bear sport hunt. Insufficient information has been made available to the public to make informed comments and the Service’s reasoning is wanting. The proper venue to resolve this issue is the upcoming March 2015 meeting of the Alaska Board of Game, not an ill-advised public closure.

Sincerely,

A handwritten signature in black ink that reads "Wes Keller". The signature is written in a cursive, slightly slanted style.

Wes Keller, Chair
Citizens Advisory Commission on Federal Areas