



June 23, 2023

Via eRulemaking Portal: regulations.gov

Deputy Division Chief for Wildlife Conservation  
U.S. Department of the Interior, Director (HQ-630)  
Bureau of Land Management  
1849 C St. NW, Room 5646  
Washington, DC 20240

**Re: Safari Club International Comments on the BLM's Proposed Rule,  
Conservation and Land Health, 1004-AE92, 88 Fed. Reg. 19583 (April 3,  
2023)**

Dear Deputy Division Chief for Wildlife Conservation:

Safari Club International (“SCI”) appreciates the opportunity to comment on the Bureau of Land Management’s (“BLM”) proposed rule for Conservation and Land Health. The proposed rule seeks to include “conservation” among the uses appropriate for public lands under the multiple-use and sustained-yield framework of the Federal Land Policy and Management Act (“FLPMA”). As part of its efforts, the proposed rule would define “conservation,” create “conservation leases” with the stated purposes of protecting and restoring “degraded” public lands, and extend BLM’s rangeland health fundamentals beyond grazing leases. While SCI fully supports conservation of habitat and wildlife, SCI seeks to protect broad hunting access on federal lands. SCI does not support this proposed rule in its current form, due to unclear rights under the proposed conservation leases which may restrict hunting access, the inconsistent meaning of “conservation,” the lack of clarity for allowed uses on lands subject to a conservation lease, and the lack of clarity in the BLM’s new decision-making protocol. SCI respectfully requests that BLM revise the proposal, consistent with the recommendations in these comments and the comments of other affected users of public lands, and publish another proposal that will promote conservation, but protect the multi-use and sustained yield nature of federal public lands under FLPMA.

### **Safari Club International**

SCI, a nonprofit I.R.C. § 501(c)(4) corporation, has approximately 50,000 members and advocates worldwide. Thousands of SCI’s members utilize public lands for recreation and hunting. Among SCI’s membership are guides and outfitters whose livelihoods depend on access to public lands impacted by the proposed rule. SCI’s missions include conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation and wildlife management tool. SCI supports a “No-Net-Loss” policy to maintain at least the current levels of hunting and fishing access on federal public lands across the United States. SCI regularly files comments with BLM and other agencies to protect hunting access and has filed suit when necessary to preserve access to lands, species, and methods of harvest.

## SCI's Comments on the Proposed Rule

### 1. Conservation Leases

SCI opposes the proposal to create conservation leases for BLM lands, at least as currently described. Of course, SCI supports the conservation of public lands and wildlife. Conservation is one of SCI's missions. However, conservation means "the wise *use* of resources." The BLM's mandate is to "manage the public lands under principles of multiple use and sustained yield ... except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law." 43 U.S.C. § 1732(a). While the proposed rule notes that FLPMA's declaration of policy includes protection of other values, it undersells the fact that FLPMA's operative provisions require managing for multiple use and sustained yield. BLM should ensure that public lands are being used responsibly, so the uses can be sustained over time and the land is not degraded.<sup>1</sup> But BLM can and should do so using its current tools, such as rangeland health standards and monitoring. BLM has no need to create ambiguous new "mechanisms" that risk encroaching on FLPMA's multiple use and sustained yield mandate.

The proposed rule's description of conservation leases is problematic for at least three reasons. First, BLM has the authority—indeed, the responsibility—to manage public lands so their current use does not preclude their future use. That is the concept of a "sustained yield," enshrined in BLM's mission and in the fundamentals of rangeland health. *E.g.*, 43 C.F.R. § 4180.2. BLM does not need a new tool to promote public lands conservation. It has a range of tools, from the rangeland health standards discussed in the proposed rule to reclamation of oil and gas development and mining sites, among other things.

As one example, in May 2023, "the Department of the Interior announced plans to infuse \$161 million into ecosystem restoration and resilience on the nation's public lands." The Department's press release stated that this work would be "led by the Bureau of Land Management," and would "focus on 21 'Restoration Landscapes' across 11 western states." Secretary Haaland stated that, "Through the President's Investing in America agenda, [the Department and BLM] will increase the ability of public lands to provide clean water, habitat for fish and wildlife, opportunities for recreation, and other important benefits." The press release went on to confirm that, "BLM has restored millions of acres of public lands."<sup>2</sup> If the press release is to be believed, then BLM already has more than adequate resources and is already successfully "conserving" millions of acres. If public lands are as "degraded" as the proposed rule suggests, then BLM must refocus on using its existing tools, including more effective allotment of resources, monitoring, and enforcement, instead of proposing new and untested tools. SCI requests that BLM explain in any final rule why its current tools and activities,

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<sup>1</sup> The BLM has successfully managed public lands under the mandate of multiple use and sustained yield for almost 50 years, since the passage of FLPMA in 1976.

<sup>2</sup> Department of the Interior, Press Release, Biden-Harris Administration Announces \$161 Million for Landscape Restoration (May 31, 2023), <https://www.doi.gov/pressreleases/biden-harris-administration-announces-161-million-landscape-restoration>.

including monitoring of land uses, allocation of leases, application of rangeland health standards, and reclamation requirements, are insufficient to avoid degradation of public lands, and why a new tool is needed in lieu of better enforcement of current regulations.<sup>3</sup>

Second, the proposed rule's concept of a "conservation lease" does not include state and local governments among potential lessees. SCI opposes this omission, and requests that if BLM goes forward with the proposal, that state and local governments, including state agencies managing fish and wildlife, be included among the potential lessees for conservation leases with BLM. States "unquestionably" have "broad trustee and police powers over wild animals within their jurisdiction." *Kleppe v. New Mexico*, 426 U.S. 529, 545 (1976). These broad powers reflect "the legitimate state concerns for conservation and protection of wild animals." *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979). Using reliable and effective management programs, state government and wildlife agencies are best equipped to responsibly conserve wildlife within state borders. If the proposed rule's goal is to protect intact landscapes, restore degraded habitat, and make wise management decisions based on science and data, then state and local governments should be permitted to apply their expertise to restoring and protecting degraded lands.

Third, the proposed rule is not specific about what current uses will be permitted under a conservation lease, under all circumstances (and not the terms of a specific lease). BLM requests comment on whether the rule should clarify what actions conservation leases will allow. SCI believes such a clarification is critically necessary to protect existing users who depend on public lands. Specifically, SCI requests that any final rule make abundantly clear that state-authorized hunting, both recreational and guided, is authorized on all BLM lands<sup>4</sup> including those subject to a conservation lease. Over 99 percent of the 250 million acres that BLM manages are open to hunting, fishing, and recreational shooting opportunities.<sup>5</sup> These hunting opportunities are vital

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<sup>3</sup> As explained above, if BLM's primary concern in the proposed rule is the degradation of public lands, then BLM already has the tools it needs to ameliorate that degradation, if BLM focuses on more effective monitoring and enforcement. It seems that the proposed rule is really changing the use of public lands, to elevate conservation as a special use among the multi-use framework. SCI does not necessarily oppose this intention. But the proposed rule is not clear if this is BLM's intent. SCI requests a forthright explanation as to how multiple uses can coexist with restoration and protection of public lands, or an explanation as to how setting aside land strictly for "conservation," as defined in the rule, is consistent with the Tenth Circuit's ruling in *Public Lands Council v. Babbitt*, 167 F.3d 1287, 1289, 1308 (10th Cir. 1999) (holding that the Secretary has authority to take conservation measures on public lands, but cannot authorize "grazing" permits intended exclusively for "conservation use").

<sup>4</sup> The proposed rule states that conservation leases are "not intended to provide a mechanism for precluding other uses, such as grazing, mining, and recreation. Conservation leases should not disturb existing authorizations, valid existing rights, or state or Tribal land use management." As guiding permits are treated as "authorizations" under BLM regulations, SCI believes that guided hunting should continue on these lands.

<sup>5</sup> BLM Website, <https://www.blm.gov/programs/recreation/recreation-programs/recreational-shooting>.

because of the wealth of species and open availability, particularly for new and lower income hunters. For example, BLM manages 43 million acres of elk habitat, 131 million acres of mule deer habitat, and 23 million acres of bighorn sheep habitat. Hunters value and seek to protect this access.

Public lands provide critical access and help generate significant revenue for the guided hunting, fishing, and recreational industries as well. Hunting and fishing guides are required to pay the BLM approximately 3% of their adjusted annual gross revenue or a minimum of \$115, whichever is greater, in exchange for the authorization to guide on public lands.<sup>6</sup> The BLM retains and reinvests 100% of collected fees into local programs to expand and improve outdoor recreational opportunities.<sup>7</sup> The prevention of commercial guide activities by a conservation lease would result in a drastic decline in revenue generation for the BLM, ranging upwards of \$100 million. Such an economic impact should be considered by the BLM before issuing a rule that may prevent the lawful use of public lands for guided hunting and fishing.

Guided hunting represents a unique authorization on BLM lands. Unlike most uses (e.g., oil and gas, grazing) which are subject to a “lease,” guided hunting is allowed under a permit or “authorization.” SCI reads the current rule to allow this activity to continue on conservation lease lands as written. However, the proposed rule’s ambiguity is concerning for members whose livelihoods and passions depend on public land hunting access. SCI therefore requests an express statement in any final rule that hunting, including recreational and BLM-authorized guided hunting, is permitted and cannot be prohibited by the lessee on any BLM lands subject to a conservation lease.

## **2. Definition of “Conservation”**

SCI is particularly concerned with the proposed rule’s use of the term “conservation,” which is inconsistent with how that concept is properly defined or applied.

The proposed rule defines “conservation” as “maintaining resilient, functioning ecosystems by protecting or restoring natural habitats and ecological functions.” 88 Fed. Reg. at 19598. Within the framework of the proposed rule, “protection” and “restoration” together constitute conservation. SCI fully supports conservation; however, the proposed rule’s definition implies preservation and not the “wise use” of resources.

Defining conservation as preservation and restoration, and not wise use, conflicts with the mandates of FLPMA and the multi-use nature of public lands. The proposed rule contains

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<sup>6</sup> On May 8, 2023, the BLM Director raised the minimum fee for commercial use to \$130 per year. 88 Fed. Reg. 29692 (May 8, 2023).

<sup>7</sup> BLM Website, <https://www.blm.gov/programs/recreation/permits-and-fees/flrea-revenue>. Common expenditures of permit revenues include enhancing access, collecting trash, maintaining recreational facilities, upgrading existing facilities to meet universal accessibility standards, permit administration, and protecting nearby natural and cultural resources from recreational impacts.

inadequate safeguards to ensure that “conservation,” as defined in the rule, does not override other uses, in contravention of FLPMA. BLM should ensure, through its current tools, that public lands are being used, and rested or used less intensively, to maintain their long-term viability. The definition of “conservation” should reflect responsible use and resting periods, but the term as defined suggests that preservation and protection are the only way to achieve healthy public lands.

SCI supports efforts to take conservation measures on public lands, but not to the exclusion of other uses that are not detrimental to the long-term health of that land. SCI is concerned with the preservationist bent of the definition of “conservation” and “conservation lease” in the proposed rule. To align with the BLM’s multiple use framework, SCI recommends that the term “conservation” be reworked to add a parenthetical confirming that “conservation” does not preclude sustainable, wise use of resources.<sup>8</sup> SCI also requests that BLM amend the rule such that conservation leases do not preclude any specific uses, but take science-based and responsible actions to ensure that rangelands are healthy.

### **3. Lack of Clarity of Allowed Uses**

SCI is concerned that the proposed rule lacks clarity about what activities will be allowed under a conservation lease. The proposal uses vague language and double definitions. While this flexibility might benefit the lessee, SCI seeks to preserve public lands hunting access for the benefit of the tens of thousands of hunters who rely on BLM lands, in line with SCI’s “No-Net-Loss” policy.

The proposed rule’s definition of “casual use” is not clear with respect to what hunting or kinds of hunting will be authorized under a conservation lease. Section 6102(a)(5) of the proposed rule states that “no land use authorization is required under the regulations in this part for casual use of the public lands covered by a conservation lease.” 88 Fed. Reg. at 19600. The proposed rule defines “casual use” as “any short-term, noncommercial activity that does not cause appreciable damage or disturbance to the public lands or their resources or improvements and that is not prohibited by closure of the lands to such activities.” 88 Fed. Reg. at 19598. But the rule does not explain who determines whether an activity causes appreciable damage or disturbance. Despite assurances from BLM presentations, the proposed rule does not clearly state that hunting, which can temporarily disturb wildlife (during the hunt) and does lead to the incremental loss of wildlife (due to a successful hunt) will be allowed under all conservation leases, and will not be prohibited at the lessee’s discretion.

BLM is seeking comments on whether certain activities should be explicitly protected under conservation leases. Although the definition of “casual use” likely covers recreational hunting, again, SCI requests that this authorization be made crystal clear. And although casual use is

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<sup>8</sup> Defining conservation to incorporate the concept of “sustainable use” is consistent with the Executive Order on Facilitation of Hunting Heritage and Wildlife Conservation (Aug. 2007), as well as the U.S. Fish and Wildlife Service’s and the U.S. Forest Service’s understanding of “conservation” to include sustainable use through hunting.

authorized, SCI requests BLM to explicitly require conservation lessees to permit hunting, not simply allow it if and when the lessee wants it. Further, the proposal is ambiguous as to whether professional guiding and outfitting on public lands is covered by the “casual use” definition. Although the activity is recreational for the hunter, it is commercial for the guide, who has public lands access pursuant to a BLM permit or authorization. How the proposed rule considers guided hunting is not clear. Again, SCI requests an express statement in any final rule that hunting, including recreational and BLM-authorized guided hunting, is permitted and cannot be prohibited by the lessee on any BLM lands subject to a conservation lease.

As it stands now, the term “casual use” is ambiguous for another reason. The rule does not define what is “appreciable” damage. SCI is concerned that lessees will be given broad discretion to determine what is appreciable damage and what is not. To ensure congruent management across BLM public lands, it is important to define this concept and identify what factors are considered when making such a determination. BLM defines appreciable damage’s counterpart, “disturbance,” and should do so for this term as well. When appreciable damage or disturbance is found, public lands could be temporarily closed to public access for purposes authorized by conservation leases, such as restoration activities or habitat improvements. SCI requests this clarification in any final rule, and suggests that “appreciable” damage must be considerably higher than the incremental harvest of individual animals by hunters—particularly when this harvest is authorized by the state agency in support of wildlife management objectives.

#### **4. Lack of Clarity in Decision-making Protocol**

SCI requests that any final rule further explain the data sources that BLM intends to use for land management decisions and assessments. The proposed rule states that the fundamentals of rangeland health “and related standards and guidelines” will be applied to all renewable-resource management, instead of just to grazing. SCI requests further explanation of what “related standards and guidelines” the proposal intends to apply. In the same vein, the proposal defines “high-quality information” as “information that promotes reasoned, fact-based agency decisions. Information relied upon or disseminated by BLM must meet the standards for objectivity, utility, integrity, and quality set forth in applicable federal law and policy.” SCI requests that the final rule identify what “federal law and policy” is referenced. The preamble states that “the best available scientific information” would underpin decisions, 88 Fed. Reg. at 19589, but that standard is not clear in the proposed rule’s definition of high-quality information.

Further, SCI questions the broad discretion provided to authorized officers to identify land values and prioritize ecosystems for restoration and preservation actions under the proposed rule. See Section 6102.5, 88 Fed. Reg. at 19692, 19602-03. SCI questions when and how these officers will consult with state wildlife and land management agencies, in addition to consultation with Tribes and Alaska Native Corporations, and what appellate rights will be available for these land management decisions. For example, if a land manager determines that an area requires restoration and access should be “temporarily” halted to preserve the land values, what rights are available to users who disagree with the officer’s determination? Any final rule should more clearly explain what rights are available to users, and not just conservation lessees, who disagree with a BLM manager’s determinations.

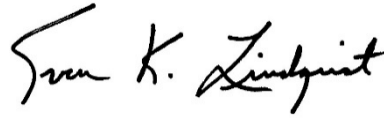
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SCI appreciates the opportunity to provide these comments. If you have any questions, please contact SCI's Litigation Counsel at [litigation@safariclub.org](mailto:litigation@safariclub.org).

Sincerely,

A handwritten signature in black ink that reads "Sven K. Lindquist". The signature is written in a cursive style with a large initial 'S'.

Sven Lindquist  
President, Safari Club International