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Public Comments Processing
Attn: FWS-HQ-NWRS-2023-0038
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS: PRB (JAO/3W)
Falls Church, VA 22041-3803

**Re: Safari Club International Comments on the National Wildlife Refuge System:
2023–2024 Station-Specific Hunting and Sport Fishing Regulations, 88 Fed. Reg.
41058 (June 23, 2023)**

Dear Assistant Secretary Estenoz:

Safari Club International (“SCI”) appreciates the opportunity to comment on the 2023-2024 Station-Specific Hunting and Sport Fishing Regulations, 88 Fed. Reg. 41058 (June 23, 2023) (“Proposed Rule”). SCI and its members support the expansion of hunting opportunities on three National Wildlife Refuges, across approximately 3,000 acres. In this regard, the Proposed Rule is consistent with the U.S. Fish and Wildlife Service’s (“FWS”) statutory obligation to make compatible wildlife-dependent recreational uses, including hunting and fishing, the “priority general public uses” of the National Wildlife Refuge System (“Refuge System”), and to give these uses “priority consideration in refuge planning and management.” 16 U.S.C. § 668dd(a)(3)(c).

However, SCI is disappointed in the limited scope of the Proposed Rule. The FWS must do more to administer its statutory obligations to prioritize hunting and fishing on Refuges, and to provide increased opportunities for families to engage in traditional outdoor activities, such as fishing and hunting. 16 U.S.C. § 668dd(a)(1)(K). Hunting conservation groups have identified over 100 new potential hunting opportunities on Refuges—none of which are included in the Proposed Rule. The FWS could contact state wildlife agencies to identify new opportunities, or survey hunters and anglers who use the Refuge System for opportunities that they would want opened. Respectfully, the FWS does not seem to be trying to expand hunting and fishing opportunities. Rather, it seems to be prioritizing closing down the use of lead ammunition and tackle on Refuges, which diminishes recreational opportunities on Refuges.¹ SCI objects to any politicizing of the Hunt Fish rule process.

¹ The FWS only appears willing to expand hunting if it can shut down the use of traditional ammunition. Even with this agenda, SCI is aware that waterfowl hunters—who have not used lead ammunition since 1991—provided the FWS with a list of approximately 100 new or expansion opportunities on Refuges. SCI is disappointed in the FWS’ failure to act on this list in developing the Proposed Rule.

SCI opposes the proposed ban on the use of lead ammunition on the Okeechobee Unit of Everglades Headwaters Refuge and the new acres on Minnesota Valley Refuge. SCI also reaffirms its strong opposition to the proposed phase-out on use of lead ammunition and fishing tackle on eight Refuges addressed in the Proposed Rule. To be clear: SCI does **not** oppose lead restrictions **where specifically tailored and scientifically warranted**. But the FWS has yet to point to any science regarding these specific Refuges. Nor has the FWS explained why alternatives to a phase-out or ban on the use of lead ammunition and tackle are not alternatives under consideration.² SCI is concerned that these restrictions will significantly limit hunting opportunity—and will essentially shut down some of the opportunities that have recently been opened or expanded in the annual Hunt Fish Rule. SCI and other hunting conservation organizations have objected to restrictions on use of lead ammunition and tackle because alternative ammunition is not always available or is not readily available. The FWS has not responded to the first criticism (*see* 87 Fed. Reg. 57108 (Sept. 15, 2022)); its response to the second is simple disagreement. But the FWS must offer more when putting hunting access at risk—particularly when hunting experienced a significant drop-off following the ban on lead ammunition for waterfowl hunting adopted in 1991. SCI is not challenging that ban, but actions have consequences. And wildlife management, funding, and the interests of millions of U.S. hunters are potentially at issue here.³

Safari Club International

Many of SCI's more than 70,000 members and advocates hunt on Refuge System lands. SCI is a non-profit organization whose missions include the conservation of wildlife, protection of the hunter, and education of the public about hunting and its use as a conservation and wildlife management tool. SCI has long been an active supporter of the Refuge System and the expansion of hunting opportunities on Refuges. For example, SCI is a founding member of the Cooperative Alliance for Refuge Enhancement ("CARE"). This group advocates for robust funding for the Refuge System. SCI has also defended the Refuge System in court, including in a decade-long legal case over the FWS' compliance with National Environmental Policy Act requirements when opening hunting opportunities on Refuges. In the past 15 years, SCI has submitted substantive comments supporting hunting opportunities on hundreds of Refuges. For example, SCI submitted 65 pages of comments supporting the 2020-2021 and 2021-2022 proposed rules opening new hunting and fishing opportunities in the Refuge System.

² These could include (but are not limited to) carcass control regulations, emphasis on using more modern lead ammunition (which are designed to avoid fragmentation), or the FWS' coordination with other agencies to support development of additional lead alternatives.

³ The Proposed Rule would also remove the permit requirement for hunting with dogs on Silvio O. Conte Refuge. SCI supports removal of the permit requirement, but requests the FWS reconsider the approved training season and expand it to align with state regulations. The Refuge System Improvement Act of 1997 requires the FWS to align federal and state regulations, where practicable. 16 U.S.C. § 668dd(m).

SCI Supports the Expansion of Hunting in the Proposed Rule

1. The Proposed Rule is consistent with governing legal authorities.

The nation's Refuges have long provided important hunting opportunities to the public. This is in keeping with the fact that much of the land that makes up the Refuge System was acquired with hunter support and funding. Consequently, the key role of hunting and the need to provide enhanced hunter access is enshrined in law. A few examples include Executive Order 12996, "Management and General Public Use of the National Wildlife Refuge System"; the National Wildlife Refuge System Improvement Act of 1997 (sponsored by noted hunter and SCI member Rep. Don Young) ("Improvement Act"); Executive Order 13443, "Facilitation of Hunting Heritage and Wildlife Conservation"; and Secretary's Order 3356, "Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories." SCI supports the proposed new hunting opportunities because they are consistent with these legal mandates.

2. Expanded hunting increases the benefits of hunting on Refuges.

Funding. Hunting provides significant tangible benefits for the conservation and management of wildlife and for individual citizens. Hunting revenues, including federal Duck Stamp purchases, are a primary means of acquiring Refuge System lands. Tax revenues from the sale of hunting, fishing, and shooting equipment provide the major source of funding for state fish and wildlife agencies. In 2023, the FWS distributed approximately **\$1.2 billion** pursuant to the Pittman-Robertson Federal Aid in Wildlife Restoration Act.⁴ Hunting can also contribute significantly to local economies near public lands.

Management. Hunting can provide direct management benefits on Refuges, particularly to control big game or invasive species that otherwise negatively impact habitat. For example, hunting is widely used to control deer populations and reduce over-browsing. Similarly, hunting of invasive feral hogs is used to reduce their overly abundant populations. Managed hunting helps keep populations of species in balance with each other, and thus benefits at-risk or threatened species who share Refuges with game species.

Recreational Opportunity. As the FWS routinely recognizes, hunting is a healthy, traditional recreational use of renewable natural resources, deeply rooted in American heritage. Hunting helps people stay strong in mind and body. It contributes to self-reliance. Hunting provides organic, free-range meat, which is particularly important after facing the meat shortages that resulted from the COVID-19 pandemic. These benefits drew many new hunters during the pandemic,⁵ and States are working hard to retain and even expand that interest. SCI requests that

⁴ <https://www.fws.gov/sites/default/files/documents/Certificate%20of%20Apportionment%20Pittman-Robertson%20Wildlife%20Restoration.pdf>.

⁵ E.g., The Wall Street Journal: <https://www.wsj.com/articles/more-hunting-is-good-news-for-wildlife-conservation-11608304965>; Counsel to Advance Hunting and the Shooting Sports, <https://cahss.org/huntinglicensesales2020-2021/>.

the FWS support those state efforts by avoiding policies, like lead ammunition restrictions, that will put up barriers for hunting.

3. Comments specific to the three Refuges with expanded hunting opportunities.

a. *Cahaba River National Wildlife Refuge*

SCI supports the proposal to expand archery deer hunting on 1,164 recently acquired acres on Cahaba River National Wildlife Refuge in Alabama. As explained in the Refuge’s draft Comprehensive Conservation Plan, Alabama’s deer population is extremely healthy, and many areas suffer from “over-browsing of native vegetation, crop damage, and deer/vehicle collisions.” Cahaba River National Wildlife Refuge, Draft Comprehensive Conservation Plan (2015), p. 79. Adding this hunting opportunity will have no detrimental impact on the sustainability of the deer population and may help to advance population management objectives. See Draft Environmental Action Statement for Categorical Exclusion for 2023-24 Cahaba River National Wildlife Refuge Hunt Package, p. 4.

b. *Everglades Headwaters National Wildlife Refuge*

SCI supports the proposal to expand existing migratory game bird, upland game, and big game hunting to 1,863 new acres on the Okeechobee Unit of Everglades Headwaters Refuge. Expanding acreage allows a greater number of people to participate in hunting and to enjoy the benefits of a pristine experience on Refuge lands. In contrast, SCI does not support the proposal to prohibit the use of lead ammunition, except where non-lead ammunition is already required for migratory waterfowl. It is unclear why any prohibition on lead ammunition would be required on the Okeechobee Unit, as the property has already been managed as a hunting lease, without any apparent negative impacts to wildlife from the use of lead ammunition.⁶ In fact, it does not appear that any hunting on Everglades Headwaters National Wildlife Refuge has negatively impacted wildlife, despite the availability of lead ammunition. The Categorical Exclusion prepared to accompany this proposal states: “The current hunt program has not resulted in adverse impacts to listed species.” Draft Environmental Action Statement for Categorical Exclusion for 2023-2024 Everglades Headwaters NWR Hunt Package for the Okeechobee Unit, p. 3; see generally Everglades Headwaters National Wildlife Refuge

⁶ This proposal would be less objectionable if Florida’s Fish and Wildlife Conservation Commission (“FWC”) agrees with it, and has a science-based explanation for limiting use of lead ammunition on these acres. But SCI is concerned that the 2022 Hunt Fish Rule represented that some state agencies supported or “helped develop” proposed lead restrictions, but those statements were not wholly true. Here, the Categorical Exclusion document states that “[t]he Service has a [Memorandum of Understanding] with FWC ... Since the Proposed Action represents a minor change to those previously approved documents and since no or negligible impacts would be anticipated, public involvement and additional interagency coordination will be conducted through the 2023-2024 Hunting and Sport Fishing rulemaking action with public notice through the Federal Register.” Draft Environmental Action Statement for Categorical Exclusion for 2023-2024 Everglades Headwaters Refuge Hunt Package for the Okeechobee Unit, p. 7. SCI questions why the Categorical Exclusion does not identify actual, current communications with the FWC regarding the development of this proposal.

Conservation Area, Migratory Bird, Upland Game, and Big Game Hunt and Sport Fish Plan (2020) (not imposing any special prohibitions on use of lead ammunition).

In addition, the Refuge's Land Protection Plan identifies as one of the Refuge's four goals that "visitors of all abilities will enjoy opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation, while increasing knowledge of and support for conservation of the important grassland and savanna landscape of the headwaters of the Everglades." Land Protection Plan for the Establishment of the Everglades Headwaters National Wildlife Refuge and Conservation Area (Jan. 2012), p. 8. The Plan further states that "newly acquired lands that become part of the Everglades Headwaters NWR will be open for public hunting as part of the [Wildlife Management Area] program administered by [Florida Wildlife Conservation Commission], increasing the amount of lands open to public hunting in this area ... at the same level of activity that existed prior to [the FWS'] acquisition of the land." *Id.*, p. 109. As explained below, unwarranted restrictions on the use of lead ammunition reduce hunting access, because non-lead ammunition is not as easily available and is typically more expensive than traditional lead ammunition. Thus, the proposal is likely to conflict with the Land Protection Plan.

c. Minnesota Valley National Wildlife Refuge

SCI supports the proposal to expand existing hunting to 98 new acres on Minnesota Valley National Wildlife Refuge. SCI opposes the requirement for non-lead ammunition for the extremely limited firearms deer hunts administered under the Minnesota Department of Natural Resources "Learn to Hunt" program. New hunters are the least likely to be able to find non-lead ammunition. SCI objects to erecting barriers to hunting for a program focused exclusively on new hunters.

SCI again disputes that any such restrictions are necessary. As stated in the Categorical Exclusion, the number of new hunters is expected to be low, and "[h]arvest of wildlife has previously been determined to not significantly impact the local, regional, or national populations [of wildlife on the Refuge] because the percentage taken would be so low." Environmental Action Statement for Categorical Exclusion, Minnesota Valley National Wildlife Refuge, p. 4. Respectfully, a decision that is based on no specific science, and set against prior determinations that hunting on the Refuge has no significant negative impacts on wildlife populations, appears to be politically motivated and not scientifically based.

SCI Opposes Restrictions on Use of Lead Ammunition and Tackle in the Proposed Rule

SCI does not support the proposal to adopt regulations requiring use of non-lead ammunition and tackle on eight refuges in Maryland, Virginia, Pennsylvania, Massachusetts, and Maine by September 1, 2026. The FWS has not demonstrated, and does not demonstrate in the Proposed Rule, the need for further lead restrictions on these Refuges. The science on which the FWS relied and continues to rely focuses on the impact of lead ammunition on eagles and scavenger birds and the impact of lead tackle on loons. *E.g.*, 87 Fed. Reg. at 57112-13; Cumulative Impacts Report 2023-2024 National Wildlife Refuge Proposed Hunting and Sport Fishing

Openings, pp. 22-24. The FWS points to no studies that evaluate impacts of exposure to lead from lead ammunition on other animals, and particularly on mammals. The science does not support the need for an immediate ban or phase-out of lead ammunition on these Refuges.

Even the 2022 study that the FWS repeatedly cites does not support an immediate ban or phase-out. This study does not find that eagle populations are declining due to lead exposure.⁷ Rather, it assumes that all eagles with liver lead concentrations above a certain threshold will die. That assumption is not based on an empirically demonstrated level of lead toxicity: the paper notes that there is no known toxicity concentration because eagles that are treated for lead exposure typically get better and are released. But even assuming that all eagles with liver lead concentrations above a certain level will die, the study finds only that lead exposure is slowing eagle population growth rates. As the study concludes, eagle numbers are “rapidly increasing.”⁸

As SCI explained in prior Hunt Fish Rule comments, these Refuges provide important and inclusive hunting opportunities. Hunting is a traditional activity on the lands that comprise many of these eight Refuges. Hunter dollars were used to acquire Refuge lands, such as at the Erie Refuge in Pennsylvania. And hunting is used to manage overly abundant species on these Refuges, especially deer. Adopting an across-the-board non-lead requirement for these Refuges is likely to reduce hunter participation. That will negatively impact hunting and fishing as priority public uses. It violates the trust that hunters had in the FWS, when they supported acquiring these lands as part of the Refuge System. And it will reduce the efficacy of hunting as a management tool.⁹

As SCI explained in its comments last year, hunters continue to face an ammunition shortage. Forcing the use of non-lead ammunition will only make it worse. The FWS’ response to this point has been simply, “we do not agree.” 87 Fed. Reg. at 57115. But unsupported disagreement is a violation of the Administrative Procedure Act. *E.g.*, *Sierra Club v. Bosworth*, 510 F.3d 1016, 1023 (9th Cir. 2007) (noting that a court “defer[s] to an agency’s decision only if it is fully informed and well-considered”). Moreover, ammunition manufacturers cannot simply “flip a switch” to start producing non-lead bullets. Copper is difficult to source, significantly more expensive than lead, and in high demand for other uses. Producing a copper bullet requires

⁷ V.A. Slabe et al., Demographic implications of lead poisoning for eagles across North America, 375 *Science* 779-82 (Feb. 17, 2022), <https://www.science.org/doi/10.1126/science.abj3068>.

⁸ SCI also notes that the study does not find consistent lead exposure impacts. Rather, “Bald eagles in the Central Flyway exhibited higher rates of chronic lead poisoning than did those in the Atlantic and Pacific Flyways.” Slabe et al. (2022). Notably, the Proposed Rule proposes to prohibit or phase out the use of lead ammunition on East Coast and Mid-Atlantic Refuges. This study does not geographically support that decision.

⁹ For example, in response to last year’s proposed rule, the West Virginia Wildlife Resources Section objected that “[t]he prohibition of lead ammunition for the hunting of all game on the refuge may significantly limit hunter activity. Non-lead ammunition is often unavailable and far more expensive than lead ammunition. In addition, non-lead ammunition may be incompatible with some firearms. Reduction in hunter participation would likely result in a decrease in the number of deer harvested on the refuge. This reduction in harvest could impact deer herd health and adversely affect environmental conditions on the refuge as a result of over browsing by deer.”

an entirely different process than producing a lead bullet. It will take the industry considerable time and expense to acquire the appropriate machinery. The ammunition industry is also limited in their research and development by other federal laws, notably, the Gun Control Act of 1968.

The result of forcing a lead ban is four-fold. First, it forces a loss of access. Hunters will simply not have the ammunition they need to hunt, or purchasing ammunition will become considerably more expensive.¹⁰ Hunter numbers will decline.

Second, lead restrictions will have an outsized impact on new and youth hunters, and stymie state “recruitment, retention, and reactivation” efforts. Hunters (especially new hunters) identify barriers to hunting as their number one reason for stopping. Lead restrictions impose a de facto closure of public land if the hunter does not have (and cannot easily get) the required ammunition.

Third, hunting and shooting are essential sources of revenue for state wildlife agencies under the Pittman Robertson Act, as explained above. The FWS’ phase-out of lead ammunition is likely to negatively impact revenues generated under this program.

Finally, as SCI explained last year—in a comment to which the FWS did not reply—the FWS has recently opened a number of small game opportunities on these Refuges. But for some bullet weights and calibers commonly used for small game (and for youth) hunting, a feasible, affordable, and available non-lead alternative does not exist.¹¹ Thus, the FWS has “opened” new hunting, and proposed to close it at the same time because it is not possible to hunt the game legally. That “giving with one hand, taking with the other” does not comply with the letter or intent of the Improvement Act.

SCI reminds the FWS that the Improvement Act was passed in 1997, six years **after** the FWS adopted a national ban on the use of lead shot for hunting waterfowl. Congress, especially hunters like Rep. Young, were well aware of the FWS’ lead restrictions. But Congress did not

¹⁰ Last year’s Hunt Fish Rule states, “We are confident that non-lead ammunition and tackle are not cost-prohibitive as hunting and angling continues on all Refuge System stations where we have restricted lead use.” But those stations are not necessarily representative, as many are in areas with above-average median income and below-average hunting participation. And while hunting participation was previously “declining” as a percentage of the U.S. population, that “decline” is not uniform across regions, and has also been turned around in the last three years.

¹¹ *E.g.*, J.O Hampton et al., Assessment of Lead-Free .22 LR Bullets for Shooting European Rabbits, 44 Wildlife Soc’y Bulletin 760-65 (2020) (finding that the only commercially available lead-free .22 bullets “produced substantially poorer animal welfare outcomes, and were [six times] more expensive per killed rabbit, than lead-based bullets”). In last year’s Hunt Fish Rule, the FWS stated that “non-lead options are already increasing and can be expected to continue to increase, including options for older firearm models and less commonly used calibers.” But .22 ammunition is commonly used. For some calibers and weights, the integrity and efficacy of the bullet is reduced by requiring a lead alternative. Further, the FWS’ statement that “appropriate non-lead ammunition is available for” the newly opened hunting opportunities was not true. The FWS did not address the impact of lead restrictions on small game hunting, for which lead alternative ammunition is not easily available.

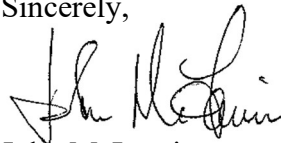
impose any new restrictions. The Improvement Act does not mention lead ammunition at all. Rather, it requires the FWS to prioritize hunting and fishing as a compatible wildlife-dependent use of Refuge lands, and it requires the FWS to provide increased opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting. 16 U.S.C. §§ 668dd(a)(3), (4)(H)-(K). Lead “restrictions,” which result in de facto bans on certain hunting, violate the Improvement Act.

SCI implores the FWS to work with the hunting and fishing communities instead of against them. Hunters and anglers are sincere conservationists. Their dollars built the Refuge System and continue to sustain it. Hunters and anglers will accept limited and targeted restrictions, based on sound and specific science. They will accept voluntary and incentive-based programs. But they will not accept politically motivated lead restrictions that fail to take into account the realities of manufacturing and purchasing ammunition.

Conclusion

SCI supports the Proposed Rule’s expansion of hunting opportunities on 3,000 acres across three Refuges. However, SCI opposes mandatory restrictions and a phase-out of lead ammunition on these Refuges and in connection with these new opportunities. And SCI opposes the adoption of regulations to prohibit the use of lead ammunition in 2026, as explained above. If you have any questions or need anything further, please contact Regina Lennox at rlennox@safariclub.org.

Sincerely,



John McLaurin

President, Safari Club International