



National Headquarters

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Michael Stroeh
Refuge Manager
Prime Hook National Wildlife Refuge
U.S. Fish and Wildlife Service
11978 Turtle Pond Road
Milton, DE 19968

Via U.S. Mail and Electronic Mail (fw5rw_phnwr@fws.gov).

**RE: Comments on Draft Environmental Assessment for Dune Work at Prime Hook
National Wildlife Refuge**

Dear Mr. Stroeh:

We appreciate the opportunity to provide comments on the Draft Environmental Assessment ("EA") for the proposed dune work at Prime Hook National Wildlife Refuge ("Refuge" or "Prime Hook NWR"). Defenders of Wildlife ("Defenders") is a national, non-profit, public interest conservation organization with more than one million members and supporters. Defenders has been substantively involved in individual refuge issues as well as National Wildlife Refuge System policy for decades, and played an active role in the passage of the National Wildlife Refuge System Improvement Act of 1997 ("Refuge Improvement Act"). We have also been actively involved in the formulation of national policy guidance issued since passage of the Act, including policies addressing planning, compatibility, biological integrity, diversity, environmental health, appropriate use, recreational use, and wilderness.

Defenders provides the following comments on the EA.

**I. THE PROPOSED ALTERNATIVE MUST BE COMPATIBLE WITH THE REFUGE SYSTEM
MISSION AND REFUGE PURPOSES**

The Refuge Improvement Act states that the primary mission of the Refuge System is "to administer a national network of lands for the conservation . . . of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans."¹ In addition to carrying out this mission, Prime Hook NWR must be managed in accordance with the following purposes:

¹ 16 U.S.C. § 668dd(e)(1)(A).

- [F]or use as an inviolate sanctuary, or for any other management purpose, for migratory birds.²
- [S]uitable for -- (1) incidental fish and wildlife-oriented recreational development, (2) the protection of natural resources, (3) the conservation of endangered species or threatened species.³
- [T]he Secretary...may accept and use...real...property. Such acceptance may be accomplished under the terms and conditions of restrictive covenants imposed by donors.⁴

The Draft EA indicates that the proposed alternative will alleviate animosity between the Service and some community members who are unable at times to access the road leading into the Primehook Beach community due to high water conditions. However, the Service is vague in its explanation of how the proposed alternative supports the Refuge System mission and Refuge purposes, stating that it will "help preserve the federal lands and waters of the interior system until a long-term restoration program is implemented through the CCP process."⁵ Defenders, therefore, recommends that the Service explain this connection in the final EA.

Additionally, the Refuge Improvement Act directs that the Service "shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge," unless that use is determined to be a "compatible use."⁶ Service regulations define a compatible use as "a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose(s) of the national wildlife refuge."⁷ To carry out the proposal to scrape sand from the Refuge for use on private property, the Service must first complete a lawful compatibility process. Based on the information provided in the draft EA, we believe it is not compatible.

II. THE PROPOSED ALTERNATIVE MUST CONTRIBUTE TO THE RESTORATION OF BIOLOGICAL INTEGRITY AND ENVIRONMENTAL HEALTH

The Refuge Improvement Act directs the Secretary of the Interior to "ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans."⁸ Service policy provides the following definitions for these terms:

- Biological Diversity -- The variety of life and its processes, including the variety of living organisms, the genetic differences among them, and communities and ecosystems in which they occur.

² 16 U.S.C. § 715d.

³ 16 U.S.C. § 460k-1.

⁴ 16 U.S.C. § 460k-2.

⁵ Draft EA at 16.

⁶ 16 U.S.C. § 668dd(d)(3)(A)(i).

⁷ 50 C.F.R. § 25.12(a).

⁸ 16 U.S.C. § 668dd(a)(4)(B).

- Biological Integrity – Biotic composition, structure, and functioning at genetic, organism, and community levels comparable with historic conditions, including the *natural biological processes* that shape genomes, organisms, and communities (emphasis added).
- Environmental Health – Composition, structure, and functioning of soil, water, air, and other abiotic features comparable with historic conditions, including the *natural abiotic processes* that shape the environment (emphasis added).⁹

Defenders supports a climate change adaptation approach that provides species the space and time to adapt to changing conditions. We encourage the Service to undertake management activities that facilitate, rather than impede, the transition of wildlife and ecological communities to new areas in response to climate change. The Service acknowledges that reconstructing the duneline as detailed in the proposed alternative provides only a temporary solution, allowing time for a long-term restoration plan to be developed through the CCP process.¹⁰ We recommend that the Service clarify in the final EA how the proposed alternative will contribute to the long-term restoration of natural biological and abiotic processes needed to restore biological integrity and environmental health, and adapt to climate change.

III. THE SERVICE MUST PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

The National Environmental Policy Act ("NEPA") requires that an environmental impact statement be prepared ("EIS") for major federal actions that may significantly affect the quality of the human environment.¹¹ The Ninth Circuit has asserted that an EIS "must be prepared if substantial questions are raised as to whether a project may cause significant degradation of some human environmental factor."¹² The term "significantly" according to the Council on Environmental Quality's regulations "requires considerations of both context and intensity," specifically including considerations of "[i]mpacts that may be both beneficial and adverse," "[t]he degree to which the proposed action affects public health or safety," "[u]nique characteristics of the geographic area such as proximity to ... wetlands, wild and scenic rivers, or ecologically critical areas," "[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial," "[t]he degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration," "[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts," "[t]he degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973," and "[w]hether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment."¹³

We believe that the actions proposed by the Service will significantly affect the quality of the human environment, and therefore require the preparation of an EIS. Specifically, the action will result in both beneficial and adverse impacts to the Refuge and the environment. The action is also designed

⁹ U.S. Fish and Wildlife Service, *601 FW 3 Biological Integrity, Diversity, and Environmental Health* (2001).

¹⁰ Draft EA at 19.

¹¹ 42 U.S.C. § 4332(2)(c); 40 C.F.R. § 1502.3.

¹² Klamath Siskiyou Wildlands Center v. Boody, 468 F.3d 549, 562 (9th Cir. 2006) (quoting Idaho Sporting Congress v. Thomas, 137 F.3d 1146, 1150 (9th Cir.1998)).

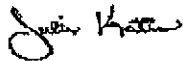
¹³ 40 C.F.R. § 1508.27, (b)(1), (2), (4), (6), (7), (9), (10).

in part to provide for public safety. Furthermore, given that the action involves a Refuge, it certainly involves a geographic area with a variety of unique characteristics. The action also, for reasons articulated in the EA and highlighted in this letter, is highly controversial. Given the long-term and ongoing nature of the problem and the Service's attempt to resolve it via the action, the action may establish a precedent for future actions. Due to the related impacts of climate change – specifically sea-level rise – and the Service's likely actions in the future to plan for and adapt to climate change, this action certainly is related to other actions with cumulatively significant impacts. As another matter, the EA notes that the Service will be engaging in consultation under the Endangered Species Act, though it is not clear whether this consultation has been completed. If such consultation reveals impacts on endangered or threatened species or critical habitat, then the action is significant for those reasons. Finally, due to the applicability of the Refuge Improvement Act, the Endangered Species Act, and other environmental laws, the action may threaten a violation of such laws or requirements. In this way, we believe the proposed action could represent an action significantly affecting the quality of the human environment, therefore demonstrating the need for preparation of an EIS.

IV. CONCLUSION

Defenders appreciates the opportunity to provide comments. We believe the Service should complete an environmental impact statement on this proposed action and cease consideration of the proposal to move sand from the Refuge to private lands.

Sincerely,



Julie Kates
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