

October 8, 2008

Sent via Hand Delivery

The Honorable Dirk Kempthorne
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Room 6156
Washington, DC 20240

The Honorable Mary A. Bomar
Director
National Park Service
1849 C Street, NW
Room 3312
Washington, DC 20240

The Honorable R. Lyle Laverty
Assistant Secretary of Fish and Wildlife and
Parks
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

The Honorable Dale Hall
Director
U.S. Fish and Wildlife Service
1849 C Street, NW
Room 3258
Washington, DC 20240

**Re: Report on Impact of Concealed Firearm Rule; Administrative Procedure Act
Petition**

Dear Secretary Kempthorne, Assistant Secretary Laverty, Director Bomar, and Director Hall:

I am writing on behalf of the Coalition of National Park Service Retirees (CNPSR) to transmit a report entitled *Natural and Cultural Resource Impacts and Management Consequences of the Proposed Regulation to Authorize the Possession of Concealed Firearms in Units of the National Park & National Wildlife Refuge Systems*. For the reasons discussed in the enclosed report, CNPSR petitions the Department of the Interior (DOI), pursuant to section 553(e) of the Administrative Procedure Act (APA), 5 U.S.C. § 553(e), and 43 C.F.R. Part 14, to issue a formal notice of withdrawal of the proposed regulation published on April 30, 2008, to authorize concealed firearms in national parks/wildlife refuges. 73 Fed. Reg. 23,388-90. In addition, CNPSR petitions DOI to use the information in the enclosed report to evaluate the justification for, and legal sufficiency of, the proposed rule. As demonstrated by the enclosed report, DOI has

October 8, 2008

Page 2

violated its procedural duties under several federal laws and cannot publish a final rule without first complying with these requirements.

Through the proposed rule, DOI plans to change longstanding regulations restricting the possession of firearms. If adopted, the new rule would allow park and refuge visitors to carry loaded and concealed firearms, should the relevant state allow such activity in comparable areas. This change could have substantial impacts on parks and refuges, their resources and visitors, and park and refuge management. The proposed rule does not explain these changes, and no analysis of the potential impacts on the environment, cultural resources, public safety, or agency management has been provided by DOI.

In the absence of such necessary scrutiny from DOI, CNPSR conducted a scoping analysis and survey to determine the extent of these potential impacts and their significance to the proposed rule. The attached report is a synthesis of quantitative and qualitative data from those surveys. The survey has confirmed that those individuals with the most experience managing parks and refuges believe, by significant margins, that the rule will have adverse impacts on wildlife and cultural resources, public safety, and park and refuge management.

Of those responding to the survey, 77.4 percent believe that the proposal will have an overall negative effect on the ability of the agencies to accomplish their respective missions. 83.3 percent of respondents anticipate that the proposal will increase the level of complexity for the management of parks and refuges. 75.3 percent feel that there will be an increase in the numbers of opportunistic or impulse wildlife killings in parks and refuges. When asked whether the proposal would justify the preparation of an environmental assessment (EA) or environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), 63.5 percent responded that the impacts of the proposal in individual parks or refuges alone would justify such review, while 78.8 percent responded that the cumulative impacts of the proposal, as applied throughout the national park and national wildlife refuge systems, require such action.

In previous correspondence with DOI, CNPSR has stated that rulemaking should not go forward without procedural compliance with all applicable federal laws. Compliance with NEPA, 42 U.S.C. § 4321 et seq., requires the preparation of an EA, and depending on its findings, the preparation of an EIS. Compliance with section 106 of the National Historic Preservation Act, 16 U.S.C. § 470(f), requires DOI to determine the effects of the proposed rule on historic properties and consult with state and tribal historic preservation officers. Section 7(a)(1) of the Endangered Species Act (ESA) imposes an affirmative duty on DOI to conserve listed species and their habitat. *Defenders of Wildlife v. Andrus*, 428 F. Supp. 167 (D.D.C. 1977). Compliance with section 7(a)(2) of the ESA requires DOI to engage in formal consultation with FWS and the National Marine Fisheries Service (NMFS). This duty includes the requirement to prepare a species list, make a “may affect” finding, and undertake formal consultation. 50 C.F.R. §§ 402.12, 402.14. Compliance with section 9(a)(1) of the ESA prohibits DOI from authorizing

October 8, 2008

Page 3

activities that result in the take of listed species. *Strahan v. Coxe*, 127 F.3d 155 (1st Cir. 1997), *cert. denied*, 525 U.S. 830 (1998); *Defenders of Wildlife v. EPA*, 882 F.2d 1294 (8th Cir. 1989); *Animal Protection Institute et al. v. Holsten*, 541 F.Supp.2d. 1073 (D.Minn. 2008); *Seattle Audubon Society v. Sutherland*, No. 06-1608MJP, 2007 WL 1577756 at *2 (W.D.Wash. May 30, 2007); *Pacific Rivers Council v. Brown*, No. 02-243-BR, 2002 WL 32356431 at *11 (C.D.Ore. Dec. 23, 2002); *Loggerhead Turtle v. County Council of Volusia County, Florida*, 92 F.Supp.2d 1296 (M.D.Fla. 2000). Finally, the APA, 5 U.S.C. § 553(c), requires an adequate explanation of the basis for the rule. The enclosed report demonstrates the reasons why DOI has not complied with any of these legal obligations in its development of the concealed firearms rule.

As stated in our previous comments, CNPSR requests that DOI withdraw the proposed rule. If DOI intends to proceed with the proposed rule, the compliance actions discussed in the attached report must be completed before making a final decision. We respectfully request that DOI complete these steps prior to taking final action on the proposed rule. CNPSR appreciates your attention to this report.

Very truly yours,



William Wade
Coalition of National Park Service Retirees

cc: William Hogarth