

From: [Morris, Charisa](#)
To: [Katherine Garrity](#); [Sara Prigan](#); [Wilkinson, Susan](#); [Anissa Craghead](#)
Subject: Fwd: FWS Regulations Review Comment Disposition
Date: Thursday, March 8, 2018 2:35:01 PM
Attachments: [FWS March 1 2018 Regulations Review Report \(1\).docx](#)

FYI - this is how we do it

----- Forwarded message -----

From: **Morris, Charisa** <charisa_morris@fws.gov>
Date: Thu, Mar 8, 2018 at 3:30 PM
Subject: FWS Regulations Review Comment Disposition
To: "Foster, Maureen" <maureen_foster@ios.doi.gov>
Cc: Jim Kurth <jim_kurth@fws.gov>, Stephen Guertin <stephen_guertin@fws.gov>, Greg Sheehan <greg_j_sheehan@fws.gov>, Kashyap Patel <kashyap_patel@fws.gov>

The attached submission from the U.S. Fish and Wildlife Service (Service) contains a summary and initial disposition information concerning the 1 Service-related comment received from December 26 – January 25, 2018 in response to the Department of the Interior's (Department) June 21, 2017 Federal Register publication (82 FR 28429) seeking public comments on how the Department can improve implementation of regulatory reform initiatives and policies and identify regulations for repeal, replacement, or modification. An update from a comment dated January 2018 report is also included.

The comments received during this reporting period pertained to the following Service offices:

- 2 for Ecological Service,
- 1 for Fisheries and Aquatic Habitat Conservation.
- Dispositions provided by Gary Frazier's office for the ES comments.
- Disposition for FAHC deferred until next month.

If you need additional information or have any questions, please contact Ms. Marcia Cash, 703-358-2013, Division of Policy, Performance, and Management Programs.

Many thanks,
Charisa

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Charisa_Morris@fws.gov | Chief of Staff, Office of the Director | U.S. Fish & Wildlife Service | 1849 C Street NW, Room 3348 | Washington, DC 20240 | (202) 208-3843 | For urgent matters, please dial cell: 301-875-8937

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Charisa_Morris@fws.gov | Chief of Staff, Office of the Director | U.S. Fish & Wildlife Service | 1849 C Street NW, Room 3348 | Washington, DC 20240 | (202) 208-3843 | For urgent matters, please dial cell: 301-875-8937

March 1, 2018 Report to Task Force
Comments Received January 26, 2017 – February 25, 2018

- Arctic Slope Regional Corporation (ASRC)
ID: **DOI-2017-0003-0245**
RE: Recommendations from ASRC regarding the 2015 Arctic National Wildlife Refuge (ANWR) Comprehensive Conservation Plan (CCP) and the Endangered Species Act (ESA).
 - Review and revamp ANWR CCP because affective Alaska Natives were not adequately consulted.
 - FWS should focus on recovery efforts instead of listing.
 - FWS should focus on measurable steps to de-list species by working on recovery plans with local and State stakeholders.
 - Focus on managing the current list of endangered species instead of extrapolating impacts into the future.
 - Only truly at-risk species should be protected.
 - Stakeholders are usually left out of recovery efforts.
 - Maximum control should be local.
 - Critical habitat areas should be limited to necessary for species, not largest geographical area that may be used.
 - Refine appeal and petition process using sound science.
 - Require concerned stakeholders to demonstrate robust evidence to demonstrate how species may be imperiled.
 - Incidental Take Regulations (ITRs) should be performance based, minimize takes and be more balanced with economic activity.
 - Dates of IRTs should be flexible to accommodate changes in climate.
 - Remove restriction requiring separation of vessels of 15 miles in Beaufort Sea.
 - Work closely with the National Marine Fisheries Service.
 - Look for ways to integrate performance based metrics into regulations, balancing protection of marine mammals and wildlife with economic activity.
 - Always base requirements on science.
 - Supports decision to postpone enforcement of U.S. Russia Bilateral Polar Bear Treaty until 2020.
 - Reconsider whether Treaty rulemaking is justifiable.
 - Reconsider whether Treaty infringes on Alaska Native sovereignty and practices.
 - Previous quotas were based on questionable data.
 - Rulemaking and Treaty are unnecessary and should be reviewed.
 - FWS is infringing on community's self-determination, indigenous rights and economic freedom.
 - Scope of ESA has been applied too broadly.
 - Mitigation policies inconsistent with recent directives.
 - Mitigation policies negatively affect economic activity and job creation through punitive compensatory structures.

March 1, 2018 Report to Task Force
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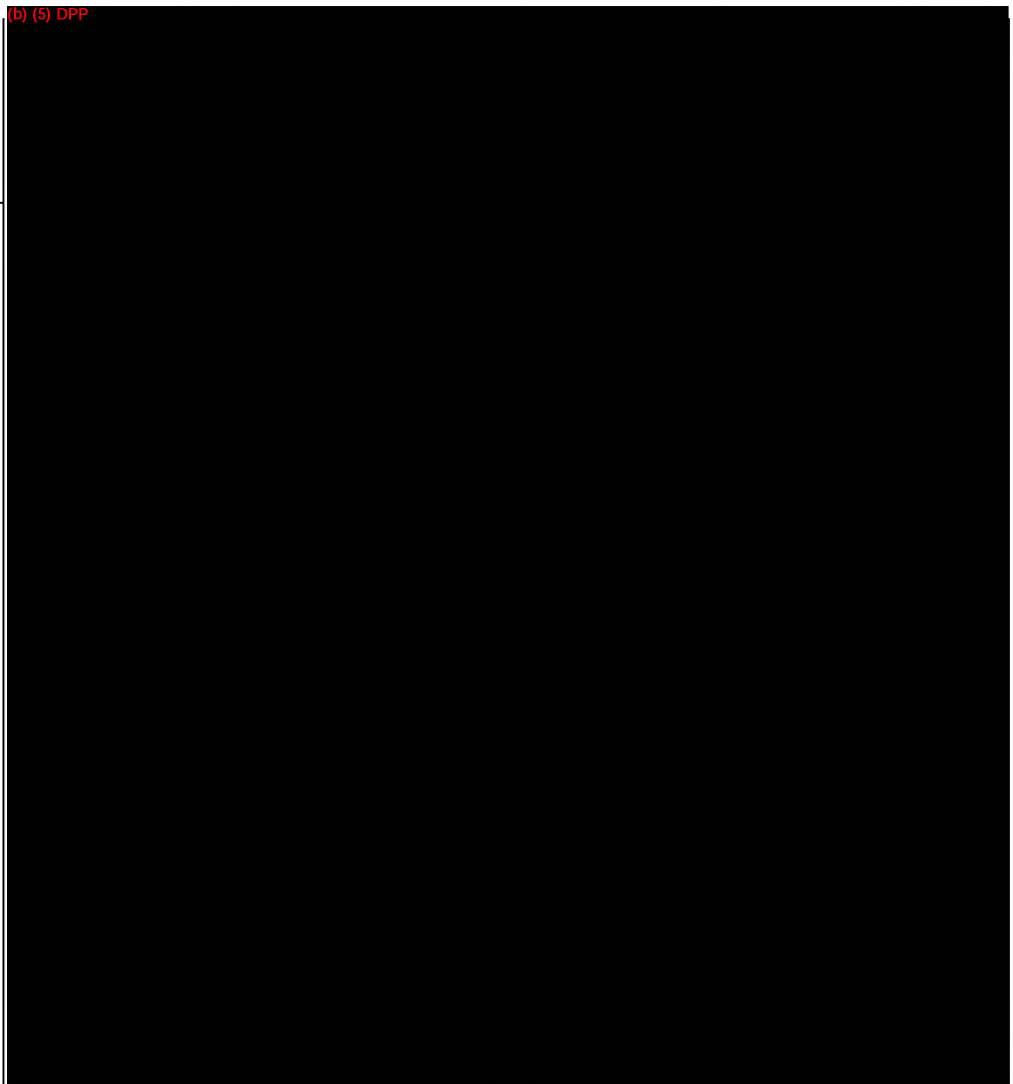
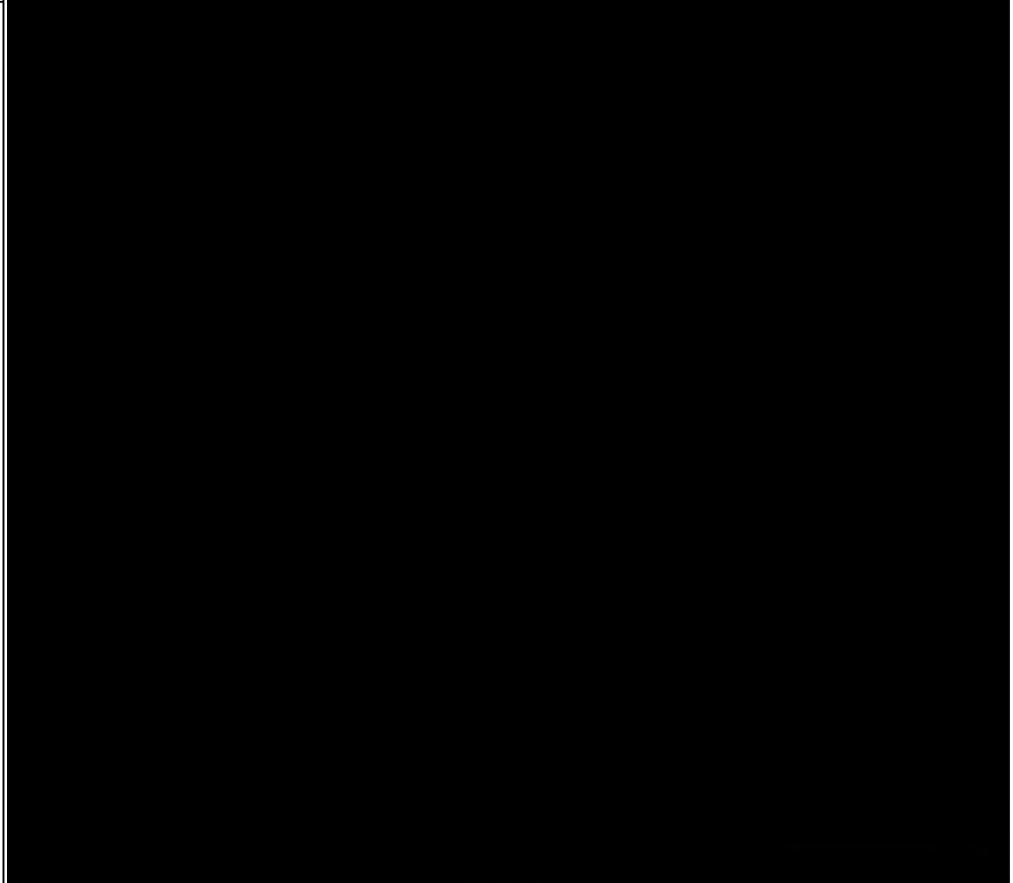
- Narrow application of IRT directly impacts resource development and ends exploration program that created jobs.
- **RECOMMENDED DISPOSITION:**

FWS should focus on recovery efforts instead of listing.	(b) (5) DPP
FWS should focus on measurable steps to de-list species by working on recovery plans with local and State stakeholders.	
Focus on managing the current list of endangered species instead of extrapolating impacts into the future.	
Only truly at-risk species should be protected.	
FWS should work with State agencies, local governments, and indigenous peoples on recovery efforts, listing decisions, conservation planning, and identifying critical resources.	
FWS should not be making designations which are inconsistent with the people who live and work in this region where these animals inhabit. FWS should encourage maximum local control on these efforts.	
Critical habitat areas should be limited to necessary for species, not largest geographical area that may be used.	
Refine appeal and petition process using sound science.	

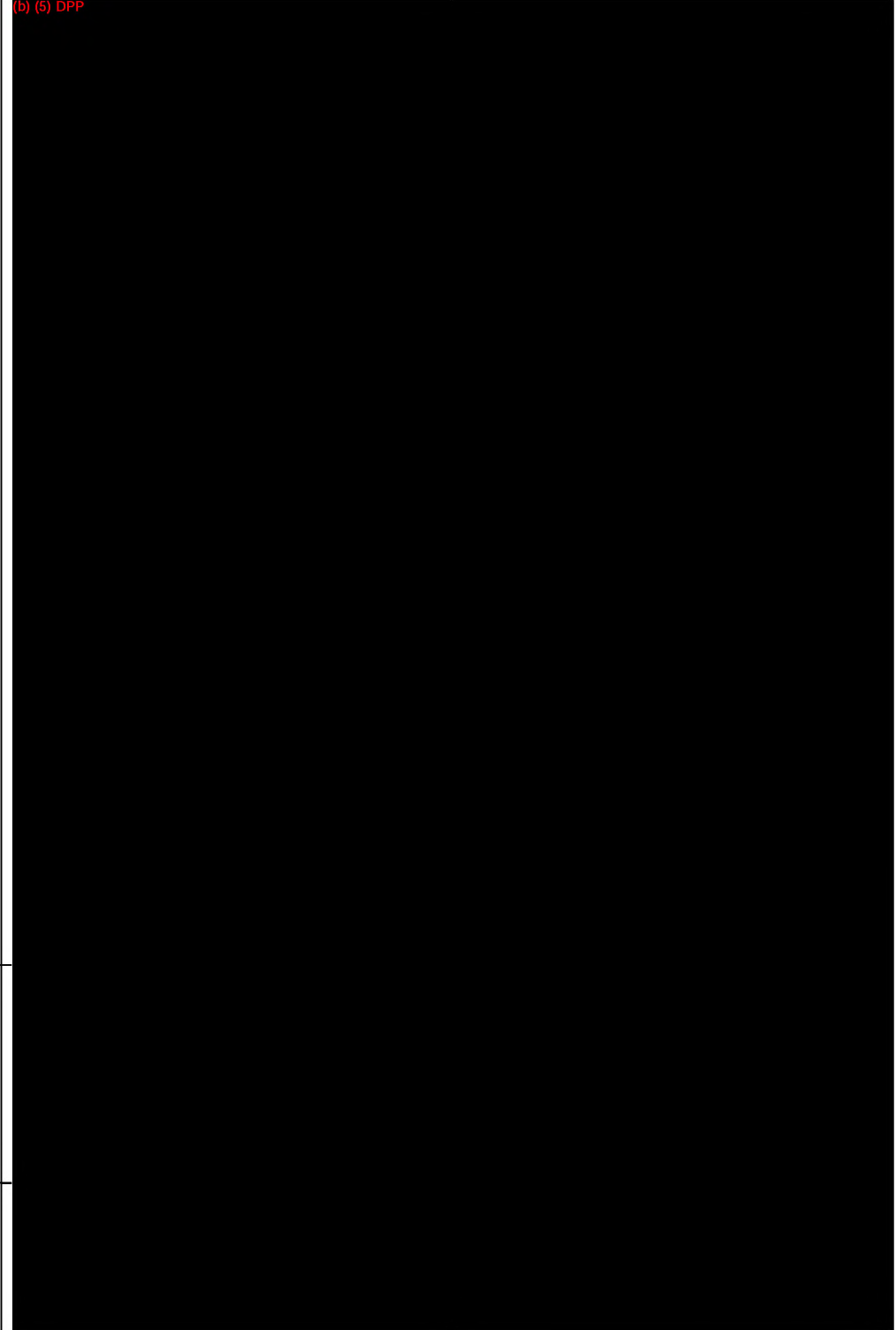
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<p>Require concerned stakeholders to demonstrate robust evidence to demonstrate how species may be imperiled.</p>	<p>(b) (5) DPP</p>
<p>ASRC recommends FWS review and revise their various mitigation policies consistent with the objectives of EO 13783: Promoting Energy Independence and Economic Growth and Secretarial Order 3349.</p>	<p>(b) (5) DPP</p>
<p>ASRC recommends FWS review and revise the following: Endangered and Threatened Wildlife and Plants; Endangered Species Act, Compensatory Mitigation Policy, December 27, 2016., U.S. FWS Mitigation Policy, November 21, 2016, Joint FWS and NMFS Habitat Conservation Planning Handbook, December 21, 2016; Department Manual Release, Landscape-Scale Mitigation Policy, October 23, 2015.</p>	<p>(b) (5) DPP</p>

March 1, 2018 Report to Task Force
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<p>Incidental Take Regulations (ITRs) should be performance based, minimize takes and be more balanced with economic activity.</p>	<p>(b) (5) DPP</p> 
<p>Dates of ITRs should be flexible to accommodate changes in climate.</p>	

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<p>Remove restriction requiring separation of vessels of 15 miles in Beaufort Sea.</p>	<p>(b) (5) DPP</p> 
<p>Work closely with the National Marine Fisheries Service.</p>	
<p>Look for ways to integrate performance based metrics into regulations, balancing protection of marine</p>	

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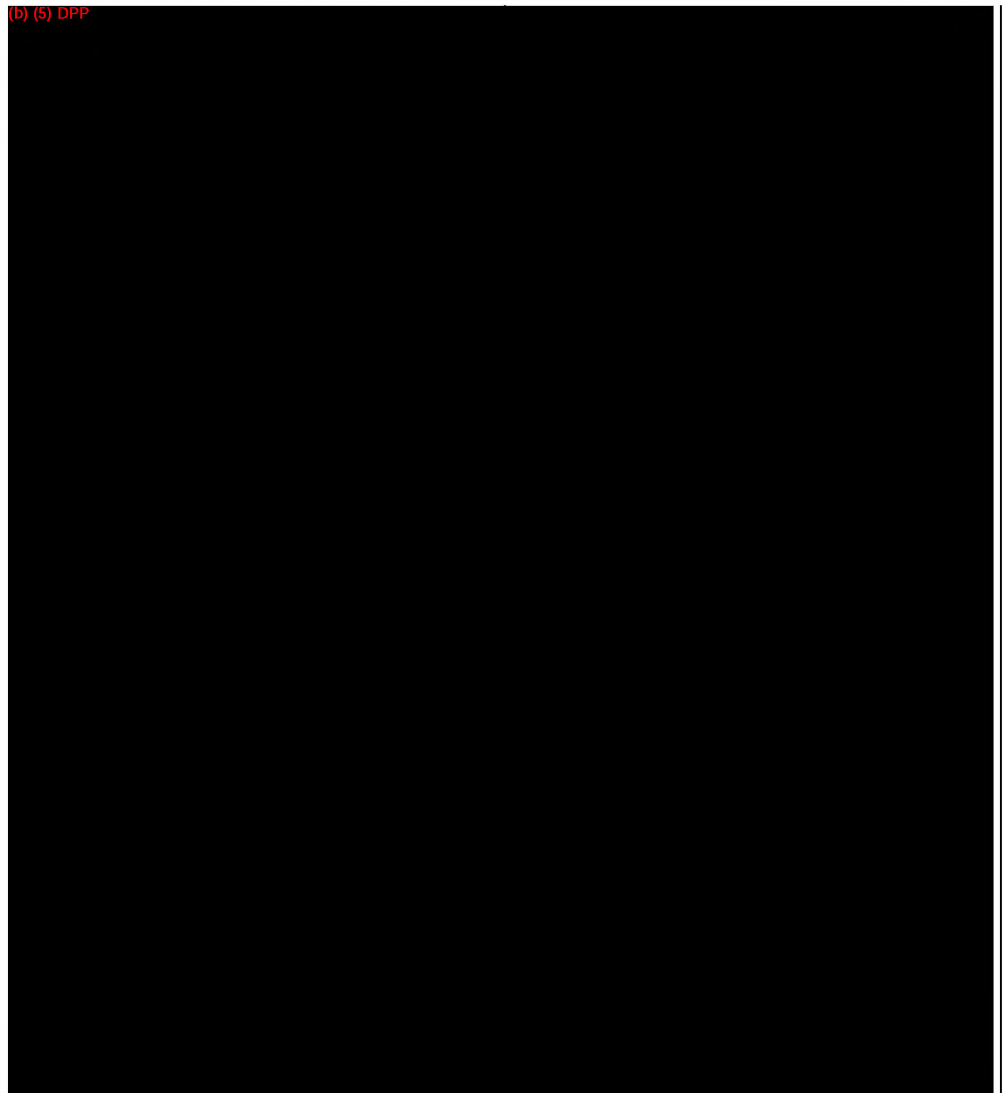
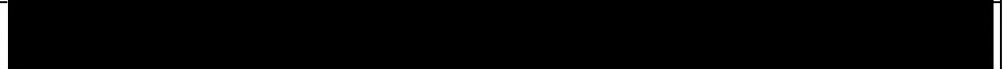
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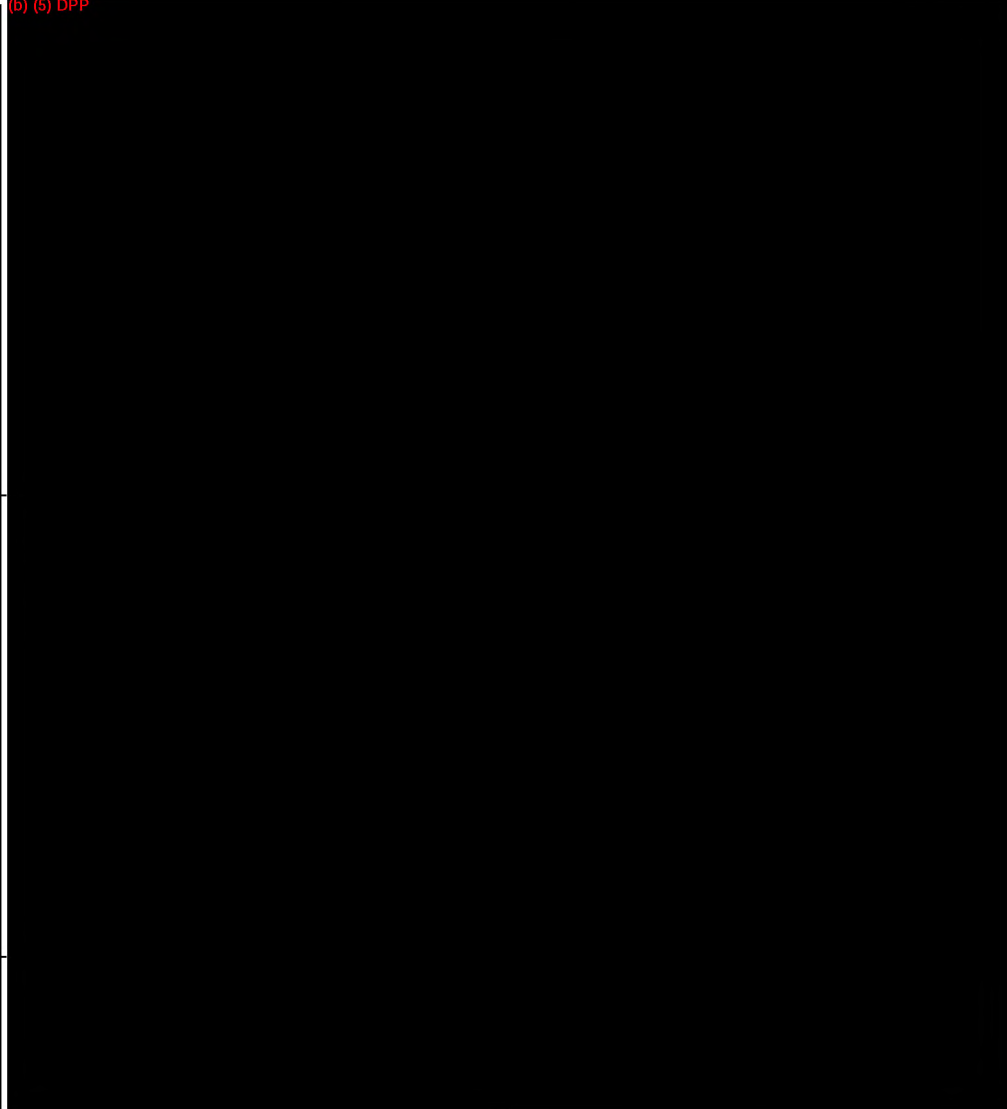
(b) (5) DPP



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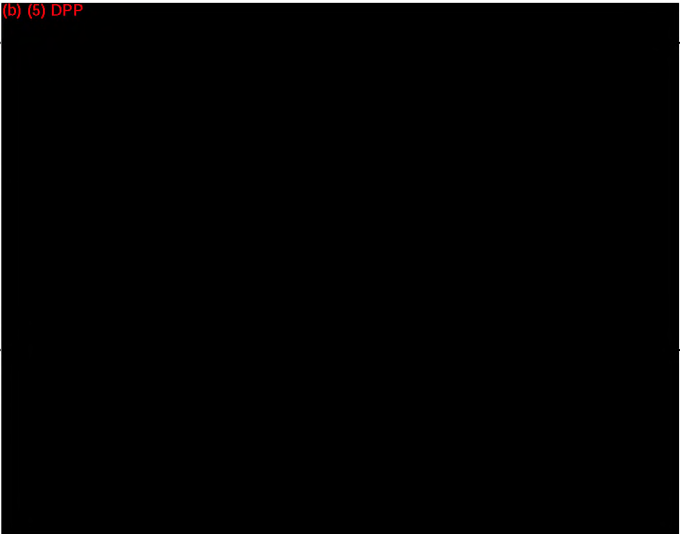
<p>FWS is infringing on community's self-determination, indigenous rights and economic freedom.</p>	<p>(b) (5) DPP</p> 
<p>Scope of ESA has been applied too broadly.</p>	

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<p>Mitigation policies inconsistent with recent directives.</p>	<p>(b) (5) DPP</p> 
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<p>Narrow application of ITR directly impacts resource development and ends exploration program that created jobs.</p>	

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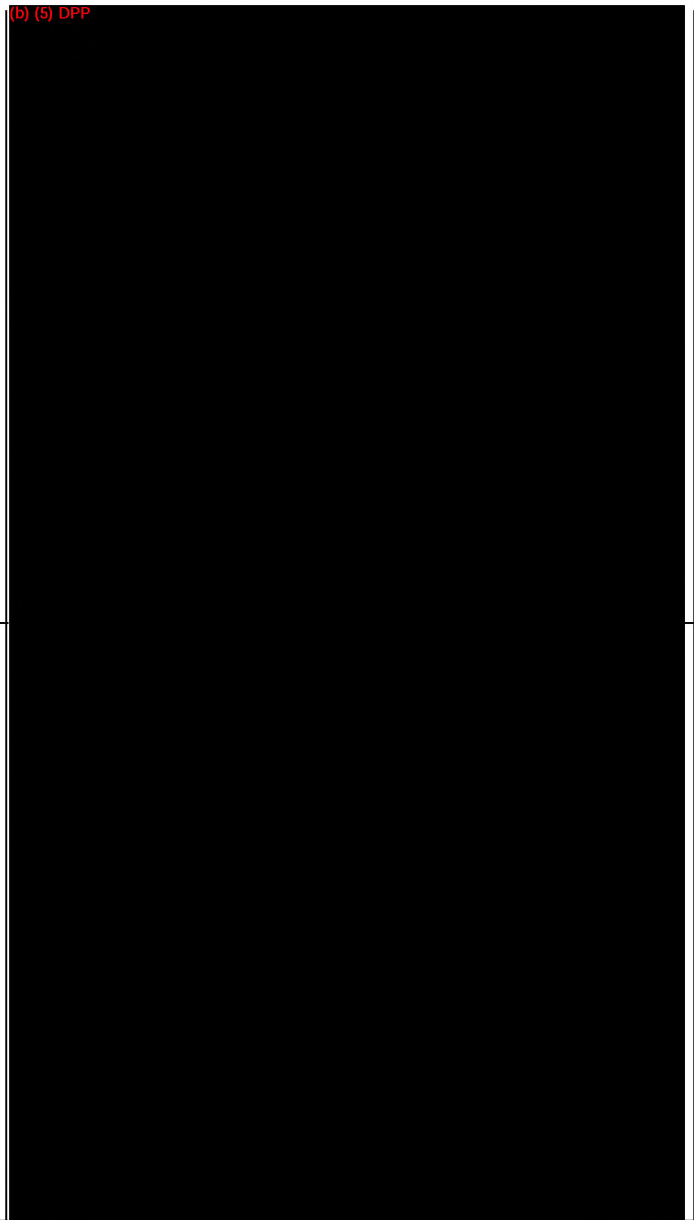
- Northwest Public Power Association (NWPPA)
ID: DOI-2017-0003-0246
RE: Challenges and recommendations from NWPPA.
 - Consultations and requirements often make licensing process take 10 years and cost millions of dollars.
 - Requirements imposed impact project economics by reducing clean energy production and limiting flexibility.
 - Delays in issuing licenses result from late, conflicting, or additional author
 - Interior should adhere to the requirements of the Energy Policy Act of 2005 (EPAct 2005) by applying alternative criteria.
 - Require any project requirement imposed by agency is within scope of the Secretary’s conditioning authority.
 - Require agency to complete written statement on “equal consideration” every time a 4(e) condition or section 18 prescription is imposed.
 - DISPOSITION:

<p>NWPPA Comment 1: Interior could fix problems associated with applicant alternative conditions and prescriptions by directing its agencies and bureaus to adhere to the requirements of FPA section 33 by applying the alternatives criteria and selecting either their original conditions submitted to the Federal Energy Regulatory Commission (FERC) or an alternative condition proffered by the applicant or other licensing participant, as required by the statute.</p>	<p>(b) (5) DPP</p> 
<p>NWPPA Comment 2: Interior could fix problems associated with applicant alternative conditions and prescriptions by requiring any requirement applicable to the project imposed by the agency pursuant to any federal authorization that is within the scope of the Secretary’s conditioning authority under 4(e) or section 18 of the Federal Power Act is imposed under these provisions. Utilizing section 4(e) and 18 authorities in this manner will ensure applicants and others have a fair opportunity to have their proposed alternatives fully considered, as envisioned by Congress.</p>	

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NWPPA Comment 3: “Equal Consideration” Statements for the Public Record. Unfortunately, Interior and other agencies have taken the position that the requirement for the Secretary to submit a written statement demonstrating “equal consideration” is required only in situations where an alternative condition or prescription is offered. This approach is contrary to the plain language of the statute, which requires the “equal consideration” statement whenever a condition or prescription is submitted by the agency. Because the agencies have not complied, this provision of EAct 2005 has not helped the agencies to evaluate and fully understand the various trade-offs associated with the imposition of their mandatory license conditions. Recommendation: Interior could fix this problem by directing its agencies and bureaus to complete the written statement on equal consideration every time a section 4(e) conditions or section 18 prescription is imposed.

NWPPA Comment 4: Interior should revise and reissue the final rulemaking revising trial-type hearings. This should be done in coordination with the Departments of Agriculture and Commerce, as EAct 2005 requires these rules to be jointly issued by all three Departments. A revised rulemaking could tackle some of these issues and make the trial-type hearing process more effective for resolving licensing disputes.



March 1, 2018 Report to Task Force
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- National Aquaculture Association (NAA)

ID: DOI-2017-0003-0248

RE: Discussion and comments about the authority provided by the Lacey Act to list native species as Injurious Wildlife or regulate pathogens by listing species as Injurious Wildlife. Request for a review.

- Lacey Act was intended to regulate illegal trade in wild animals.
- No mandate or judicial interpretation supporting regulation of fungi.
- U.S. Department of Agriculture on agency authorized to regulate foreign animal diseases.
- The Service exceeded authority and intent of Congress by interim rule regarding fungus infection for native animals, or carried by foreign animals entering the U.S.
- DISPOSITION: (b) (5) DPP