

March 12, 2024

Via Regulations.Gov (FWS-HQ-OC-2023-N088)

Douglas Hobbs
U.S. Fish & Wildlife Service
Designated Federal Officer
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: Hunting and Wildlife Conservation Council; Charter Re-Establishment

Dear Mr. Hobbs,

Friends of Animals (FoA)¹ submits these comments on the renewal of the charter of the Hunting and Wildlife Conservation Council (“the Council”), which would re-establish this advisory committee to “benefit recreational hunting,” “[p]romote opportunities for fair chase hunting,” and “recruit and retain hunters.”²

INTRODUCTION

FoA opposes this renewal because the Council is contrary to public policy and illegal. The Council, its membership, and its mission are out-of-date. The Council continues to represent a small number of Americans who kill animals for sport rather than the much greater number of people who wish to peacefully engage with wildlife. By only protecting the interests of the former group, this Council demonstrates the Department’s failure to recognize just how enormous the threats to wild animals are. Further, the Department has failed to legally justify the Council. No statutes or executive orders empower the Council’s creation. Altogether, the Council is an illegal and half-hearted sleight of hand to slightly broaden the appeal of a group that is dedicated to advancing the unrepresentative economic interests of a small number.

¹ FoA is an international animal rights organization incorporated in the state of New York since 1957 with roughly 200,000 members worldwide. FoA and its members seek to free animals from cruelty and exploitation around the world and to promote a respectful view of non-human animals, both free-living and domestic. FoA’s activities include educating its members on current threats to many species’ abilities to live in ecosystems free from human manipulation, exploitation, and abuse, and monitoring federal agency actions to ensure that laws enacted to protect the environment and wildlife are properly implemented.

² Hunting and Wildlife Conservation Council; Re-Establishment, 89 Fed. Reg. 14084 (Feb. 26, 2024), <https://www.federalregister.gov/documents/2024/02/26/2024-03828/hunting-and-wildlife-conservation-council-charter-re-establishment>.

ARGUMENT

A. The Council's re-establishment violates the Federal Advisory Committee Act.

This advisory committee, like all advisory committees, must satisfy the Federal Advisory Committee Act ("FACA"). To do so, the Council must have been established only after being "specifically authorized by statute or by the President"³ or being "determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law."⁴ Further, any legislation authorizing such a committee must "require the membership of the advisory committee to be fairly balanced."⁵ Yet the Council fails to meet any of these requirements.

The Council's charter ("the Charter") fails to accurately cite a single statute, executive order, or comparable form of authority to justify its creation. The Charter names three statutes and one executive order as its sources of authority.⁶ But it strains credulity to see any of those sources even implicitly authorizing the Council, let alone "specifically" authorizing it. Only one source, Executive Order 13443, even mentions an advisory committee at all. Specifically, the Order references the Sporting Conservation Council, which is an entirely separate entity that had been previously authorized. More dramatically, the three statutes do not mention councils, committees, FACA, or anything else that would indicate the intent to create an advisory committee of any sort. Without even a passing reference to advisory committees generally, the statutes certainly do not specifically authorize the Council. Thus, because there is no statutory or presidential authority, there must be a formal determination by the Secretary that the Council is in the public interest.

But the formal record includes neither a justification for the Council nor an explanation of how it would serve the public interest. In the notice for its re-establishment, Secretary Haaland certifies that the Council is "necessary, in the public interest, and in connection" with the Department's statutory duties.⁷ But a certification does not create the requisite formal record. The notice, which is under two pages long, merely lays out the Council's duties without any justification for those responsibilities or explanation of why the Council is positioned to accomplish its goals. Secretary Haaland's certification is thus entirely unsupported in the provided notice. In other words, this notice may provide a declaration, but it does not provide a determination, as is required by FACA. Without a meaningful

³ 5 U.S.C. § 1008(a)(1).

⁴ 5 U.S.C. § 1008(a)(2).

⁵ 5 U.S.C. § 1004(b)(2).

⁶ U.S. Fish & Wildlife Serv., *Hunting and Wildlife Conservation Council Charter* (Feb. 11, 2022), <https://www.fws.gov/sites/default/files/documents/2022%20HWCC%20Joint%20Signed%20and%20Filed%20charter%202.11.22.pdf> (citing 16 U.S.C. § 742(a); 43 U.S.C. § 1701; 16 U.S.C. § 668dd; and Exec. Order No. 13443, 72 Fed. Reg. 46537 (Aug. 20, 2007)).

⁷ 89 Fed. Reg. 14084.

explanation, the public cannot provide a meaningful response. This approach violates both the Administrative Procedure Act and the Federal Advisory Committees Act.

Third, the discretionary membership listed in the Council's charter is illegally unbalanced. It bears repeating that, as shown above, there is no authority creating the Council. But even if that authority existed, FACA would require that it provide for an ideologically balanced committee. Yet, the Council does not fulfill that requirement either. Three of the Charter's recommended appointments to the Council are just organizations representing people who kill different kinds of animals for sport.⁸ Perhaps including three types of explicitly and intrinsically pro-hunting groups would be legal if the rest of the categories balanced them out like FACA requires. But they do not. The Charter suggests multiple other categories to be filled with allied organizations of pro-hunting groups.⁹ For example, organizations that represent specific non-hunting niches, like archery, are directly involved in pro-hunting advocacy.¹⁰ Of the Charter's few suggested categories that remain, those roles are still often filled by hunting and fishing advocates.¹¹

Despite the Council's stated goals of improving wildlife conservation and habitat quality, it is in a poor position to do so because none of the Charter's recommended roles require a specialty in those issues. Notably missing from the Charter's suggestions, for example, are conservation biologists, ecologists, or members of any related academic fields. Additionally, despite the Council's many positions dedicated to those who kill animals, there is not a single spot for those advocating for animal rights or animal welfare. The only way for an organization that is actually dedicated to wildlife protection and conservation to get on the Council is through a catch-all category. And despite being theoretically possible, no such group was included on the Council in practice.¹² The statutory requirement of "fair balance" is not about balancing the interests of people who kill animals with bows against people who kill animals with guns.

⁸ Hunting and Wildlife Conservation Council Charter, 12(b) (listing "Upland bird hunting organizations," "Waterfowl hunting organizations," and "Big game hunting organizations").

⁹ *Id.* (listing "Shooting sports interests," "Archery interests," "Tourism, outfitter, and/or guide businesses related to hunting and/or wildlife conservation," "Agricultural interests," and "Ranching interests").

¹⁰ The Archery Trade Association, which represents "archery interests" also owns and operates Bowhunters United and its Council representative is a decades-long hunter. See Archery Trade Ass'n, *Owned and Operated by the ATA*, <https://archerytrade.org> (last visited Mar. 11, 2024) and Archery Trade Ass'n, *Dan Forster*, <https://archerytrade.org/staff/dan-forster/> (last visited Mar. 11, 2024).

¹¹ For example, the Theodore Roosevelt Conservation Partnership represents "wildlife and habitat conservation/management organizations." This position is one of the few recommended by the charter that is not directly connected to killing animals for food or for sport. Despite all the hunting and fishing advocates already on the Council, this position still went to the Theodore Roosevelt Conservation Partnership, with the stated mission "to guarantee all Americans quality places to hunt and fish." Theodore Roosevelt Conservation P'ship, *Mission*, <https://www.trcp.org/mission/> (last visited Mar. 11, 2024).

¹² U.S. Fish & Wildlife Serv., *Hunting and Wildlife Conservation Council Members*, <https://www.fws.gov/program/hwcc/hunting-and-wildlife-conservation-council-members> (last visited Mar. 11, 2024).

Accordingly, the Council's existence itself is illegal for multiple reasons. Even if it were justified by the statutes and executive orders the charter cites, the Council's current makeup violates FACA.

B. The Council should not exist because it further entrenches an outdated and unrepresentative approach to conservation.

At best, the Council represents an outdated and violent approach to conservation. Realistically, it is just another way for shrinking minority of consumptive wildlife users to further entrench their views against the values and desires of everyone else. Fundamentally, there is no reason for the Council to exist in 2024.

While significant methodological changes to the 2022 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation prevent comparing its numbers directly to others in the past, it makes one thing abundantly clear: the vast majority of Americans prefer watching wild animals over killing them.¹³ Less than 12% of Americans fish and less than 4.5% of Americans hunt, but over 44% of Americans watch wildlife.¹⁴ Those who do kill animals recreationally are disproportionately older and richer compared to the median age and income, while being overwhelmingly male and white.¹⁵

The structure of the Council doubles down on representing this small minority of Americans who already wield disproportionate power in the United States. Assuming (unrealistically) that there is absolutely no overlap between the groups, hunters and anglers combined represent only about 16% of Americans. So, the Council already represents a small slice of Americans whose interest in killing wildlife runs directly contrary to the of 44% of Americans who want to engage in non-consumptive uses. After all, killing and trapping animals makes it impossible for others to engage with those animals in other ways. Not only is 16% a small number of people relative to the rest of country, but this particular group does not reflect the diversity of race, sex, age, and income of the country as a whole. By structuring the Council to be comprised of almost exclusively people who kill for sport, it only entrenches a loud minority's views at the cost of everyone else's. A committee dedicated to killing as a form of conservation is out of step with, at a minimum, 84% of the country.

Instead, the Department should stop relying on this consumptive model of conservation and should instead better reflect reality and attitudes in the 21st century. The only reason that the North American Model ever worked in the 20th century is because the greatest threat to wildlife was the hunters themselves.¹⁶ Despite the modern arguments that killing

¹³ U.S. Fish & Wildlife Serv., *2022 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation* (Sept. 2023) at 46-47, https://www.fws.gov/sites/default/files/documents/Final_2022-National-Survey_101223-accessible-single-page.pdf.

¹⁴ *Id.* at 47.

¹⁵ *Id.* at 48.

¹⁶ Wide Open Spaces, *Overhunting's History: What We Can Learn From Perhaps the Worst Era of Hunting Ever* (Feb. 14, 2022), <https://www.wideopenspaces.com/overhunting/>.

is conservation, it quickly became obvious in the 20th century that wild animals needed protection from their killers. Hunters brought species like the passenger pigeon to extinction and nearly did the same for other iconic species like the American bison. And so, extracting money from hunters and anglers and putting it towards protection of the same animals who were being killed was at least some gruesome version of “sustainability.” But today, this approach is absurd. There are not enough hunters left in the country to fund conservation at the necessary levels.¹⁷ Further, the current top threats to wildlife include climate change, habitat destruction, and invasive species.¹⁸ Pretending that relying on people killing animals for pleasure will somehow fix problems of this magnitude is fantastical. Any serious effort to protect wild animals and their habitat would move beyond the niche interests of such a small fraction of the country.

A council that was actually dedicated to protecting wildlife would not promote the mass slaughter of wild animals, who are already pressured by the ongoing Anthropocene extinction. Instead, such a council would broaden its scope to recognize the sheer magnitude of threats facing wildlife and the breadth of people who care passionately about conservation. But the Council opts to fill itself with special interests looking to prop up their shrinking economic base rather than employing subject matter experts and others who oppose killing.

C. The Council is a transparent effort to sound better than past councils without substantively improving them.

The Hunting and Wildlife Conservation Council just rebrands the Hunting and Shooting Sports Conservation Council (“HSSCC”) to sound slightly more palatable without changing any of the substance that makes it objectionable in the first place. All interested organizations seem aware of that fact. In 2022, when the Council was first established in its current form, the National Rifle Association and its allies embraced it as the HSSCC by another name.¹⁹ On this issue, at least, FoA agrees with those other groups. Even the Department seems to acknowledge this fact. In the initial Federal Register notice, the Department says that the Council merely “replaces and changes the name” of the HSSCC.²⁰ It did not exaggerate just how little was done.

The Council and the HSSCC have essentially the same stated objectives and share many of the same individual and organizational members. Both committees had minimal

¹⁷ Nat’l Pub. Radio, *Decline In Hunters Threatens How U.S. Pays For Conservation* (Mar. 20, 2018), <https://www.npr.org/2018/03/20/593001800/decline-in-hunters-threatens-how-u-s-pays-for-conservation>.

¹⁸ Scientific American, *Climate Change Is Becoming a Top Threat to Biodiversity* (Mar. 28, 2018), <https://www.scientificamerican.com/article/climate-change-is-becoming-a-top-threat-to-biodiversity/>.

¹⁹ Archery Trade Ass’n, et al, *RE: Federal Register Docket No. 2022-0398 Hunting and Wildlife Conservation Council Charter Renewal* (Mar. 7, 2022), <https://www.fws.gov/sites/default/files/documents/Comments-on-HWCC-charter-from-conservation-NGOs.pdf>.

²⁰ Hunting and Wildlife Conservation Council Charter Renewal; Request for Nominations, 87 Fed. Reg. 9374 (Feb. 18, 2022), <https://www.fws.gov/sites/default/files/documents/FR-notice-renew-nom02-18-2022.pdf>.

responsibilities regarding conservation. Instead, the Council inherited the HSSCC's primary responsibility: protect and expand the interests of people who recreationally kill animals. The Council is supposed to expand access for hunters, recruit more hunters, and develop public land for use by hunters. Then, to execute its mission, the Council is populated by many of the same people and organizations that were doing the same thing during the Trump Administration. Eight organizations, seven of which are represented by the same people, were already on the HSSCC.²¹ Now, they are on the Council.

In addition to changing its name, the Charter's recommended appointees obfuscate the membership and rationale of the Council. As mentioned elsewhere, the Charter recommends that the Council include groups with a particular interest in "wildlife & habitat conservation/management."²² It is immediately apparent that some groups representing such a generic interest are pro-hunting. The Backcountry Hunters and Anglers, for example, fall into that category. But others are even more hidden. For example, the Congressional Sportsmen's Foundation and the National Wildlife Federation represent that same broad interest of "wildlife & habitat conservation/management."²³ But obscuring the reason those groups were selected under bland catch-all terms does not change the substance of what those organizations do. The Congressional Sportsmen's Association's board is "dedicated to protecting and enhancing the rights of hunters, anglers, recreational shooters, and trappers"²⁴ and the National Wildlife Federation is "one of America's oldest and most respected hunting and angling" groups.²⁵ Softening the language does not impact the Council or what it does. At least the HSSCC was upfront in whose interests it protected.

At every level, the Council is a self-apparent attempt to sweep the flaws of the HSSCC under the rug without doing anything about them. Adding terms like "fair chase" to the Council's mission and removing the National Rifle Association from its membership does not address its fundamental flaw: the Charter crystallizes the narrow interests of hunters in this country's conservation policy.

²¹ Jeffrey Crane and the Congressional Sportsmen's Foundation, John Devney and Delta Waterfowl, Daniel Forster and the Archery Trade Association, Blake Henning and the Rocky Mountain Elk Foundation, Collin O'Mara and the National Wildlife Federation, Keith Tidball and Cornell University, Wayne Hubbard and Urban American Outdoors, and the Mule Deer Foundation. *See supra* note 12 and <https://www.fws.gov/program/hwcc/hunting-and-wildlife-conservation-council-members> and SBG MEDIA, *Secretary Zinke Announces Members Of The Hunting And Shooting Sports Conservation Council*, (May 30, 2018), <https://sgbonline.com/secretary-zinke-announces-members-of-the-hunting-and-shooting-sports-conservation-council/>.

²² *Supra* note 6 at 3.

²³ *Supra* note 12.

²⁴ Congressional Sportsmen's Ass'n, *Who We Are*, <https://congressionalsportsmen.org/who-we-are/> (last visited Mar. 11, 2024).

²⁵ Nat'l Wildlife Fed'n, *Advocating for Wildlife and Outdoor Traditions*, <https://www.nwf.org/Sportsmen.aspx> (last visited Mar. 11, 2024).

CONCLUSION

The Council is an illegal and outdated approach to conservation. It has no legislative or executive authority to justify its existence. In practice, it is so ideologically one sided as to be illegal. Rather than more closely associating with groups that represent a dwindling number of people who kill animals for sport, the Department should be looking for ways to broaden its base. Unless the Department radically adjusts its approach to wildlife conservation, it will fail to adapt to a 21st-century model and all Americans will be worse for it.

Thank you for the opportunity to comment on this important issue.

Sincerely,

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