

Comments on
The National Park Service's Proposed Rule:
"Alaska; Hunting and Trapping in National Preserves"

88 Fed.Reg. 1176 (Jan. 9, 2023)
NPS-AKRO-33913; RIN 1024-AE70

Comments respectfully submitted by:

**Alaska Professional Hunters Association,
Sportsmen's Alliance Foundation
Alaska Outdoor Council**

March 27, 2023

Through their attorneys,
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March 27, 2023

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Re: APHA / SAF / AOC Comments on NPS's Proposed Rule, "Alaska; Hunting and Trapping in National Preserves," 88 Fed.Reg. 1176, RIN 1024-AE70

Dear Regional Director Creachbaum:

The Alaska Professional Hunters Association, Sportsmen's Alliance Foundation, and Alaska Outdoor Council respectfully submit these comments on the Proposed Rule issued by the National Park Service (NPS) on January 9, 2023 and the related January, 2023 draft Environmental Assessment.¹ NPS's Proposed Rule would repeal NPS's June, 2020 rule that had restored State management over methods and means of hunting on Alaska National Preserves, and would again federally prohibit from occurring on Alaska National Preserves various hunting methods and means authorized by the State of Alaska.²

I. Introduction

The Alaska Professional Hunters Association (APHA) is Alaska's association of hunting guides, many of whom live and work in rural Alaska, and are Federally-Qualified Subsistence Hunters when hunting for food for their families as opposed to leading clients in hunts.³ Alaska Outdoor Council (AOC) is a statewide association of outdoor enthusiasts including hunters and anglers. Sportsmen's Alliance Foundation (SAF) is a national association of sportsmen with a membership that consists of both individual hunters, anglers, and trappers and various state, local, and regional hunting and fishing associations which are organizational members of SAF.

¹ The Proposed Rule is 88 Fed.Reg. 1176 (Jan 9., 2023). NPS extended the comment due date through March 27, 2023. 88 Fed.Reg. 14963 (March 10, 2023).

² The 2020 Rule is 85 Fed.Reg. 35181 (June 9, 2020), codified at 36 CFR 13.42.

³ APHA members reside in both federally-defined rural communities and NPS "resident zone" communities.

APHA and SAF have participated over many years in the cycle of rulemakings and litigation leading to this rulemaking, while AOC has participated in the cycle of rulemakings. All three organizations have considerable experience with these issues. APHA and SAF are defendant-intervenors in support of NPS in related litigation, *Alaska Wildlife Alliance v. Haaland*.⁴ In that case, Plaintiffs Alaska Wildlife Alliance sued Defendant NPS for judicial review of NPS's 2020 Rule. As noted above, in the 2020 Rule, NPS restored State management of hunting on Alaska National Preserves by rescinding Federal bans on State-approved hunting methods that NPS has imposed in its earlier 2015 Rule. Earlier, APHA and SAF in 2017 filed a petition for rulemaking urging NPS to repeal the 2015 preemptive rule.

The efforts of APHA, SAF and its allied litigation partners the State of Alaska and SCI to defend NPS's 2020 Rule in litigation has been mostly successful (NPS did not submit a brief in defense of its own rule). The Alaska District Court entered a judgment in September, 2022 that affirmed many aspects of the 2020 Rule, declined to vacate the 2020 Rule, and remanded the 2020 Rule to NPS for reconsideration on three discrete issues.⁵ As discussed below, none of the issues on which the District Court directed reconsideration are barriers to NPS reaffirming the 2020 Rule in this proceeding. The court's judgment is currently on appeal and the appeals are stayed for approximately 9 months during this rulemaking.

Recognizing that the present Administration takes a different view than the Administration which adopted the 2020 Rule, APHA, SAF, and AOC respectfully request that that NPS review these comments carefully and evaluate if there is a result available that would end the cycling of rules in which each incoming Administration adopts a new rule to fully repeal what was adopted by the previous Administration. This cycling back and forth is not only wasteful and inefficient, it provides no certainty for the public and interested parties going forward. It can and should come to an end. We are confident that it is in everyone's interest that NPS considers, respects, and acts to protect the legitimate interests and values of all citizens, particularly Alaskans, and not just the views of those on one side of the debate at any given point in time.

I. Discussion

A. NPS has not Complied With Federal-State Consultation Requirements.

The comments of the Association of Fish & Wildlife Agencies (AFWA) on the Proposed Rule are devoted to the issue of whether NPS has complied with its duty to consult with the State of Alaska in this rulemaking.⁶ AFWA reports its understanding that "efforts to initiate the consultation process with [the Alaska Department of Fish & Game] did not occur until days before the Proposed Rule was published."⁷ The State of Alaska reports in its comments that pre-consultation meetings between the State and NPS did not occur until February 23 and March 6,

⁴ U.S. District Court for the District of Alaska Case No. 3:20-cv-00209-SLG and Ninth Circuit Court of Appeals Case No. 22-36001, et al. (*Alaska Wildlife Alliance v. Haaland*).

⁵ *Alaska Wildlife Alliance v. Haaland*, 2022 WL 17422412 (D. Alaska Sept. 30, 2022).

⁶ See AFWA Comments and Feb. 23, 2023 cover letter from AFWA President Curt Melcher to NPS Alaska Regional Director Sarah Creachbaum.

⁷ AFWA Comments, p. 1.

2023, well after NPS had decided upon and announced its proposed and preferred course of action in the Proposed Rule published on January 9, 2023. Based on this information, NPS did not adequately consult with the State.

NPS's legal duty to consult with the State is clear. Section 1313 of the Alaska National Interest Lands Conservation Act (ANILCA) provides: "Except in emergencies, any regulations prescribing such restrictions relating to hunting, fishing, or trapping shall be put into effect only after consultation with the appropriate State agency having responsibility over hunting, fishing, and trapping activities"⁸ The Department of Interior (DOI) rules that direct that State hunting laws presumptively govern hunting on DOI units including NPS units also require consultation with the affected State before NPS restricts State-authorized hunting activities. 43 CFR 24.4(f) and (h)(4).

Notably, although NPS in the 2023 Proposed Rule discusses NPS's reported efforts to consult with Alaska Tribes and Alaska Native Corporations, it does not assert that NPS engaged in similar consultation with the State of Alaska.⁹ Citing the lack of consultation, the State in its February 6, 2023 letter to you requested that NPS withdraw the Proposed Rule, or failing that, at least extend the comment date by two months to allow a belated consultation period. The State's letter notes that a meeting between NPS and the State would not occur until March 6, 2023, just four days before the original comment deadline of March 10, 2023. NPS did not act on the extension request until about March 8, 2023, when it gave word that it would extend the comment period by just 17 days, through March 27, 2023. To the extent belated consultation after issuance of a proposed rule has any value, there was little time for it.

More fundamentally, it was unreasonable under the circumstances and contrary to law for NPS to wait to consult with the State until after NPS had completed development of the Proposed Rule. Consulting during development of a proposed rule allows input into the proposed rule's content, before it is published in the Federal Register, at which point it takes on the status of the federal agency's planned and preferred course of action. For this reason, Executive Order 13132 requires that consultation with States regarding regulations such as the 2023 Proposed Rule that preempt the application of State law occur "**early in the process of developing the regulation.**" EO 13132 § 6(c)(1) (emphasis added), 64 Fed.Reg. 43255 (Aug. 4, 1999). Preemption is involved, so this provision of EO 13123 certainly applies. The State has adopted regulations allowing particular methods of hunting that the Proposed Rule proposes to Federally ban, which is preemption.¹⁰ The court reviewing the 2020 Rule analyzed these issues as "preemption" issues

⁸ ANILCA is Public Law No. 96-487 (Dec. 1980). We cite to the sections of the public law rather than the sections as codified in the U.S. Code. NPS's website posts the public law version with cross-references to U.S. Code: <https://www.nps.gov/locations/alaska/upload/ANILCA-Electronic-Version.PDF>

⁹ 2023 Proposed Rule, 88 Fed.Reg. at 1182.

¹⁰ Whether NPS must also prepare a federalism impact study under a separate part of EO 13132 is a different issue. The obligation in EO 13123 § 6(c)(1) to consult with the State "early in the process of developing the regulation" applies regardless of whether § 6(b) of the EO requires a federalism impact study. See Proposed Rule, 88 Fed.Reg. at 1181-82 (concluding federalism impact study is not required, without addressing the consultation requirement). The EO's consultation requirement is directed at rulemakings that preempts State law, here State hunting rules that are applicable on National Preserves

and applied preemption case law to evaluate the Plaintiffs' claims that NPS erred in its 2020 Rule by declining to preempt hunting methods authorized by State law.¹¹

Separately from EO 13123, the Ninth Circuit Court of Appeals has overturned an agency decision when statutorily-mandated consultation took place too late in the process, even though the agency remained open to be persuaded to change its decision. "Consultation requires an exchange of information and opinions **before** the agency makes a decision. This requirement is distinct from the opportunity to offer comments on the agency's decision." *Cal. Wild. Coal. v. U.S. Dept. of Energy*, 631 F.3d 1072, 1092 (9th Cir. 2011) (emphasis added). The court quoted the New Oxford Dictionary, which defines consultation as "to have discussions or confer with (someone), typically **before** undertaking a course of action." *Id.*, 631 F.3d at 1087 (emphasis by court).¹²

NPS completed the development of the Proposed Rule long before it engaged in any semblance of consultation with the State. NPS began the rulemaking on February 17, 2022, when the Assistant Secretary for Fish, Wildlife and Parks issued a memorandum to the Director of NPS "directing that NPS initiate a rulemaking process to reconsider the 2020 Rule." The Assistant Secretary's memorandum admonished NPS to be sure to "consult with Alaska Native Tribes and Alaska Native Corporations," as part of "decision-making regarding this rulemaking." By contrast, the memorandum said nothing about consulting with the State of Alaska. NPS soon completed the process of drafting the Proposed Rule. NPS submitted a draft of the Proposed Rule to the Office of Management and Budget (OMB) on June 1, 2022.¹³ NPS completed its Cost Benefit Analysis for the Proposed Rule in July, 2022.¹⁴ Thus the State of Alaska had no opportunity for input into the content of that Cost Benefit Analysis or the Proposed Rule. Per AFWA, NPS did not even initiate consultation with the State until January, 2023, days before NPS published a Proposed Rule that NPS had drafted six months earlier. The State was also not consulted before NPS published its draft Environmental Assessment which NPS released with the Proposed Rule on January 9, 2023.

pursuant to ANILCA § 1313 in the absence of superseding preemptive Federal rules. The EO's impact study requirement is directed instead at rulemakings that impose monetary costs on States

¹¹ *Alaska Wildlife Alliance*, 2022 WL 17422412, * 14; see also, 43 CFR 24.1(a) (discussed below).

¹² We understand that NPS is taking the position that ANILCA § 1313 authorizes NPS to defer "consultation" with the State until late in the rulemaking process, because that provision only requires that "consultation" occur before preemptive restrictions on taking wildlife are "put into effect" If NPS is indeed reading § 1313 that way, it is misreading the statute by reading the word "consultation" out of the statute. As discussed in the dictionary definition of consultation reviewed by the Ninth Circuit in *Cal. Wild. Coal.*, 631 F.3d at 1092, and other standard dictionary definitions, consultation is discussion leading up to and playing a part in reaching a decision on a course of action. Accordingly, discussion only after a preferred and planned course of action is decided is not consultation. Moreover, the "put into effect" language in § 1313 does not override the ordinary meaning of "consultation" because "put into effect" introduces no conflict with the ordinary meaning of "consultation." Discussion early enough in the rulemaking to qualify as "consultation" is necessarily also discussion before a final rule is "put into effect."

¹³ Declaration of Grant Hilderbrand, Association Regional Director, NPS, dated June 15, 2022 and filed that day by NPS in *Alaska Wildlife Alliance v. Haaland*, U.S.D.C. Alaska Case No. 3:20-cv-00209-SLG.

¹⁴ This is the date of the Cost Benefit Analysis posted by NPS to the rulemaking docket.

NPS has not complied with the applicable consultation requirements. NPS should pause the rulemaking docket, withdraw its Proposed Rule, consult with the State, and, depending on the outcome of that consultation, decide whether to issue a new proposed rule. The State must have a meaningful chance to have input on the content of any replacement proposed rule, including the opportunity to provide NPS with data useful in developing the content of that replacement proposed rule.

Finally, although NPS has emphasized from the very beginning of the rulemaking process its desire to consult with Alaska Natives and Alaska Native Corporations, that does not mean that such consultations were effective or complete. Testimony by a representative of AHTNA before the Alaska State Legislature on Monday, March 20, 2023 regarding Senate Joint Resolution 32023 (not yet transcribed) suggests NPS's efforts to consult with Alaska Natives and ANCs was incomplete and ineffective. We have heard various other reports along these lines and the matter may well be addressed in the comments of other stakeholders.

B. ANILCA § 1313 uses the phrase “for sports purposes” to distinguish subsistence hunting from non-subsistence hunting, not to limit methods of hunting.

ANILCA § 1313 provides that, in Alaska National Preserves, “the taking of fish and wildlife **for sport purposes** and subsistence uses, and trapping shall be allowed” subject to regulation. (Emphasis added). NPS in the Proposed Rule reopens public comment on what “for sport purposes” means, even though NPS resolved that issue just three years ago.

NPS asks whether § 1313 uses the term “sport” in “for sport purposes” as a subtle way of excluding from National Preserves any method of non-subsistence hunting that NPS finds is not “fair chase.”¹⁵ However, after thoroughly considering this issue, NPS in its 2020 Rule concluded that “for sport purposes” instead refers to hunting that is not subsistence hunting.¹⁶ NPS reasoned that ANILCA treats subsistence and non-subsistence hunting differently and that sport hunting was a means of referring to non-subsistence hunting.¹⁷ NPS therefore in its 2020 Rule rejected the argument that “for sport purposes” was intended to establish a federal fair chase limitation.¹⁸

NPS's ruling in 2020 left the Alaska Department of Fish & Game (ADFG) and its Board of Game fully empowered to apply appropriate fair chase limitations, including for hunts on Alaska National Preserves, which ADFG and the Board do in their rules.¹⁹ Fair chase principles apply differently in Alaska because of the vast distances, limited presence of grocery stores, the high prices of meat in stores, and the importance of Alaska Native cultural hunting practices.

¹⁵ 2023 Proposed Rule, 88 Fed.Reg. at 1180-81.

¹⁶ 2020 Rule, 88 Fed.Reg. at 35185.

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ 2022-2023 Alaska Hunting Regulations, Alaska Department of Fish & Game, pp. 18-19, available at: <https://www.adfg.alaska.gov/index.cfm?adfg=wildliferegulations.hunting>

NPS in its Proposed Rule agrees fair chase concepts should not be applicable to subsistence hunting.²⁰ However, NPS is defining subsistence hunting very narrowly in establishing a limited subsistence exemption to its proposed bans on State-authorized hunting methods. As discussed in Point D below, much hunting in Alaska is conducted purely to obtain food or fiber, and not recreationally, in situations that fall outside the narrow boundaries of what NPS and the Federal Subsistence Board (FSB) consider to be exempted subsistence hunting.

To give two examples of ADFG appropriately administering and adapting fair chase principles in the unique Alaska context, ADFG generally bans the hunting of swimming caribou, but allows the practice in two very remote areas (GMUS 23 and 26) overlapping with Alaska National Preserves.²¹ We presume NPS understands that this is a hunt for food and not a recreational hunt, regardless of whether the hunter is acting in a Federally Qualified Subsistence Hunter (FQSH) capacity in a particular hunt. ADFG also generally bans bear denning (hunting bears in dens): bear denning is illegal in nine of the ten Alaska National Preserves, and most of the tenth unit as well. At the request of an Alaska Native community, ADFG allows bear denning in one very remote corner of Gates of the Arctic National Preserve, far away from the road system and the visiting public.²² This allows Alaska Natives who now live in an urban area or a different rural area than the area in which the hunt is being conducted (and so are not hunting as FQSH) the opportunity to participate in this traditional community hunt when returning to their ancestral village. The bear meat yielded by this hunt in the deep winter wilderness is eaten, so this is a hunt for food. NPS's 2020 Rule appropriately allows ADFG to make these decisions.

By contrast, in its 2023 Proposed Rule, NPS contemplates pivoting 180 degrees and reading an unstated Federal fair chase limitation into “for sport purposes” as used in § 1313. This would include banning of various hunting methods, subject to a narrow subsistence exception. For multiple reasons, NPS should instead adhere to its 2020 determination that “for sport purposes” in ANILCA § 1313 is simply a reference to non-subsistence hunting.

First, ANILCA § 1313, quoted above, utilizes the term “for sport purposes” without providing any text referring to fair chase hunting. Further, none of the other ANILCA provisions that refer to “for sport purposes,” “sport” hunting or “sport” fishing mention a fair chase limitation.²³ There is no textual basis in ANILCA to read a “fair chase” limitation into the phrase “for sport purposes.” Tellingly, the House and Senate Reports for ANILCA discuss “for sport purposes,” “sport” hunting” and “sport” fishing multiple times, sometimes providing explanations of the

²⁰ 2023 Proposed Rule, 88 Fed.Reg. at 1180 (the “construct” of “fair chase” “does not necessarily apply to subsistence practices which emphasize cultural traditions and the acquisition of calories for sustenance.”)

²¹ 2022-2023 Alaska Hunting Regulations, Alaska Department of Fish & Game, p. 19 (URL above).

²² *Id.* p. 19. By using maps to compare the geographic scope of the State authorization with the Alaska National Preserves, one can see how little of the National Preserve system is impacted. *See also*, 2020 Rule, 85 Fed.Reg. at 35185 (NPS agrees that State authorized this practice in an effort to accommodate requests from Alaskan Native communities “as a way people get food” through “traditional harvest activities” and that “these practices were conducted for generations without any substantial long-lasting or irreversible effects to predator populations ...”) (NPS quotes State).

²³ See ANILCA §§ 101(b), 816(a), 1307(b), 1307(c), 1313, 1427(b)(5),

meaning of the various legislative provisions, but do not mention any fair chase limitation. These Reports are available online and were searched for these terms.²⁴

Second, the term “sport” is consistently used in ANILCA to accomplish an entirely different purpose that is fully evident in the statutory text. Thus, there is no need to strain to imply into “for sport purposes” a fair chase limitation not evident in the statutory text. Specifically, ANILCA provisions including §§ 203, 205, 304(d), 816(a) and 1313 consistently use one or more of the terms “subsistence,” “for sports purposes,” “sport hunting” and “sport fishing” as a way to (1) distinguish subsistence hunting and fishing from non-subsistence hunting and fishing, and (2) distinguish recreational fishing from commercial fishing.²⁵ These provisions use these terms to specify the permissible purposes for which hunting and fishing are allowed in the different conservation units established or reorganized by ANILCA. For example §§ 203, 816(a), and 1313 deploy these terms to allow non-subsistence hunting on National Preserves while more broadly allowing subsistence hunting, subsistence fishing, and sport fishing on National Parks and Monuments as well as National Preserves.²⁶ “Sport” is used in § 1313 to specify the allowable “purposes” for hunting and fishing, not allowable methods and means.

Third, ANILCA § 203 duplicates § 1313 by directing NPS to allow “hunting” on Alaska National Preserves, but, unlike § 1313, § 203 gives that direction to NPS without using the adjective “sport” or the phrase “for sport purposes.” Like § 1313, § 203 further directs that one type of hunting, “subsistence” hunting, also be allowed on National Parks and Monuments as well as National Preserves. Because §§ 203 and 1313 give the same direction to NPS on the very same subject, the inclusion of “sport purposes” in one provision but not the other must be immaterial. Congress is unlikely to have given two inconsistent directions on precisely the same topic. Reading both provisions together, “hunting” in § 203 and hunting “for sport purposes” in § 1313 are references to non-subsistence hunting. Had Congress intended the phrase “for sport purposes” to be a significant constraint on the types of non-subsistence hunting allowable on National Preserves, it would have imposed that constraint in § 203 as well as in § 1313.

Fourth, there was a good reason, unrelated to “fair chase” principles, for Congress to use the phrase “for sport purposes” rather than the phrase “for non-subsistence purposes” in § 1313. Section 1313 uses the phrase “for sport purposes” to refer to fishing as well as hunting. By using “for sport purposes” rather than “non-subsistence purposes,” Congress ensured that NPS would not be required to allow commercial fishing on Alaska National Preserves. Unlike commercial hunting, which has been uniformly illegal for over a century, commercial fishing is often legal. A direction to allow non-subsistence fishing would likely have required NPS to allow commercial fishing, but the use in § 1313 of “for sport purposes” precludes that interpretation.²⁷

²⁴ See Senate Report 96-413 (1979), available as 1980 USCAAN 5070 and 1979 WL 10337; see also, House Report 96-97 (parts 1 and 2, April 18 and 23, 1979), available on Westlaw under the legislative history tab for Pub. Law No. 96-487 (ANILCA).

²⁵ See ANILCA §§ 203, 205, 304(d), 816(a), and 1313.

²⁶ Section 816(a) allows sport fishing on National Parks and Monuments. Section 1313 allows subsistence fishing and sport fishing but not commercial fishing on Alaska National Preserves. Finally, §§ 204 and 304(d) allow commercial fishing in certain circumstances.

²⁷ Combining this point with the previous ones, the most probable explanation for why § 203 directs that NPS allow non-subsistence “hunting” on National Preserves, while § 1313 uses slightly different language

Fifth, a narrow reading of “for sport purposes” would create a problematic statutory gap that NPS’s 2020 reading avoids. The concept of “fair chase” is historically associated with leisure-time hunting for recreational purposes. Thus, any reading of “for sport purposes” as containing an implied fair chase limitation would be premised on first reading “for sport purposes” narrowly as hunting motivated by recreational purposes. However, as discussed in Point D below, much hunting in Alaska is by persons who are not FQSH, yet are hunting purely for food, and not for recreation. This beneficial type of hunting could very well fall outside § 1313’s mandate that NPS allow hunting “for sport purposes,” if “for sport purposes” is read narrowly to include only recreationally-motivated hunting. This beneficial hunting would also fall outside of §1313’s mandate that NPS allow “subsistence” hunting, because NPS interprets subsistence hunting so narrowly. Reading “for sport purposes” to refer to all rather than some non-subsistence hunting avoids creating a statutory gap that Congress surely did not intend in which beneficial subsistence hunting by persons who are not acting as FQSH and are also not hunting for (narrowly defined) “sport purposes” fall through the cracks in § 1313’s protections.

Finally, NPS is contemplating reading “sport purposes” and “sport” differently than how its sister agency FWS reads the term with regard to hunting on National Wildlife Refuges in Alaska, which are also governed by ANILCA. As NPS correctly applied the term in the 2020 Rule, FWS uses the term “sport” (1) to distinguish subsistence hunting and fishing and non-subsistence hunting and fishing, 50 CFR 36.14 and 36.32(a) and (2) to distinguish sport fishing and commercial fishing, 50 CFR 36.32(a) and (b). NPS’s 2020 reading of “for sport purposes” is consistent with the usual usage.

NPS should adhere to its 2020 interpretation of “for sport purposes” in ANILCA § 1313.

C. ANILCA Only Authorizes NPS to Prefer Subsistence Hunting Over Non-Subsistence Hunting if the Standards in ANILCA Title VIII for Triggering Subsistence Priority Are Satisfied.

NPS in the Proposed Rule does not justify preferential restrictions that apply only to hunters who are not Federally-Qualified Subsistence Hunters (FQSH). For example, NPS complains that non-subsistence hunters are hunting bears using non-natural bait. In reaction to its concern, NPS proposes to continue to allow FQSH to use natural bait, which is allowed by a rule adopted by the Federal Subsistence Board (FSB), while banning all other hunters from using any form of bait.²⁸ The preferential treatment is unjustified. If NPS has the authority to restrict use of bait, it should use that authority in an even-handed manner, by banning all hunters from using non-natural bait, and allowing all hunters to use natural baits.

to direct that NPS allow hunting and fishing “for sports purposes” on National Preserves, is that § 203 addresses only hunting, while § 1313 addresses both hunting and fishing. Thus the reference to “for sport purposes” was needed in § 1313, in order to clarify that Congress was not directing NPS to allow commercial fishing on National Preserves.

²⁸ 50 CFR 100.26(b)(14)(iii) (existing FSB rule, which the Proposed Rule would not change, which allows use of natural bait by FQSH engaged in a FSB-scheduled hunt). In NPS’s pending Proposed Rule, it limits the subsistence exception to the prohibition on using bait to “local rural residents,” which means that residents from other rural communities would be excluded despite being FQSH. 88 Fed.Reg. at 1183 (proposed text for Rule 13.42(k)).

Permissible types of bait are just an example of a more general point regarding even-handed treatment. On all issues, NPS should treat hunters who are not FQSH and hunters who are FQSH equally, unless the FSB makes the various fact-specific findings required by ANILCA § 802 and 815(3) to justify imposing restrictions that prefer FQSH over other hunters.

In its Proposed Rule, NPS overlooks these statutory limitations on the circumstances in which ANILCA Title VIII authorizes NPS to prefer FQSH over other hunters. NPS explains that imposing restrictions on permissible methods and means of engaging in non-subsistence hunting could aid FQSH by dampening “competition” from non-subsistence hunters. However, the mere existence of “competition” between FQSH and other hunters, which is to be expected because ANILCA § 1313 directs NPS to allow both FQSH and non-subsistence hunting on Alaska National Preserves, does not satisfy the statutory criteria governing when it is permissible for NPS to prefer hunting by FQSH over non-subsistence hunting.

ANILCA § 802(2) set forth criteria for “when” a subsistence preference is lawful:

“(2) non-wasteful subsistence uses of fish and wildlife and other renewable resources shall be the priority consumptive uses of all such resources on the public lands of Alaska ***when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population***”²⁹

This statutory criteria allows NPS to give a preference to hunting by FQSH in two situations: (1) when “necessary ... to assure the continued viability of a fish or wildlife population,” and (2) when “necessary ... to assure ... the continuation of subsistence uses of such populations.” ANILCA § 815(3) clarifies that NPS is not “authoriz[ed]” to restrict non-subsistence hunting to benefit FQSH unless these two situations or other inapplicable situations occur.³⁰

²⁹ ANILCA § 802 (codified at 16 U.S.C. § 3112, emphasis added).

³⁰ ANICLA § 815(3) provides:

“Nothing in this title [the subsistence title] shall be construed as ... (3) authorizing a restriction on the taking of fish and wildlife for nonsubsistence uses on the public lands (other than national parks and monuments) unless necessary for the conservation of healthy populations of fish and wildlife, for the reasons set forth in section 816, to continue subsistence use of such population, or pursuant to other applicable law.”

ANILCA § 815 (codified at 16 U.S.C. § 3125). In addition to the § 802 subsistence preference criteria discussed above, § 815(3) allows the imposition of restrictions under § 816, which can include closures of hunting for reasons of public safety and administration. However, § 816 address the standards for closing subsistence hunting. Thus, the cross-reference to § 815(3) in § 816 brings into play circumstances involving public safety and administration in which it would be lawful to even-handedly close both subsistence and non-subsistence hunting. Here, NPS proposes to restrict non-subsistence hunting but not qualifying subsistence hunting, and thus § 816 does not furnish additional permissible reasons to prefer subsistence hunting. In any event, competition for animals is fully addressed in the § 802 criteria, which require a significant impact, and is not a public safety or administration issue.

Thus, for “competition” between subsistence and non-subsistence hunters to justify a subsistence preference, that competition would have to rise to the level of threatening the continued viability of fish or wildlife populations or the continued existence of subsistence uses. *Id.* No one claims either of these extreme situations are present. Indeed, NPS itself found in its 2019 Environmental Assessment accompanying its 2020 Rule that very few animals are harvested by non-subsistence hunters on Alaska National Preserves using the methods and means at issue.³¹ The low level of harvest using these methods and means of hunting was relied upon by the reviewing court in declining to vacate the 2020 Rule.³²

In summary, NPS has not satisfied the ANILCA Title VIII criteria for preferring subsistence hunting over non-subsistence hunting. Thus, any restrictions on State-allowed methods and means that NPS imposes must treat all hunters even-handedly.

D. Because the Proposed Exemption for Subsistence Hunting by FQSH is so Narrow, Other Beneficial Subsistence Hunting Will be Unduly Restricted.

To the extent NPS has any authority to prefer subsistence hunting over non-subsistence hunting when the ANILCA Title VIII criteria for imposing a subsistence preference has not been satisfied, and NPS chooses to use that authority, NPS should avoid preferring one type of subsistence hunter over another type. NPS should treat all types of subsistence hunting equally. Several important types of subsistence hunting would be subject to the proposed restrictions, because the proposed FQSH exemption is so narrow. Critically, in addition to protecting FQSH, ANILCA §§ 203 and 1313 direct that NPS allow hunting by persons who are not FQSH on Alaska National Preserves. Thus all hunters, including subsistence hunters not hunting as FQSH, have legitimate statutory interests in this case that NPS must consider.

In its Proposed Rule, NPS subtly limits the scope of the subsistence exemption. “This paragraph [attaching a list of prohibited hunting methods] applies to the taking of wildlife in park areas administered as national preserves except for **subsistence use** by **local rural** residents **pursuant to applicable Federal law and regulation**”³³ We have added coloring to the black text printed in the Federal Register to aid in spotting the subtle limitation on the scope of the exemption.

The requirement that the hunting be “**subsistence use**” is a limitation one would expect to see in a rule crafting a subsistence exemption. The remaining limitations are problematic.

First, NPS requires that the subsistence use be by a “**rural** resident.” Because only rural residents of Alaska can qualify as FQSH eligible to take advantage of ANILCA Title VIII provisions, this limitation on the scope of the proposed exemption is unsurprising, but it is still unnecessary, and unduly limiting in units such as National Preserves where NPS is required by law to allow non-subsistence hunting. In Alaska, the limited availability, high prices, and sometimes low quality of meat in grocery stores is such that many citizens who live in areas of

³¹ NPS 2019 EA, pp 6-9, 32.

³² *Alaska Wildlife Alliance v. Haaland*, 2022 WL 1742242,*21.

³³ 2023 Proposed Rule, 88 Fed.Reg. at 1183 (printing text of proposed revised rule 36 CFR 13.42(k)).

the State that are designated as “urban” hunt to harvest meat for food, rather than for recreation. This is particularly so for those living in the outskirts of urban areas.

Second, and much more surprising, even rural Alaskans only qualify for FQSH treatment if on a particular day they are participating in a hunt established by the Federal Subsistence Board (FSB) or other federal agency, as opposed to a hunt established by State law. This limit appears subtly in the proposed rule language requiring that the hunting be “*pursuant to applicable Federal ... regulation.*”³⁴ A FSB rule in a different title of the CFR governing subsistence hunting provides: “You may take wildlife for subsistence uses Seasons are closed unless opened **by Federal regulation.**” 50 CFR 100.26(a) (emphasis added). Those who compare CFR sections line by line can thus see that the proposed exemption would cover only Federally-scheduled hunts. This is significant. As the Federal Subsistence Board has itself noted, there are both State-scheduled and FSB-scheduled hunts in rural communities.³⁵

Third, NPS proposes another subtle limitation, that the rural resident engaged in Federally-scheduled hunt be a “*local* rural resident,” not just a “rural resident,” in order to be eligible for the proposed exemption.³⁶ Thus a rural Alaskan who leaves their local remote rural community to hunt in another remote rural area for food will not be eligible for the proposed exemption, even when hunting in a Federally-scheduled rather than State-schedule hunt.

These limits on the scope of the proposed subsistence exemption impact both non-Native and Native hunters engaging in subsistence hunting. The Proposed Rule bans methods used to hunt species for food, so its restrictions on the scope of the subsistence exemption have a negative impact on achieving subsistence goals. Caribou are obviously hunted for food, including in remote GMUs 23 and 26, which is where the State authorizes harvest of swimming caribou, a practice the Proposed Rule would preempt. In the context of Alaska Native hunting in very remote areas during the harsh winter, bear meat harvested through denning is also eaten.

The Proposed Rule also contains a general preemption clause that would allow the NPS to ban additional State-authorized hunting practices that qualify as “predator reduction” or “predator control,” both terms that NPS does not attempt to define in the Proposed Rule.³⁷ Any preemptions ordered under this general preemption clause would be subject to the same very limited subsistence exemption that would exclude genuine subsistence hunting.

E. The Department-Wide Rules in 43 CFR Part 24 Regarding State Regulation of Hunting and Fishing on Department of Interior Lands Limit NPS’s Authority,

NPS’s Proposed Rule fails to address the most relevant legal authority: the rules DOI adopted in the 1980s to govern the application of State hunting laws on DOI land units, including NPS units. 43 C.F.R. §§ 24.1–24.7. These rules provide for DOI agencies including NPS to

³⁴ *Id.*

³⁵ 2020/2022 Federal Subsistence Wildlife Regulations, p. 3, Federal Subsistence Board, available at: <https://www.doi.gov/sites/doi.gov/files/2020-2022-wildlife-regs-book-web-reduced-size.pdf> (“The State of Alaska often administers a hunt for the same species in the same area as a Federal subsistence hunt.”)

³⁶ 2023 Proposed Rule, 88 Fed.Reg. at 1183.

³⁷ *Id.*, 88 Fed.Reg. at 1181, 1183.

generally defer to State hunting regulations on DOI lands “in the absence of **specific overriding Federal law**.” 43 C.F.R. § 24.1(a) (emphasis added).

The 43 CFR Part 24 rules explain that “in general the States possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on Federal lands within a State,” subject to “preempt[ion]” only under the Constitution’s property, commerce, and treaty clauses. 43 CFR 24.3(a). Most importantly, DOI confirmed that “**Congress has**, in fact, **generally declined** to diminish the responsibility and authority of the States to manage fish and resident wildlife on Federal lands.” *Departmental Fish and Wildlife Policy; State-Federal Relationships*, 47 Fed. Reg. 46147, 46148 (Oct. 15, 1982) (emphasis added), *adopted*, 48 Fed. Reg. 11642 (Mar. 16, 1983).

In its 2023 Proposed Rule, NPS primarily cites NPS Management Policies 2006 as the authority that purportedly requires that NPS to preempt the State hunting regulations at issue.³⁸ However, NPS Management Policies 2006 describes itself as a policy rather than law.³⁹ Thus it is not “specific overriding federal **law**” as needed to override state management. 43 CFR 24.1(a) and 24.4(h)(4) (“The National Park Service or Fish & Wildlife Service may, after consultation with the States, close ... Federal land under their jurisdiction, or impose such other restrictions as are deemed necessary, for **reasons required by** the Federal **laws** governing their areas.”) (emphasis added). See also, 43 CFR 24.4(f), 24.4(h)(3) and 24.7(b). As a subordinate agency, NPS cannot override rules adopted at the Department of Interior.

In its 2020 Rule, NPS appropriately cited and quoted this provision in 43 CFR 24.1(a) in concluding to withdraw the prior 2015 Rule’s preemption of State hunting methods and means.⁴⁰ NPS had the analysis correct in its 2020 Rule, and should stick with that analysis, rather than make a 180 degree pivot and preempt State-allowed methods of hunting where such preemption is not required by some “specific overriding Federal law.” 43 CFR 24.1(a).

F. Alaska National Preserves Established After Statehood Fall Outside the Scope of the *Safari Club v. Haaland* Decision in the Kenai Refuge Litigation.

In NPS’s Cost Benefit Analysis⁴¹ accompanying its January, 2023 Proposed Rule, NPS justifies its decision to issue the Proposed Rule in part by citing *Safari Club v. Haaland*⁴², a decision by the Ninth Circuit in 2022 that held that the U.S. Fish and Wildlife Service had “plenary” authority to regulate hunting on the Kenai National Wildlife Refuge. For convenience, we refer to the *Safari Club v. Haaland* decision and litigation as the “FWS Kenai Case.”

³⁸ *Id.*

³⁹ NPS Management Policies 2006, pp. 1-4 (describes itself as “policy” and contrasts policy with “law”).

⁴⁰ 2020 Rule, 85 Fed.Reg. at 35182

⁴¹ See *Cost-Benefit and Regulatory Flexibility Analysis: Alaska Hunting and Trapping Regulation in National Preserves*, National Park Service July 2022, pages 4 to 5 (“Cost Benefit Analysis”). To commenters’ knowledge, NPS first made this document publicly available on or after January 9, 2023, when the Proposed Rule was published in the Federal Register. At that time, NPS opened the rulemaking document on www.regulations.gov in which it posted the Cost Benefit Analysis.

⁴² *Safari Club, Inc. v. Haaland*, 31 F.4th 1157 (9th Cir. 2022) (FWS Kenai Case).

NPS in its *Cost Benefit Analysis* stated that the Ninth Circuit's decision in the *FWS Kenai Case* supported NPS's action in issuing the present Proposed Rule and NPS indicated its belief that NPS also has plenary authority to regulate hunting on Alaska National Preserves.⁴³ Given NPS's reliance on the *FWS Kenai Case*, it is important to review that opinion, in order to understand why the "plenary" authority holding in that opinion regarding FWS's authority to manage the Kenai Refuge does not extend to NPS's authority to manage National Preserves.

The key distinction is that Alaska National Preserves were withdrawn from the general public domain after Statehood, while the Kenai Refuge is a pre-Statehood reservation.

In the *FWS Kenai Case*, the Ninth Circuit analyzed § 6(e) of the Alaska Statehood Act, Pub. L. 85-508 (1958).⁴⁴ Section 6(e) declared that certain game lands would transfer from the United States to the State at the time of Statehood. Section 6(e) also declared that the State would assume management responsibility for Alaska's fish and wildlife shortly after Statehood when the Secretary of Interior certified the new State's readiness for that task, which occurred effective January 1, 1960. However, § 6(e) carved an exception, providing that "such transfer shall not include lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife" ⁴⁵ The Ninth Circuit read "such transfer" as referring back to (and carving exceptions from) both the § 6(e) provision that transferred ownership of certain lands to the State and the § 6(e) provision under which the State assumed management authority.⁴⁶

Applying this exception in § 6(e) of Statehood Act for lands "withdrawn or otherwise set apart as refuges or reservations," the Ninth Circuit observed that the Kenai Refuge had been withdrawn or otherwise set apart as a reservation for the protection of wildlife and so concluded that the State did not assume wildlife management jurisdiction at the time of Statehood.⁴⁷ This led the Ninth Circuit to conclude the subsequent enactment in 1980 of ANILCA § 1314 preserved a pre-existing status quo in which the State did not have wildlife management authority.⁴⁸ Section 1314 provides that ANILCA neither increased nor diminished state wildlife management authority. This reasoning led the Ninth Circuit to conclude that FWS had "plenary" authority to manage wildlife on the Kenai Refuge.⁴⁹ This in turn led NPS in its recent *Cost Benefit Analysis* to conclude that the *FWS Kenai Case* supported issuing the present Proposed Rule in which NPS would preempt several State hunting rules on Alaska National Preserves.⁵⁰

⁴³ See NPS July, 2022 Cost Benefit Analysis at 5.

⁴⁴ 31 F.4th at 1167-68.

⁴⁵ Statehood Act, Pub. L. No. 85-508, § 6(e).

⁴⁶ See 31 F.4th at 1168.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 1169.

⁵⁰ *Cost Benefit Analysis* at 5.

Importantly, the vast majority of the Kenai Refuge was a pre-Statehood reservation withdrawn from the public domain as the Kenai Moose Range in December, 1941.⁵¹ Thus, at the time of Statehood in 1958, the Kenai Refuge constituted “lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife” and so lands subject to the exception in Statehood Act § 6(e). While APHA / SAF / AOC do not agree that the § 6(e) exception for lands withdrawn or set aside as refuges applies to the State’s assumption of wildlife management responsibilities at or shortly after Statehood, they do agree that the Kenai Refuge is mostly a pre-Statehood refuge or reservation for the protection of wildlife.⁵²

In *U.S. v. Alaska*, 521 U.S. 1, 58-61 (1997), the Supreme Court decided a case that turned on the § 6(e) distinction between pre-Statehood from post-Statehood reservations. The case involved the Arctic National Wildlife Refuge (“ANWR”). The Supreme Court’s opinion emphasizes the importance of determining whether a given refuge or reservation “had been” withdrawn as a refuge for wildlife before Statehood in 1958, or instead was established later:

Section 6(e) of the Alaska Statehood Act expressly prevented lands that **had been** “set apart as [a] refug[e]” from passing to Alaska. It follows that, because all of the lands covered by the 1957 application **had been** “set apart” for future use as a refuge, the United States retained title to submerged lands within the Range.⁵³

The Supreme Court examined whether the withdrawal of lands from the public domain to form ANWR as a reservation for the protection of wildlife occurred: (1) in 1957, a year before Statehood, when DOI officials filed the withdrawal papers or (2) after Statehood, when the withdrawal process was formally completed.⁵⁴ The Supreme Court held that the filing of papers to initiate the withdrawal before Statehood was a sufficiently definitive action to make ANWR a pre-Statehood refuge covered by the § 6(e) exception.⁵⁵ The § 6(e) exemption was later applied in the FWS Kenai Case to the Kenai Refuge, which is another pre-Statehood unit.

Unlike the Kenai Refuge or ANWR, as far as undersigned commenters can tell, all or most lands making up the Alaska National Preserve system were first withdrawn to serve as refuges for the preservation of fish and wildlife in 1980 in ANILCA, well after Statehood. Section 201 of ANILCA, entitled “Establishment of New Areas,” created seven new National Preserves in 1980:

- (1). Aniakchak Nat. Pres. (ANILCA § 201(1), formed from 376,000 acres of “public lands”);
- (2). Bering Land Bridge Nat. Pres. (§ 201(2), formed from 2,457,000 acres of “public lands”);

⁵¹ 6 Fed.Reg. 6471 (Dec. 18, 1941).

⁵² It appear that none of the litigants in the FWS Kenai Case brought to the Ninth Circuit’s attention the fact that a relatively small portion of the Kenai Refuge was added to the pre-Statehood refuge in 1980, so the Ninth Circuit was not given the opportunity to consider the significance of that fact. ANILCA § 303(a)(4). Thus the Ninth Circuit could not account for that factor in its opinion, and did not mention it.

⁵³ *U.S. v. Alaska*, 521 U.S. at 61 (emphasis added).

⁵⁴ *Id.* at 59-61

⁵⁵ *Id.*

- (3). Gates of the Arctic Nat. Pres. (§ 201(4)(a), formed from 900,000 acres of “Federal lands”);
- (4). Lake Clark Nat. Pres. (§ 201(7)(a), formed from 1,213,000 acres of “public lands”);
- (5). Noatak Nat. Pres. (§ 201(8)(a), formed from 6,460,000 acres of “public lands” – acreage later increased by P.L. 104-333 to 6,477,168 acres);
- (6). Wrangell St. Elias Nat. Pres. (§ 201(9), formed from 4,171,000 acres of “public lands”);
- (7). Yukon-Charley Rivers Nat. Pres. (§ 201(10), formed from 1,713,000 acres of “public lands”).

In addition, ANILCA § 202 added new acreage from the general public domain to three land units that already existed in 1980, but classified the newly added acreage (and only the newly added acreage) as “National Preserve” land. Three new National Preserves were created this way and so are also post-Statehood reservations, even though they may be adjacent to National Parks or Monuments with pre-Statehood roots:

- (8). Glacier Bay Nat. Pres. (§ 202(1), formed from 57,000 acres of “additional public land”);
- (9). Katmai Nat. Pres. (§ 202(2), formed from 308,000 acres of “additional public land”);
- (10). Denali Nat. Pres. (§ 202(3), formed from 1,330,000 acres of “additional public land”).

Thus, it appears that all ten Alaska National Preserves are post-Statehood reservations.

Because Alaska National Preserves were not lands withdrawn as refuges for the conservation of fish and wildlife as of Statehood, any exception in § 6(e) for lands already withdrawn or set aside for use as a refuge or reservation for the protection of wildlife as of Statehood does not apply. Thus, the State under § 6(e) acquired management authority over fish and wildlife at the time of Statehood over the lands that 20 years later in 1980 became Alaska National Preserves upon enactment of ANILCA. Accordingly, ANILCA § 1314 preserved a pre-existing status quo in which the State did have management authority. NPS therefore does not have plenary authority to manage fish and wildlife on Alaska National Preserves. NPS instead has the constrained authorities granted to NPS by ANILCA §§ 1313 and 1314.

The decision in the FWS Kenai Case is inapplicable to Alaska National Preserves for additional reasons. Section 203 and 1313 of ANILCA are even more protective of non-subsistence hunting on National Preserves than corresponding ANILCA provisions governing non-subsistence hunting on National Wildlife Refuges. Compare ANILCA §§ 203 and 1313 (mandating that NPS allow non-subsistence hunting) with ANILCA §§ 101 (providing for “sport hunting” is a purpose of ANILCA applicable to all conservation units) and 304 (applying the National Wildlife Refuge System Improvement Act to hunting on Alaska National Wildlife Refuges – that Act makes hunting a priority public use, subject to a compatibility analysis).

Further, ANILCA § 1313 directly establishes the scope of NPS’s authority to restrict hunting: “Consistent with the provisions of section 816 [a subsistence hunting provision], within

national preserves the Secretary may designate zones where and periods when no hunting, fishing, trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment.” The challenged State regulations concern methods of hunting. NPS’s proposed prohibitions of specific methods of hunting do not close hunting in particular zones or for particular periods, and so fall outside that authority.⁵⁶

G. ANILCA, the NPS Organic Act, and NPS Management Policies 2006 do not Support Preempting the Challenged State Hunting Regulations.

In *Alaska Wildlife Alliance v. Haaland*, Plaintiffs opposed to NPS’s 2020 Rule contended that various provisions in ANILCA and the NPS Organic Act purportedly required “natural” management of wildlife on Alaska National Preserves. Plaintiffs argued that the methods and means of hunting allowed by the State were inconsistent with this purported statutory mandate that only “natural” use of wildlife occur. The court rejected Plaintiffs’ arguments and concluded that ANILCA and the NPS Organic Act do not require natural management as Plaintiffs claimed.⁵⁷ The court further held that ANILCA and the NPS Organic Act do not prohibit predator management on NPS lands. The Court concludes that the plain text of the Organic Act and ANILCA demonstrates that predator reduction efforts are permissible in the National Preserves of Alaska, provided that these efforts do not impair the wildlife resources under the Organic Act or the maintenance of healthy populations under ANILCA.⁵⁸ This holding is significant in and of itself and also because it confirms that there is no “specific overriding Federal law” that would displace State management of hunting under 43 CFR 24.1(a).

In its Proposed Rule, NPS engages in a highly questionable re-interpretation of NPS Management Policies 2006. In the 2020 Rule, NPS carefully analyzed that document and found no conflict between that document and the challenged State-authorized hunting practices.⁵⁹ NPS’s analysis in the 2020 Rule was correct and NPS has not shown a basis for reversing itself.

With respect to NPS Management Policies 2006, the reviewing court did not find any error that was of sufficient magnitude to call for vacatur of the 2020 Rule.⁶⁰ The court remanded the 2020 Rule for further consideration by NPS of what the court perceived as a difference between a State statute and the NPS policies. The court concluded that NPS erred by finding in the 2020 Rule that AS 16.05.255(k)(5), which defined “sustained yield” as calling for the maintenance of animal populations of sufficient size to support “a high level of human harvest of game” in “perpetuity,” set a standard equivalent to that in NPS Management Policies 2006 § 4.4.3, which

⁵⁶ Although it declined to vacate the 2020 Rule, the reviewing court observed that NPS has plenary authority to regulate hunting on Alaska National Preserves. *Alaska Wildlife Alliance*, 2022 WL 17422412, *20. All parties in the litigation (Plaintiffs, Defendant NPS, and Defendant-Intervenors) have appealed and the ruling is not final. The ruling did not address the pre-Statehood or post-Statehood distinction or the impact of the Department of Interior rules in 43 CFR Part 24 discussed above.

⁵⁷ *Id.*, 2022 WL 17422412, *8-10.

⁵⁸ *Id.*, 2022 WL 17422412, *9.

⁵⁹ 2020 Rule, 85 Fed.Reg. at 35184, 35187.

⁶⁰ *Alaska Wildlife Alliance*, 2022 WL 17422412, *21-22.

called for management of wildlife for sustainability.⁶¹ The court noted that the State statute was directed at maintaining both sustainability of animal populations and a high level of harvest, while the NPS policy was concerned only with sustainability.

However, the Court found that the low level of harvest supported the decision of NPS in the 2020 Rule to reconsider the preemptions it had ordered in its 2015 Rule.⁶² The Court based this conclusion on NPS's 2019 Environmental Assessment (EA), in which NPS analyzed many years of records supplied by the State covering periods when the challenged State hunting methods were legal:

- Just 11 wolves per year (statewide across the entire Alaska National Preserve system) were taken during the challenged summer hunting seasons for wolves and coyotes.⁶³
- Less than 2 black bears a year and about 8 brown bears a year were taken by bait on Alaska National Preserves.⁶⁴
- The State issued only 9 permits a year to hunt black bears with the aid of dogs in Game Management Units overlapping Alaska National Preserves.⁶⁵
- Few non-local hunters pursue swimming caribou in the GMUs overlapping National Preserves in which the State allows that harvest method (GMUs 23 and 26). "Due to the low level of additional take of caribou expected under the proposed action, no meaningful population-level impacts are expected."⁶⁶
- Only 4 bears were harvested by denning in 2012 and three in 2016, with none harvested in 2013, 2014, and 2015, in all of GMU 24C, the only GMU in which the State allows that activity which overlaps with a National Preserve. Gates of the Arctic National Preserve makes up just 2.85% of GMU 24C, so any harvest in the Preserve would be even more miniscule. The impact was so low that NPS dismissed it from further analysis.⁶⁷

Because the harvest levels are so low, the divergence found by the court between AS 16.05.255(k)(5) and NPS Management Policies 2006 § 4.4.3 is not material to the challenged State hunting practices involved in this case. Any divergence that may exist between the State statute and the NPS policy is only theoretical. In other words, until the State authorizes harvest methods that cause a higher level of harvest and so have a more substantial impact on wildlife populations, the State statute's focus on achieving both sustainability of animal populations and a high level of harvest does not diverge in a practical sense from the NPS policy's more singular

⁶¹ *Id.*,*15.

⁶² *Id.*,*13.

⁶³ 2019 EA, p. 6

⁶⁴ 2019 EA, pp. 6-7.

⁶⁵ 2019 EA, p. 9.

⁶⁶ 2019 EA, p. 9.

⁶⁷ 2019 EA, p. 32.

focus on population sustainability. NPS should respond to the reviewing court's very limited concern, and continue to decline to preempt the low-impact State hunting methods at issue.⁶⁸

H. Public Law No.,115-20, Which Abrogated a Similar Preemptive Rule Adopted by the U.S. Fish & Wildlife Service, Weighs Heavily in Favor of Retaining the 2020 Rule, as NPS Properly Concluded in Adopting the 2020 Rule.

In adopting the 2020 Alaska National Preserves Rule, and thus rescinding preemptions ordered by NPS's 2015 Rule, and restoring State management, NPS gave weight to an intervening 2017 Act of Congress (Pub. L. No. 115-20) that legislatively abrogated the U.S. Fish & Wildlife Service's very similar 2016 rule governing Alaska National Wildlife Refuges (Refuges Rule⁶⁹). In the Refuges Rule, FWS federally prohibited a list of State-allowed methods of hunting. This list was virtually the same as the list of hunting methods that NPS preempted as to Alaska National Preserves in its now-repealed 2015 Alaska National Preserves rule and proposes to preempt again in its current Proposed Rule.⁷⁰ Thus, NPS is now proposing to adopt for all Alaska National Preserves a rule that is functionally identical to a rule that Congress abrogated as to Alaska National Wildlife Refuges. This alone should give NPS pause.

The State of Alaska in its comments explains the mechanics of the Congressional Review Act (CRA) in depth, and discusses how the CRA in 5 U.S.C. § 801(b)(2) specifically prohibits an agency from adopting a rule that is "substantially the same" as a rule abrogated under the CRA. NPS and FWS, which issued the Refuges Rule, are both part of the same agency, the Department of the Interior, and the two rules are strikingly similar. APHA, SAF, and AOC refer the reader to the comments of the State and other stakeholders for this point.⁷¹

APHA, SAF, and AOC, however, focus on a different less technical point. Regardless of whether § 801(b)(2) would prohibit NPS from finalizing the 2023 Proposed Rule, the CRA resolution is an Act of Congress. Like any other Act of Congress, the enacted CRA resolution must be fully considered by NPS in ascertaining Congressional intent on how statutory law including ANILCA should be construed. This point was discussed by the reviewing court in *the Alaska Wildlife Alliance v. Haaland* decision concerning the 2020 NPS Rule. The court held that NPS was "required to give effect to the intent of Congress" in adopting the CRA resolution, and so NPS did not err in adopting the 2020 Rule that repealed the preemptive 2015 Rule by considering the Congressional intent conveyed by the CRA resolution. The court explained:

Agencies routinely look to acts of Congress to infer congressional intent when conducting a rulemaking. Indeed the legislative history of the CRA specifically directs agencies to do so, providing that 'a court or agency must give effect to the intent of the Congress when such a resolution is enacted and becomes the law of

⁶⁸ See Points F and I for discussion of the other two issues remanded without vacatur by the reviewing court. See Point J for further discussion of NPS Management Policies 2006.

⁶⁹ 2016 FWS Alaska Refuges Rule, 81 Fed. Reg. 52247, 52271-72 (Aug. 5, 2016) (Refuges Rule).

⁷⁰ Compare: Refuges Rule, 81 Fed. Reg. 52247, 52271-72; 2015 NPS Rule, 80 Fed.Reg. 64325, 64343 (Oct. 23, 2015); and 2023 NPS Proposed Rule, 88 Fed.Reg. at 1183.

⁷¹ See State of Alaska Comments, pp. 30-32 and n. 55 (March 24, 2023).

the land.’ [citing CRA legislative history] ... In sum, because Congress passed a joint resolution cancelling the Refuges Rule, NPS is required to give effect to the intent of Congress when it did so, and therefore properly considered the joint resolution of disapproval of the Refuges Rule in the 2020 rulemaking.⁷²

Because it was “proper” and indeed “required” for NPS in adopting the 2020 Rule to consider the 2017 CRA Resolution, it would now be erroneous for NPS to now disregard the Congressional intent conveyed by that resolution in repealing the 2020 Rule. As discussed in Point F above, the statutory protections for non-subsistence hunting on Alaska National Preserves are even stronger than they are for hunting on Alaska National Wildlife Refuges.

I. Hunting Bear by Use of Bait in Remote Areas is Not a Public Safety Risk, Particularly if the Alternative of Banning Only Non-Natural Bait is Considered.

NPS’s 2023 Proposed Rule does not establish a viable public safety rationale for banning the use of bait to hunt bear. This is particularly true when NPS considers the alternative of treating non-subsistence hunters in the same fashion as subsistence hunters and allowing both to hunt with natural bait, consistent with the Federal Subsistence Board’s current rule authorizing the use of bait by subsistence hunters. See Point C above. Natural baits are not human foods and thus cannot habituate bear to human foods. Baiting is safe when deployed in compliance with the State’s buffer rules (bait stations must be at least one quarter mile from road or trails and at least one mile from places of human habitation).⁷³

Moreover, NPS in the Proposed Rule fails to address the decisions of another federal agency that manages very substantial hunting lands, the U.S Forest Service, which has broad experience with the use of bait to hunt bear in both Alaska and the Lower 48. Addressing the same alleged public safety argument in adopting a nation-wide rule deferring to state hunting laws on the use of bait to hunt black bear on National Forests, and declining to preempt State laws allowing use of bait, the Forest Service concluded that “[t]here is no evidence that baiting increases human-wildlife conflicts. ... Bears do not become conditioned to bait. Bear baits are temporary features. **Once the bait is removed, bears revert to natural foods.**”⁷⁴

NPS in the 2020 Rule persuasively explained its reasoning behind not preempting State regulations allowing use of bait.⁷⁵ There is no reason to change that judgment now. The reviewing court affirmed NPS’s 2020 conclusion that the use of bait to hunt bear does not condition bears to seeking out humans for food. The court explained:

In the EA accompanying the 2020 Rule, however, NPS referenced a study explaining that bear baiting is unlikely to food-condition bears. This is because bear baiting does not teach bears to associate bait with humans. Although this study was premised on the theory of bear baiting, and not the practice of bear

⁷² *Alaska Wildlife Alliance*, 2022 WL 17422412, *19

⁷³ 2022-2023 Alaska Hunting Regulations, p. 26.

⁷⁴ *Use of Bait in Hunting*, 60 Fed. Reg. 14,720, 14722 (Mar. 20, 1995) (emphasis added).

⁷⁵ 2020 Rule, 85 Fed.Reg at 35187-88.

baiting, existing population data supports its conclusions. Specifically, two studies found that bears exposed to bait were unlikely to become nuisance animals in both Manitoba and on the National Preserves of Alaska. The latter study of black bear baiting in Alaska from 1992 to 2010 reported “[l]ittle to no population-level effects” and concluded that “bear baiting is centered on the management goals of minimizing food-conditioning of bears, fostering public safety ... and maintaining processes and behaviors.”

NPS acknowledged one study to the contrary, which found that bear feeding to promote tourism in Quebec had population-level effects because it “may decrease the annual and seasonal ranges of bears and lead to a local increase in bear density that may exceed the social carrying capacity.” NPS nonetheless concluded that the study of bear baiting in Alaska that found no public safety concerns was more directly applicable to the 2020 rulemaking than the study of bear baiting in Quebec for tourism purposes. This conclusion survives judicial review because NPS rationally explained why it considered the Alaska study to be more persuasive than the Quebec study. Moreover, three of the four scientific analyses discussed in the 2020 rulemaking support NPS’s bear baiting conclusion.⁷⁶

The court in reviewing the 2020 Rule had only one very limited concern with the thorough analysis in that Rule of the use of bait to hunt bear.⁷⁷ That concern involved the adequacy of State enforcement of State buffer zone rules that require hunters to set their bait stations a substantial distance from places of human habitation and roads. NPS, in the 2020 Rule, cited these State buffer rules as being protective of public safety. The reviewing court found a limited error in that NPS did not in its 2020 Rule discuss NPS’s observation in its earlier 2015 Rule that there were reports that State enforcement of the buffer zone rule were inadequate.⁷⁸

The questions regarding adequacy of State enforcement of buffer rules concerned complaints received by one National Preserve, Wrangell St. Elias, around 2002-2004, about 20 years ago.⁷⁹ This information is far too stale to support NPS banning this method of hunting in 2023. NPS needs to obtain new data, including from the State, pursuant to NPS’s obligation under ANILCA § 1313 to consult with the State. NPS should refresh the record and respond to the court’s concern, but nothing suggests the State is today failing to enforce buffer rules.

⁷⁶ *Alaska Wildlife Alliance*, 2022 WL 17422412, * 19 (footnotes omitted).

⁷⁷ *Id.*, 2022 WL 17422412, *20.

⁷⁸ *Id.*, § 20 (citing 2020 Rule, 85 Fed.Reg. at 35188).

⁷⁹ The administrative record for the 2020 Rule includes an undated old summary of concerns regarding use of bait to hunt bear along the McCarthy Road in Wrangell St. Elias National Preserve. The document reports there were bait stations within a quarter mile of the road, and so within the State’s buffer zone in which bait statements are prohibited. The document is placed in the record between a 2002 email and a 2004 email and appears to be dated around that time. See 2020 Rule administrative record pages 2020_NPS00008933 through 8936 – the report is at page 8934 (Ex. B to these Comments); see *Alaska Wildlife Alliance*, 2022 WL 17422412, *19 (explaining that NPS in 2020 did not “engage” with this data).

Moreover, the old report of under-enforcement was limited to the one National Preserve which has substantial overlap with the Alaska road system (Wrangell St. Elias).⁸⁰ Reportedly, some hunters in the early 2000s drove into the unit and parked and set up bait stations too close to the road. The record for the 2020 Rule does not appear to have any indication that there ever was under-enforcement in the other nine Alaska National Preserves or in the parts of Wrangell-St. Elias that are off the road system.⁸¹ Thus, if NPS determines that it must preempt this State-authorized hunting method, NPS should proceed in a targeted fashion only after its consultation with the State is complete and problems are identified as an ongoing and substantial concern that warrants attention.

Several findings by NPS in the 2020 Rule remain particularly relevant. First, NPS explained that “bear baiting differs [from activities such as intentional feeding or garbage attractants] in that bears do not necessarily associate baits with humans, and thus may not become food conditioned or habituated.”⁸² Second, NPS in the 2020 Rule relied on an analysis of black bear baiting on Alaska National Preserves and State records, both of which reinforced the conclusion that the use of bait has not empirically led to an increase in human-bear incidents.⁸³ NPS in the 2020 Rule observed that Alaska “and other states which allow [use of bait to hunt bear] have not detected problems [regarding public safety] that can be directly attributed to bear baiting.”⁸⁴ NPS had a sound basis for that conclusion. In addition to information from the State, NPS obtained research showing that there were “no recorded incidents of attacks or injuries related to baiting” to members of the public.⁸⁵ NPS reasoned:

Bear baiting in national preserves [in Alaska] would occur in the midst of nearly 20 million acres of very sparsely populated and remote areas, with few visitor facilities or services on site, if any. Human-bear interactions from bear baiting are likely to be rare -except for the hunters seeking bears—both due to the lack of observed bear conditioning to associate bait stations with humans and the relatively few people in such remote areas to interact with bears. The State registers thousands of black bear state stations yearly, and has done so for many years, but to date, it and other states which allow this practice have not detected problems that can be directly attributed to bear baiting.⁸⁶

That reasoning was and is correct.

⁸⁰ See *id.* (2020_NPS00008934).

⁸¹ See *id.*

⁸² 2020 Rule, 85 Fed.Reg.at 35188.

⁸³ 2020 Rule, 85 Fed.Reg. at 35187-88.

⁸⁴ *Id.*, 85 Fed.Reg. at 35187.

⁸⁵ Email exchange between researcher Janel Scharhag and David Payer of NPS dated May 21, 2019. This exchange is in the administrative record for the 2020 Rule at 2020_NPS00008691-92 (supplied as Ex. C to these comments).

⁸⁶ 2020 Rule, 85 Fed.Reg. at 35187.

J. Review of the Different Preemptions NPS Proposes in its Proposed Rule.

APHA, SAF, and AOC will conclude these comments by reviewing each of the preemptions that NPS now proposes, i.e., each action proposed by NPS that bans on National Preserves a specific hunting method allowed by State law, and also NPS's proposed action to generally preempt unidentified present and future State-approved hunting methods that in NPS's view constitute "predator control" or "predator reduction." Although the appropriate course is for NPS to reaffirm its 2020 Rule and decline to preempt these State-authorized hunting methods, APHA, SAF, and AOC offer some less restrictive alternatives for NPS to consider if NPS decides that it can and must adopt some preemptive restrictions.

1. NPS's proposed general preemption of unidentified State hunting methods that constitute "predator control" or "predator reduction" and NPS's shift of position regarding an array of specific identified State-authorized hunting practices.

The Proposed Rule contains a general preemption clause (proposed Rule 36 CFR 13.42(f)) that would ban all State-authorized hunting methods, including methods not identified by NPS in the Proposed Rule, that NPS at some point decides constitute "predator control" or "predator reduction." However, NPS provides no definition of "predator control" or "predator reduction" in this proposed general preemption clause and thus it is effectively impossible to comment.

The problematic lack of definitions of key terms is exacerbated by the fact that NPS simultaneously proposes to specifically preempt the same specific hunting practices (summer hunting of wolves and coyotes, use of bait to hunt bear, hunting of swimming caribou, etc.) that NPS declined to preempt in the 2020 Rule because NPS found they were not predator reduction or predator control due to their low impact.⁸⁷ See Point G above. This shift of position on the part of NPS with regard to specific identified hunting methods allowed by the State implies that unidentified present and future State hunting regulations that also cause a low impact may also be preempted by the general preemption clause.

The court reviewing the 2020 Rule has, however, resolved the issue of whether low impact hunting practices, identified or unidentified, violate the provisions in NPS Management Policies 2006 regarding predator control and predator reduction. The court first concluded that ANILCA and the NPS Organic Act do not prohibit predator control:

The Court concludes that the plain text of the Organic Act and ANILCA demonstrates that predator reduction efforts are permissible in the National Preserves of Alaska, provided that these efforts do not impair the wildlife resources under the Organic Act or the maintenance of healthy populations under ANILCA.⁸⁸

⁸⁷ These proposed specific prohibitions are in a table at proposed revised rule 36 CFR 13.42(k).

⁸⁸ *Alaska Wildlife Alliance*, 2022 WL 1742222412, *9 (footnote omitted). ANILCA § 815(1) and (3) explain that wildlife on the more tightly regulated units, National Parks and Monuments, must be managed to a stricter "natural and healthy" standard, while wildlife on less regulated units, including National Preserves, is to be managed to a less rigorous "healthy" standard. The passage of the court's opinion refers to the "healthy" standard, evidently from ANILCA § 815.

Then the court examined NPS Management Policies 2006. The court concluded that the specific hunting methods at issue (summer hunting of wolves and coyotes, use of bait to hunt bear, hunting of swimming caribous, etc.) are not contrary to NPS Management Policies 2006 because they did not reduce the “natural abundance of predator species”:

However, the 2020 Rule does not conflict with the Management Policies’ prohibition of predator reduction efforts because substantial evidence supports NPS’s finding that the State hunting regulations at issue in this rule do not have the effect of reducing the natural abundance of predator species in the National Preserves.⁸⁹

[S]ubstantial evidence supports the agency’s conclusion that the 2020 Rule will cause only a low level of additional take of predators and will not alter the abundance of both predator and prey populations in the National Preserves.⁹⁰

At the very least, any general preemption clause must comply with the reviewing court’s opinion and only supersede those State hunting regulations that do reduce the natural abundance of predator species.⁹¹ That standard belongs in definitions of predator control and predator reduction, if NPS unwisely insists on adopting any general preemption clause. That standard also calls for adhering to the 2020 Rule and not preempting the low-impact specifically identified hunting practices.

What is reduction in natural abundance? The court’s opinion makes it plain that reduction in natural abundance refers to significant population-level impacts as opposed to “low level” and localized limited impacts. The court rejected arguments that low-level or localized impacts were violative of NPS Management Policies 2006 or otherwise unlawful:

Plaintiffs assert that “the Service found, but failed to acknowledge, that the specific practices allowed by the 2020 Rule have the potential to alter predator-prey dynamics on the Preserves.” Indeed, NPS acknowledged in the Environmental Assessment (EA) that “[i]ncreased take of predator species could reduce abundance of bears and wolves or increase abundance of prey in localized areas.” But the inquiry did not end there. NPS explains that after reviewing relevant studies and data, including the State’s new population data, “meaningful population-level effects on predator or prey species are not expected.” ***ANILCA directs NPS to maintain wildlife populations, but does not prohibit any***

⁸⁹ *Alaska Wildlife Alliance*, 2022 WL 1742222412, *15 (footnotes omitted).

⁹⁰ *Id.*, 2022 WL 1742222412, *21 (footnotes omitted).

⁹¹ The conspicuous lack of any prohibitions in ANILCA or the NPS Organic on the use of predator control on National Preserves, together with the “healthy” (as opposed to “natural and healthy”) wildlife management standard for National Preserves specified in ANILCA §§ 815(1) and (3), suggests Congressional direction that NPS not apply NPS Management Policies from the Lower 48 to justify restrictions on Alaska National Preserves. Because it appears that NPS is determined to apply NPS Management Policies 2006 § 4.4.3 to these units, we point out that the reviewing court found no conflict between that provision of NPS Management Policies 2006 and these low-impact State hunting practices.

localized impacts of hunting, so NPS did not err by according more weight to the population data.⁹²

Moreover, the court also rejected arguments that, if it was the “intent” or “purpose” of the State to reduce predator populations to increase prey populations, that “intent” or “purpose” on the part of the State was sufficient to trigger preemption, where the low actual-impact of the State-authorizing hunting practices did not threaten natural abundance of predator populations.⁹³ This is important because, in the Proposed Rule, to the extent NPS offers any hint at what the undefined terms “predator reduction” or “predator control” might mean, NPS does so by referencing the “purpose” of the State in adopting a hunting rule.⁹⁴ The Proposed Rule cites no authority that would allow a Federal agency to preempt a State law with innocuous actual effects based on the Federal agency’s perception that one or more of the employees of the State responsible for the adoption of the law acted for some purpose that the Federal agency perceives to be improper. Preemption of State law must be based on actual effect, not intent.⁹⁵

The proposed general preemption clause is procedurally as well as substantively flawed because it appears to allow NPS to invoke the general preemption clause in the future to preempt other State hunting rules not identified in the Proposed Rule, through some procedure less protective of the interests of the State, hunters, and the public than rulemaking. Because ANILCA §§ 1313 and 1314 in describing NPS’s authority refers to Federal “law and regulation” and not other forms of decision-making, and “law and regulation” is a reference to statutes and rules, rulemaking is the agency procedure that NPS would need to utilize after adoption of a final rule to preempt additional state hunting regulations not identified in the Proposed Rule. Section 1313 declares that “any regulations” that restrict hunting on Alaska National Preserves shall be imposed only after consultation with the State. Although NPS might plan to consult with the State before utilizing a non-rulemaking process to enforce the general preemption clause, the reference to Federal restrictions being imposed by “regulations” still strongly implies that it is regulations, i.e. notice and comment rulemaking, that is the proper vehicle for NPS to use if it decides to preempt State-authorized hunting practices. There is no authorization for NPS to use a lesser process providing fewer participation opportunities for the State, hunters, and the public.

The safer course for NPS is to use this rulemaking proceeding to address whether and to what extent to preempt the challenged State-authorized hunting methods specifically discussed in the Proposed Rule, and then to hold another rulemaking if at some point in the future NPS wishes to consider preempting other State-authorized hunting methods not specifically identified in its Proposed Rule. That much more transparent procedure would provide the State, hunters, and

⁹² *Id.*, 2022 WL 1742222412, *12 (emphasis added).

⁹³ *Id.*, 2022 WL 1742222412, *10, *15. In these passages the court recites Plaintiffs’ arguments that the State acted with the intent or purpose of reducing predator populations to increase prey populations, and then immediately rejects those arguments by concluding that the actual impact of the State-authorized hunting practices is low. The message is that intent or purpose alone is insufficient for preemption.

⁹⁴ See proposed 36 CFR 13.42(f) (banning “actions to reduce the numbers of native species for the purpose of increasing the number of harvested species (e.g. predator control or predator reduction) are prohibited.”)

⁹⁵ Moreover, if the State’s intent or purpose was somehow relevant, NPS’s 2020 analysis of State intent and State purposes remains persuasive.

the public with notice and an opportunity to comment on identified State hunting rules that NPS proposes to preempt, as opposed to filing comments now that defend on a generic basis now-unidentified State hunting rules NPS might later preempt.

2. Use of Bait to Hunt Bear

This method is fully discussed in Point I above, which provides less restrictive alternatives for NPS to consider if NPS believes it must adopt some restrictions.

3. Summer hunting of wolf and coyotes

As discussed in Point G above, approximately 11 wolves a year are taken statewide on Alaska National Preserves during the State's summer wolf season (May through August). These eleven (11) takes provide value to Alaska because they support guided hunting as a productive economic endeavor. During May, the bear season is open. Clients who are unable to harvest a bear may still have a successful hunt if they are able to harvest a wolf. Wolf pelts can still be prepared to make productive use of the fiber from the harvest. This hunting method (actually, an extended season) is not unusual or extreme relative to hunting in the Lower 48 States and is low impact. If NPS believes it must adopt some restrictions, it should adopt a harvest cap for the summer wolf season and require reporting. This way, if harvest ever spikes upward from the historical record of there being a dozen or so wolf taken each year on National Preserves in the summer season, NPS can shut down the extended season.

4. Harvesting Swimming Caribou

This hunting practice involves hunting of ungulates rather than predators. This is a form of subsistence hunting engaged in by the broader subsistence hunting community, not just FQSH hunting in a FQSH capacity. Like all the other hunting practices at issue, it has very little impact and low harvest amounts. See Point G above. It is allowed by the State only in limited very remote portions of the Alaska National Preserve system overlapping with GMUs 23 and 26. *Id.* There is no good reason to preempt this practice.

An additional concern is that hunting of swimming caribou obviously occurs when caribou are in the water. The water will often be navigable. Most of the use of this hunting method occurs on the Noatak River, which is navigable. Navigable waterways are owned by the State, per the *Sturgeon* decision and ANILCA §103(c), and so are outside NPS jurisdiction even when within Preserve boundaries.⁹⁶ The Proposed Rule seeks to regulate general hunting of a terrestrial animal rather than fish, and is a regulation of general hunters rather than a subsistence fishing regulation adopted under ANICLA Title VIII. Thus, any exceptions regarding federal regulation of subsistence fishing are inapplicable. Accordingly, NPS will be stepping into a hornet's nest of confusion and difficult enforcement issues if it adopts the proposed preemption of harvest of swimming caribou and does not specifically exclude navigable waters.

In summary, NPS should adhere to the decision it made in its 2020 Rule to not preempt this low impact non-predator hunting method. If NPS decides it must preempt, it should

⁹⁶ *Sturgeon v. Frost*, 139 S.Ct. 1066, 1080 (2019).

allow the practice to continue for purposes of hunting for food, whether or not the hunter is a FQSH hunting in a FQSH capacity.

5. Bear Denning

This Alaska Native cultural hunting practice allowed by the State in one very remote corner of one of the ten Alaska National Preserves is discussed in Points D and G of these comments. We are unaware of this practice ever being used by recreational hunters from urban Alaska or the Lower 48. The problem with the Proposed Rule is that its exemption for subsistence hunting is drawn too narrowly. We understand that this method is utilized when Alaska Natives who now live in another part of rural Alaska or in urban Alaska return to their ancestral village for a traditional cultural hunt for food deep in the winter in extremely remote areas. NPS should not preempt this method of hunting. If NPS decides it must impose restrictions, it should require reporting of bears taken by this method and establish a low statewide harvest cap for hunting with this method on Alaska National Preserves. As discussed in Point G above, it appears that at most one or two bears a year are being taken this way on the one National Preserve where the State allows this practice. If harvest increases substantially in the future, this alternative would allow NPS to shut the season down.

6. Use of Dogs to Hunting Bear

This is a common method of hunting bear in the Lower 48. There is no reason to preempt it and thereby impose a more restrictive regime in Alaska. As discussed above, it is also low-impact (the State issues about nine permits a year).

II. Conclusion

For the reasons stated above and in NPS's 2020 Rule, NPS should reaffirm and continue in effect its 2020 Rule regarding hunting and trapping methods on Alaska National Preserves. NPS should withdraw its 2023 Proposed Rule, and respond appropriately to the limited concerns raised by the court which remanded the 2020 Rule without vacatur. Alaska's bipartisan Congressional delegation jointly wrote to you on February 28, 2023 urging that NPS withdraw the Proposed Rule (Exhibit D to these comments). NPS should do so.⁹⁷

⁹⁷ The Alaska House and Senate have also vote to approved House Joint Resolution 10 calling for NPS to withdraw the Proposed Rule. It is now before the Governor. See Exhibit E.

Respectfully submitted,

Alaska Professional Hunters Association
Sportsmen's Alliance Foundation
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Attachments:

Exhibit A (2019 NPS Environmental Assessment for 2020 Rule)

Exhibit B (old Wrangell St. Elias bait station data from early 2000s)

Exhibit C (2019 NPS correspondence with researcher regarding bait and public safety)

Exhibit D (February 28, 2023 letter from Senators Murkowski and Sullivan and Rep. Peltola)

Exhibit E (State of Alaska - House Joint Resolution 10)

cc:

Senator Lisa Murkowski

Senator Dan Sullivan

Representative Mary Sattler Peltola

Governor Mike Dunleavy

Alaska Professional Hunters Association

Sportsmen's Alliance Foundation

Alaska Outdoor Council

EXHIBIT A



Alaska Region

Sport Hunting and Trapping in National Preserves in Alaska

Revised Environmental Assessment

October 2019

The National Park Service released an environmental assessment for a proposal to amend its regulations for sport hunting and trapping in national preserves in Alaska in September, 2018 for a 60-day public review and comment period. In response to the comments received, the National Park Service made a number of revisions to the document, and is issuing this Revised Environmental Assessment containing those changes, in accordance with 43 CFR 46.305(b).

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1.NEED FOR ACTION AND ISSUES ANALYZED

1.1 Need for Action

On October 23, 2015, the National Park Service (NPS) published a final rule (2015 Rule) to amend its regulations for sport hunting and trapping in national preserves in Alaska (80 FR 64325). The 2015 Rule codified prohibitions on certain types of harvest practices that are otherwise permitted by the State of Alaska. The practices are: taking any black bear, including cubs and sows with cubs, with artificial light at den sites; harvesting brown bears over bait; taking wolves and coyotes (including pups) during the denning season (between May 1 and August 9); taking swimming caribou; taking caribou from motorboats under power; taking black bears over bait; and using dogs to hunt black bears. The prohibition of these practices is inconsistent with the State of Alaska's hunting regulations found at 5 AAC Part 85.

Since early 2017, several actions have occurred which lead the NPS to reconsider the 2015 rule. On March 2, 2017, Secretary Zinke signed Secretary's Order 3347, Conservation Stewardship and Outdoor Recreation, in order to "enhance conservation stewardship, increase outdoor recreation, and improve the management of game species and their habitat." On April 3, 2017, a U.S. Fish and Wildlife Service rule for Alaska National Wildlife Refuges that was nearly identical in substance to the aspects of the 2015 Rule at issue in this rulemaking was repealed under the authority of the Congressional Review Act. See Pub. L. No. 115-20, 131 Stat. 86 (House and Senate sponsors of the law strongly criticized NPS's 2015 Rule, but acknowledged that repeal through the Congressional Review Act was time-barred, *e.g.*, 163 Cong. Rec. S1864-05, S1868 (Mar. 21, 2017) (remarks of Sen. Murkowski)). In July 2017, the Department of the Interior directed the NPS to reconsider the portions of the 2015 Rule that directly contradict state hunting regulations and that reduce opportunities for sport hunting. Acting Assistant Secretary for Fish and Wildlife and Parks Memorandum dated July 14, 2017. On September 15, 2017, Secretary Zinke signed Secretary's Order 3356, Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with State, Tribes, and Territories, to "enhance and expand upon Secretary's Order 3347 and further implement the recommendations provided by the Secretary." On September 10, 2018, Secretary Zinke issued a memorandum to the heads of Department of the Interior bureaus recognizing States as the first-line authorities for fish and wildlife management and expressing a commitment to defer to States in this regard except as otherwise required by Federal law.

Action is needed at this time to more closely align sport hunting regulations in national preserves in Alaska with State regulations, and to enhance consistency with harvest regulations on lands and waters surrounding national preserves in Alaska, in furtherance of Secretarial

Orders 3347 and 3356¹.

Consistent with those Secretarial Orders, the NPS published a proposed rule (83 FR 23621) that would remove sections of the 2015 rule, which prohibited certain sport hunting practices. The NPS has reviewed the public comments on the proposed rule, and will publish a final rule in the Federal Register implementing the proposed changes. Additional background information, including information related to the Secretarial Orders, is available in the preamble to the proposed and final rules, both of which can be accessed at: <https://www.federalregister.gov/> by searching for “1024-AE38”.

1.2 Issues Analyzed in this Environmental Assessment

Issues related to the following resources and values are analyzed in detail in this environmental assessment (EA): wildlife; federal subsistence (subsistence) use; public use and experience; and wilderness character.

Executive Order 12898 directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. Many of the rural communities near preserves in Alaska rely heavily on federal subsistence and State hunting and fishing activities. Impacts to these communities are addressed in the Federal Subsistence Use and Public Use and Experience sections of this Revised Environmental Assessment (Revised EA).

Issues related to archaeological or historic resources; fish and aquatic habitat; floodplains or wetlands; and threatened and endangered species were dismissed from detailed analysis for one or more of the following reasons:

- the environmental impacts associated with the issue are not central to the proposal or of critical importance;
- a detailed analysis of environmental impacts related to the issue is not necessary to make a reasoned choice between alternatives;
- the environmental impacts associated with the issue are not a significant point of contention among the public or other agencies; or

there are no potentially significant impacts to resources associated with the issue.
There would be no impacts to any listed species from implementation of the rule.

¹The EA released for public review evaluated the impacts of the proposed rule (83 FR 23621). Although many comments were received on the proposed rule, no substantive changes were made to the final rule. Therefore, the EA released for public review and the Revised EA appropriately consider the impacts of the final rule the NPS will publish.

2. ALTERNATIVES

2.1 Alternative 1

Remove NPS Harvest Regulations at 36 CFR 13.42 paragraphs (f) and (g) (Proposed Action and Preferred Alternative)

In the context of the current NPS wildlife regulation governing hunting and trapping in national preserves in Alaska, the proposed action would remove the prohibitions in paragraphs (f) and (g) of 36 Code of Federal Regulations (CFR) 13.42. Removing these paragraphs would rescind NPS restrictions on certain harvest practices, some of which have been authorized by the State. Paragraph (f) provides that State management actions or laws or regulations that authorize taking of wildlife are not adopted in park areas if they are related to predator reduction efforts, which is defined as efforts with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes, in order to increase harvest of ungulates by humans. Paragraph (g) sets forth a table of prohibited actions related to taking wildlife for sport purposes in national preserves in Alaska. The full text of paragraphs (f) and (g) is included in Appendix A.

Actions related to wildlife harvest that would occur in national preserves under the proposed action that are currently prohibited by 36 CFR 13.42 paragraphs (f) and (g), and are analyzed in detail in this Revised EA include the following (see Appendix B for details regarding which GMUs specific actions would be allowed in, and specific conditions that apply; see also Appendix E for a map that includes GMUs overlaid upon national preserves)²:

- The harvesting of black or brown bears over bait in accordance with State restrictions on this activity
- Hunting black bears with the aid of a dog, only currently managed through a State permit
- The taking of wolves (including pups) during an extended hunting season (current seasons would be extended between May 1 and August 9 pursuant to State regulations; see Appendix D for specific dates per GMU).
- The taking of caribou (1) from a motor driven boat; and (2) while the animal is swimming (both actions would be allowed in portions of Noatak NP, Bering Land Bridge NP, and Gates of the Arctic NP overlapping with GMUs 23 and 26). This provision will not alter subsistence regulations regarding swimming caribou.

² The State of Alaska manages hunting and trapping based on geographic units referred to as game management units (GMUs). GMUs, Subunits, and uniform coding units (UCUs) are the underlying geographic foundation of the wildlife and habitat management and regulations for ADFG. The GMU/UCU system consists of four Regions (I, II, III, and V) which are divided into twenty-six GMUs. Many of the GMUs are divided into Subunits (e.g. GMU 15 has three (3) Subunits, 15A, 15B, and 15C). More information is available at (http://www.dnr.alaska.gov/mlw/mapguide/metadata/game_mgmt_units.htm).

The NPS would continue to work with the State to obtain relevant data related to hunting, trapping, and wildlife populations on national preserves, and would continue to monitor wildlife, as appropriate and practicable. Based on available data, the NPS could take actions in the future if necessary to protect NPS resources and values, including implementing specific local hunting and trapping closures pursuant to the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), Section 1313. For any such actions, the NPS would complete additional NEPA reviews, as appropriate. Before proposing NPS actions, the NPS would attempt to address any issues with the State of Alaska Board of Game (BOG) to the maximum extent allowed by Federal law.

A number of the prohibited actions in 36 CFR 13.42(g) are also prohibited by the State or other authorities and would not occur under the proposed action. Other actions prohibited by 36 CFR 13.42(g) would occur only in limited cases under State regulations and result in minimal environmental impacts. Therefore, those actions have been dismissed from detailed analysis in this Revised EA (see Appendix C for a list of those actions).

2.2 Alternative 2

No Action (Retain NPS Harvest Regulations at 36 CFR 13.42 paragraphs (f) and (g))

Under the no-action alternative, the prohibitions on certain types of harvest practices included in paragraphs (f) and (g) of the current NPS wildlife regulation governing hunting and trapping in national preserves in Alaska, as described in the first paragraph of Alternative 1, would remain in place. The full text of paragraphs (f) and (g) is included in Appendix A.

2.3 Alternative Considered but Eliminated from Detailed Study

Prohibit State Harvest Methods Unless Specifically Authorized in NPS Areas

This alternative would specify exactly what hunting methods and means would be allowed in NPS areas in Alaska. It would likely be more restrictive with regard to hunting methods than the proposed action. The NPS believes this approach is not consistent with the ANILCA, which provides that hunting and trapping shall be allowed in national preserves under applicable State and federal law and regulation, subject to potential restrictions described in ANILCA Section 1313. This would also not address the need for action.

3. ENVIRONMENTAL CONSEQUENCES

3.1 Project Area

The area that would be affected by the proposed action is limited to the 10 national preserve units in Alaska (including the Alagnak Wild River corridor adjacent to Katmai NP) as shown in Appendix D, totaling over 20 million acres. Appendix D summarizes the approximate preserve

sizes, including acreage of designated and eligible wilderness, and some of the key species identified in ANILCA Title II for protection in these areas.

3.2 Wildlife

3.2.1 Current General Conditions of Wildlife

Large intact ecosystems, complete with large predators, are present throughout national preserves in Alaska. In general, the fish and wildlife populations are healthy and fluctuate within the limits of natural variation. Wildlife populations can change for a variety of reasons, including interactions between nutrition, weather, predator-prey relationships, and human harvest. These fluctuations have been occurring for thousands of years.

Relative to wildlife and habitat, pursuant to ANILCA, national preserves in Alaska are to be managed for the conservation of sound populations of wildlife, and to the extent consistent with ANILCA, NPS policies provide for management for natural ecosystems and processes, and natural behaviors of wildlife. These mandates have largely been satisfied. Sport and federal subsistence harvest of wildlife are mandated uses in national preserves in Alaska and are governed by a combination of State and federal laws and regulations (see Hilderbrand et al. 2013a for a review of wildlife stewardship on NPS lands in Alaska).

The territory of Alaska was divided into 26 geographical units in 1956, based on considerations of wildlife habitat, proximity and density of human population centers, wildlife distribution, and anticipated hunting pressure (DOI memo, June 24, 1957). These became known as Game Management Units (GMUs), and are the typical basis for wildlife management in Alaska. GMUs represent the best available construct upon which to base a geographic boundary for populations on an extremely large landscape such as the State of Alaska. Throughout the impact analysis, "population-level effects" are those expressed at the scale of the GMU, and localized effects as those only detectable at finer spatial scales.

The harvest of swimming caribou and the use of motorized boats for the harvest of caribou has been authorized by the State in certain GMUs and prior to 2010, the baiting of black bears was allowed in certain GMUs, including on some national preserves dating back as far as 1982. The taking of brown bears over bait has not occurred in national preserves.

In 2010, the NPS adopted temporary restrictions on certain sport hunting practices in national preserves in Alaska that had been newly allowed by State regulations. The 2015 rule permanently prohibited the same and some additional sport hunting practices on national preserves (see Appendix A).

3.2.2 Effects on Wildlife of Alternative 1

Remove NPS harvest regulations at 36 CFR 13.42 paragraphs (f) and (g)

Under the proposed action there would be the potential for localized effects on individual animals, family groups, and packs (e.g., direct mortality or increased mortality risk due to loss of

family or group members) as a result of removing the prohibitions in 36 CFR 13.42 paragraphs (f) and (g) (Hebblewhite et al. 2005, Frank 2008, Ripple and Beschta 2012). Increased take of predator species could reduce abundance of bears and wolves or increase abundance of prey in localized areas. However, based on a review of relevant studies, data, and other information including input from the Alaska Department of Fish and Game (ADFG), meaningful population-level effects on predator or prey species are not expected. The ADFG maintains that except in areas of relatively high human populations where more hunters and access are readily available, increased hunting of predator species neither reduces predator populations nor increases prey populations (B. Dale, personal communication, March 8, 2018). For example, “estimates of the effects of [hunting] harvest on the wolf population were that wolf numbers were reduced following two years when the harvest exceeded 40% but that wolf numbers increased the following year when the harvest was less than 35% (Peterson and others 1984)” (NRC 1997). Since preserves are generally remote and access is limited, the level of take on preserves under the proposed action is expected to be much less than 40% of predator populations, as discussed below. While impacts to predators and prey are likely to be greater in areas along and near access corridors, the NPS would be able to ensure no meaningful, adverse population-level effects would occur through its ability to enact specific closures, if necessary, under ANILCA Section 1313.

The ADFG argues hunting of brown bears will not impact moose populations. As cited by Miller et al. 2017:

“The ADFG has conducted preliminary analyses and concluded, ‘The department has looked at cow:calf ratios in numerous areas where brown bear seasons have been liberalized and concluded that increased bear harvest had no effect on survival of moose neonates’ (B. Dale, T. Paragi, and S. Brainerd, Alaska Department of Fish and Game, personal communication).”

Under the proposed action, extended hunting seasons for wolves would occur in certain portions of national preserves located in specific GMUs, from May 1 - August 9 of each year (see Appendix B). The areas where extended hunting seasons would be allowed are generally characterized by vast, remote landscapes where little or no harvest takes place due to the difficulty of Access. Further, according to the State, areas where seasons have been extended have not experienced meaningful increases in the harvest of wolves (SOA 2014). Data provided by the State show that approximately 1750 wolves were reported harvested from 2012 - 2016 in GMUs that overlap with national preserves, 54 of which were taken between May 1 and August 31 in GMUs that overlap with national preserves (approximately 11 wolves per year) (SOA 2018a).³ National preserves make up approximately 10.4% of the total area of those GMUs (18,517,902 acres out of 176,826,940 acres). Of those 54 wolves, 33 were taken in May through August in UCUs that are adjacent to, within, or that overlap with national preserves (on average,

³ State harvest numbers include wolves taken between August 10 and August 31 where currently allowed in GMUs that overlap with national preserves, as the State does not maintain date-specific harvest numbers. The NPS closed some national preserves through annual compendia to take between May 1 and August 9 in certain preserves in certain years during this period. Of note, those data show how many wolves were taken per GMU, but not whether wolves were taken in a national preserve.

< 7 wolves per year in an area partially comprised of national preserve lands) (SOA 2018c). While an increase in the number of wolves taken between May 1 and August 9 is expected under the proposed action, the increase is expected to be small and is not expected to have meaningful population-level effects on wolves.

When the harvest of black bears over bait was legal on NPS preserves in Alaska, harvest was low (<2 bears per year) during the period 1992-2010 (Hilderbrand et al. 2013b). During that period a total of 37 black bears were taken over bait in national preserves. 34 of those were harvested along the McCarthy Road corridor in Wrangell-St. Elias NP. Of the 37 bears taken, only three bears were harvested over bait by rural Alaska residents. While there could have been a localized effect, overall, Hildebrand et al. concluded that there were no meaningful population-level effects as a result of bear baiting on NPS lands between 1992 and 2010 (Hilderbrand et al. 2013b).

Data provided by the State shows approximately 2300 black bears were reported harvested from 2012 - 2016 in GMUs where baiting is currently allowed and that overlap with national preserves (approximately 460 bears per year) (SOA 2018a).⁴ National preserves make up approximately 9.8% of the total area of those GMUs (18,899,319 acres out of 193,148,767 acres). Available UCU data regarding bears taken over bait shows that of the 2300 bears taken, 171 were taken in UCUs where baiting is currently allowed that are adjacent to, within, or that overlap with national preserves (approximately 34 bears per year) (SOA 2018c). Of those 171 bears, 87 were taken over bait (approximately 17 bears per year in an area partially comprised of national preserve lands). Overall, based on the data in the Hildebrand study, which found fewer than 2 black bears per year were taken in national preserves, and which also reported a 4.3% annual increase in bears taken over bait statewide between 1992 and 2010, only small numbers of black bears would be expected to be taken over bait in national preserves each year under the proposed action. No meaningful population-level effects would be expected.

Data provided by the State for brown bears shows approximately 290 brown bears were reported harvested from 2012-2016 in GMUs where baiting is currently allowed and that overlap with national preserves (approximately 57 bears per year) (SOA 2018a). National preserves make up approximately 11% of the total area of those GMUs (15,351,296 acres out of 137,461,283 acres).⁵ Available UCU data regarding brown bears taken over bait shows that of the 290 bears taken, 140 were taken in UCUs where baiting is currently allowed that are adjacent to, within, or that overlap with national preserves (approximately 28 per year in an area partially comprised of national preserve lands) (SOA 2018c). Of those 140 bears, 40 were taken over bait (approximately 8 bears per year). Documenting brown bear reduction efforts in an area of Alaska without national preserves where take of brown bear over bait was initially permitted by the State, Miller et al. 2017 reported the percentage of brown bears taken over bait on the Kenai Peninsula was 77% in 2014, 89% in 2015, and 83% in 2016. Although there are some

⁴ State data show how many black bears were taken per GMU, but not whether bears were taken in a national preserve or whether bears were taken over bait.

⁵ As with black bears, those data only show how many brown bears were taken per GMU, and not whether bears were taken in a national preserve or whether bears were taken over bait. The NPS closed some national preserves through annual compendia to the take of brown bear over bait during this period.

exceptions, such as in portions of Wrangell-St. Elias NP, access to most national preserves in Alaska is more difficult than access to areas on the Kenai Peninsula used for bear baiting. Because baiting on most national preserves would be more difficult, the percentage of brown bears taken over bait under the proposed action is expected to be lower than the percentage reported by Miller et al. 2017 on the Kenai. Impacts are likely to be greater in areas along and near access corridors, but would still be less than was reported on the Kenai due to the increased distance of preserve roads from population centers. When the State decided to allow the taking of brown bears over black bear baiting stations it determined that practice would not affect the conservation of brown bears at the population level (SOA 2014). Furthermore, the State has pointed out that hunters taking brown bears over bait would need to comply with seasons and bag limits for brown bears, and has committed to monitoring brown bear harvest and taking appropriate action if sustainable harvests are threatened (SOA 2014).

By design, baiting of bears alters their behavior to increase their predictability and facilitate harvest. Herrero (2002:41-44) referred to bears that become used to people through regular contact as “habituated” bears, and noted that if such bears also obtain food rewards such as garbage that they associate with people they can become “food conditioned.” Habituated and food-conditioned bears are more likely to become a nuisance and be taken in defense of life and property, and they pose an elevated public safety risk (Herrero 1970, 1976, 2002). However, bear baiting differs in that bears do not necessarily associate baits with humans, and thus may not become food conditioned or habituated, as defined by Herrero (2002). Paquet (1991:2, cited in Hristienko and McDonald 2007) reported that bears exposed to bait in Manitoba did not become nuisance animals. Similarly, the State maintains that it has registered thousands of black bear bait stations per year for many years, and has not detected problems that could be directly attributed to the practice of bear baiting. The State points to areas with relatively high levels of bear baiting such as near Fairbanks and the Mat-Su Valley that have comparatively fewer nuisance bear issues than other urban areas such as Anchorage or Juneau (SOA 2014). Of note, ADFG regulations for bear bait stations seek to mitigate risk to people by including requirements such as site registration, signage, site cleanup and removal, and minimum distances from maintained roads, trails, houses, businesses and developed recreational facilities. These regulations also help reduce adverse human-bear interactions. Habituation, food conditioning, and other safety issues related to bear baiting are therefore expected to be rare, but such incidents could potentially lead to take of individual bears. The NPS will attempt to address any site-specific safety issues related to bear baiting with the BOG to the maximum extent allowed by Federal law, and maintains the ability to enact specific closures, if necessary in the future, under ANILCA Section 1313.

A review of the literature indicates that in some instances, bear baiting can have population-level effects other than those related to public safety. For example, a study of artificial feeding for tourism in Quebec concluded that a feeding station may decrease the annual and seasonal ranges of bears and lead to a local increase in bear density that may exceed the social carrying capacity (Masse et al. 2014). However, an analysis of black bear baiting on Alaska national preserves from 1992-2010 concluded that, “Little to no population-level effects arose from the practice of bear baiting on NPS lands. Rather, the complexity surrounding the practice of bear baiting is centered on the management goals of minimizing food-conditioning of bears, fostering

public safety, preventing defense of life and property killing of individual bears, and maintaining natural processes and behaviors” (Hilderbrand et al. 2013b). While the NPS acknowledges the results of Masse et al. (2014), Hilderbrand et al. (2013b) is more directly applicable to the bear baiting activities under the proposed action. Based on the results of the Hildebrand study, and in light of the ADFG regulations for bear bait stations noted above, the NPS does not expect meaningful population-level effects to occur as a result of bear baiting.

Hunting black bears with the aid of a dog would be allowed in all GMUs that overlap with national preserves with a State permit but the use of dogs is expected to be limited. An average of 9 permits per year from 2012 - 2016 were issued for GMUs 13, 14A, 14B, 15, 16, and 20. Of these six GMUs, only 29% of GMU 20 overlaps national preserves (Denali NP and Yukon-Charley NP), 8.1 % of GMU 16 overlaps Denali NP, and 1.7% of GMU 13 overlaps Wrangell-St. Elias NP. The other three units do not overlap or occur within national preserves. The State maintains that the use of dogs for pursuing black bears is a very limited activity in Alaska for a number of reasons including: 1) the presence of brown bears and real potential to encounter wolves makes turning dogs out to pursue black bears a risky proposition; 2) as a hunting method, this activity preferably takes place on or near a road system where dogs can be tracked and retrieved much more effectively; 3) extensive road-less (and non-motorized) areas make locating dogs in pursuit very challenging and in some cases impossible without aerial support thus becoming very expensive and logistically challenging. Hunters who have invested thousands of dollars and devoted numerous hours of training pursuit dogs for hunting bears are not likely to participate or invest time in this method in remote areas (SOA 2018b). The NPS recognizes that the use of dogs to aid with black bear hunting could result in harassment or killing of other wildlife that is present when dogs are used. However, because this activity is expected to be rare under the proposed action, any impacts to wildlife related to using dogs to hunt black bears would be localized and minimal.

The taking of swimming caribou and taking of caribou from a motor driven boat could result in increases to the number of caribou taken in Bering Land Bridge, Gates of the Arctic, and Noatak National Preserves (GMUs 23 and 26), which could result in localized impacts. However, most non-local hunters are generally not known to harvest swimming caribou, preferring to hunt on land since they have limited access to the necessary motorized boats (SOA 2014). Due to the low level of additional take of caribou expected under the proposed action, no meaningful population-level impacts are expected.

Cumulative Effects:

Abundant research has been conducted on a myriad of factors affecting bear, wolf, and other carnivore populations. Fire, harvest, illegal killing, access, habitat fragmentation, climate, and development all have the potential to impact bears and wolves at the population level across varying temporal scales and have the potential to influence natural ecosystems and processes (Creel and Rotella 2010, Gude et al. 2012, Mace and Waller 1997, McLellan 1990, McLellan et al 1999, McLellan and Shackleton 1988, McLellan and Shackleton 1989, Schwartz et al. 2012, Vucetich et al. 2005). For example, events such as wildfires, climate, and severe winters (i.e.

deep snows or icing events), can impact habitat quality of ungulates, affect recruitment, and cause direct mortality of individuals (Hegel et al. 2009, Joly et al. 2003, Joly et al. 2009, Joly et al. 2011, Joly et al. 2012, MacCracken and Viereck 1990, Weixelman et al. 1998). These effects contribute to the impacts of predation on ungulates. Ungulate numbers, in turn, are linked to prey available for predators (Hegel et al. 2009, Hegel et al. 2010).

Past wildlife habitat fragmentation for bears, wolves, moose, and caribou has occurred in and adjacent to park areas such as the Dalton Highway and developments on the North Slope, the Red Dog Haul Road through Cape Krusenstern National Monument and near Noatak NP, and the McCarthy and Nabesna roads in Wrangell-St. Elias NP. The NPS evaluated the cumulative impacts of development on wildlife and habitat, among other resources, in environmental impact statements (EISs) for Denali National Park and Preserve, Wrangell-St. Elias National Park and Preserve, and Yukon-Charley Rivers NP (NPS 1990 a, b, and c). These EISs concluded that there is the potential for adverse effects to certain large wildlife species and their habitat from mining activities. The BLM and NPS are processing an application for a road to the Ambler Mining District near the upper Kobuk River which, if built, could impact wildlife habitat and populations in Gates of the Arctic NP.

Effects outside NPS boundaries and source-sink dynamics are a management concern for carnivores and herbivores alike, particularly on the border of protected areas and areas of less restrictive harvest (Haroldson et al. 2004, Rutledge et al. 2010, Ruth et al. 2011, Salinas et al. 2005, Schwartz et al. 2006a, Schwartz et al. 2006b, Schwartz et al. 2012). NPS-managed lands can become population sources, areas where populations can flourish because habitats are abundant and pressures are minimal. Adjacent lands can become population sinks, where populations decline due to inadequate habitats, or increased pressures including hunting.

When the incremental impacts of the proposed action are added to the other cumulative impacts, wildlife and their habitat would continue to be adversely affected. The proposed action would contribute a small degree to these cumulative impacts due to the contribution of localized impacts from additional take expected under the proposed action.

Conclusion:

The proposed action could result in localized impacts to individual predators, family groups, and packs (e.g., direct mortality and increased mortality risk to predators due to loss of family or group members), and corresponding localized effects on predator-prey systems. However, due to the low level of additional take anticipated as a result of removing the current prohibitions, meaningful population-level effects are not anticipated. The use of dogs to hunt black bears is expected to be rare and is likely to result in minimal and localized environmental impacts. No meaningful population-level impacts are expected to caribou.

The State manages take of wildlife under a “sustained yield” principle (Alaska Constitution, Article VIII, Section 4) and has assured the NPS that in the event harvest were to increase beyond sustainable levels, the ADFG would close seasons by emergency order if immediate action was necessary, and/or by recommending more conservative seasons, bag limits, and/or methods to the BOG for future hunting seasons (SOA 2014). As part of the proposed action the

NPS would continue to work with the BOG to ensure sustainable harvest and protect NPS resources and values. The NPS would be able to ensure no meaningful adverse population-level effects would occur through its ability to enact specific hunting and trapping closures, if necessary, in the future. In general, due to the low level of additional take under the proposed action, and its ability to designate closures, the NPS expects healthy populations of wildlife would continue to exist in a manner consistent with the range of natural variability.

3.2.3 Effects on Wildlife of Alternative 2

No Action (Retain NPS harvest regulations at 36 CFR 13.42 paragraphs (f) and (g))

Wildlife would continue to be impacted by hunting and trapping related activities in national preserves. However, because the current prohibitions on methods of take would remain in place, there would not be the potential for increased localized impacts such as mortality risk due to loss of family or group members that could occur under the proposed action. Wildlife populations would continue to respond to current factors with little change in abundance, diversity, and distribution. Because baiting would continue to be prohibited by the NPS, bears in national preserves would maintain more natural foraging and feeding behaviors than under the proposed action.

Cumulative Effects:

Other effects on wildlife and habitat are expected to be the same under this alternative as described above for the proposed action, but the additive impacts of the no-action alternative would result in no measurable additional changes to wildlife populations or habitat. Any changes to wildlife numbers or distribution would largely be driven by take of predators adjacent to preserves and other factors discussed under the cumulative impact section of the proposed action.

Conclusion:

Keeping the existing prohibitions on methods of take in place would contribute to the maintenance of more natural ecosystems, processes, and behaviors of affected wildlife, especially bears. Healthy wildlife populations would continue to exist in a manner similar to current conditions. The no-action alternative could result in a more natural range of variability when compared to the proposed action. Changes to wildlife numbers or distribution could occur, but would largely be driven by take of predators adjacent to preserves. Overall, wildlife would be affected less by intentional human actions when compared to the proposed action.

3.3 Federal Subsistence Use

3.3.1 Current General Conditions of Subsistence Use

ANILCA Title VIII "Subsistence Management and Use" establishes a rural preference for subsistence uses, specifically including the taking of fish and wildlife for non-wasteful purposes

on federal lands in Alaska, over other forms of taking fish and wildlife. ANILCA Section 803 defines the term “subsistence uses,” also commonly referred to as “federal subsistence use,” as “the customary and traditional uses by rural Alaska residents of wild renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of non-edible by-products of fish and wildlife resources taken for personal or family consumption, for barter, or sharing for personal or family consumption; and for customary trade.” Federal subsistence hunting and trapping are allowed on national preserves pursuant to ANILCA Sections 203 and 1313. Federal regulations at 50 CFR Part 100, 36 CFR Part 242 and 36 CFR Part 13 for NPS areas describe allowable federal subsistence activities on national preserves and other areas. Federal subsistence regulations promulgated in the 1990s were based, in large part, upon State harvest methods and means, seasons, and harvest limits. These regulations included the use of bait to hunt black bear, which has been prohibited for sport hunting by 36 CFR 13.42 (g) since January of 2016, but is still allowed under federal subsistence regulations.

ANILCA Section 804 established a rural preference for federal subsistence harvest on federal public lands, and allows for restrictions on the taking of populations of fish and wildlife for subsistence uses in order to protect the continued viability of such populations or to continue such uses. To satisfy the ANILCA Section 804 priority the Federal Subsistence Board has approximately 12 current sport hunting restrictions that apply to preserves in 2018, which are subject to changes or additions during each regulatory cycle. While allocation decisions by the Federal Subsistence Board are required on federal public lands to assure rural priority, they fit within the larger system of State wildlife management, which manages populations across land ownership boundaries. The NPS recognizes that federal subsistence users also hunt on National Preserves under State sport hunting regulations. Impacts to hunting opportunities, including for subsistence users hunting under State regulations, are addressed in the Public Use and Experience section.

3.3.2 Effects on Subsistence of Alternative 1

Remove NPS harvest regulations at 36 CFR 13.42 paragraphs (f) and (g)

Initially, both State sport hunting and trapping (see Alaska Administrative Code 92.113 (b)(7)(iii)(D)) and federal subsistence hunting and trapping opportunities of predator and prey species could increase due to the elimination of the prohibitions in paragraphs (f) and (g) of the current regulation. If wolf, bear, or caribou numbers are sufficiently reduced, there is the potential for sport hunting to be restricted or eliminated by the BOG or the Federal Subsistence Board to protect the ANILCA 804 subsistence priority. However, such a reduction is unlikely because the State has a responsibility to manage resources under the sustained yield principle and because, as discussed in the “Wildlife” section, levels of additional take are expected to be low. The State has assured the NPS that if harvests were to increase beyond sustainable levels the ADFG would close seasons by emergency order if immediate action was necessary, and/or would recommend more conservative seasons, bag limits, and/or methods to the BOG for future hunting seasons (SOA 2014).

There could be the potential for a decrease in federal subsistence hunting opportunities for the take of predators in localized areas due to the expected increase in take of predators from sport hunting and trapping. For example, there could be a reduced opportunity to harvest wolves when pelts are in prime condition if more wolves are taken during the summer denning seasons. Opportunities for federal subsistence hunting of prey populations, such as moose and caribou could see a corresponding increase in those areas if fewer predators are present (see Hegel et. al. 2010). Any reductions in opportunities for take of predator species or increases in prey species are expected to be minimal and localized, because as discussed in the “Wildlife” section, additional take of predators under the proposed action is expected to be low.

There would not be meaningful impacts to federal subsistence uses from removing the prohibition on hunting black bears with the aid of bait. Federal subsistence users took only three black bears over bait in an 18-year period from 1992 – 2010 (Hilderbrand, et. al. 2013b). Regarding the more recent federal subsistence allowance for taking brown bears over bait, a slight increase in federal subsistence take over time could occur. Where the State allows the take of brown bears over bait, federal subsistence users could use a broader range of baits than those hunting under federal subsistence regulations. There is the potential for encounters between bears and subsistence users at their hunting and fishing camps, and in and near their communities where baiting occurs.

Federal subsistence users could see some beneficial impacts under the proposed action because non-rural family members would be able to help their rural family members hunt by methods of take that are currently prohibited for sport hunters.

Cumulative Effects:

The *Subsistence Management Regulations for Harvest of Wildlife on Federal Public Lands in Alaska* (Federal Subsistence Board 2016-2018) have approximately 12 closures in place preventing non-rural residents from harvesting moose, caribou, muskox, and sheep in preserves where the Board has determined restrictions are appropriate to provide the required federal subsistence priority as found in ANILCA Section 804. Combined with the incremental effects of the proposed action, harvest of ungulates could increase and the subsistence take of bears and wolves could decrease. The proposed action would contribute a small degree to the overall cumulative impacts.

Conclusion:

In specific, localized areas, there could be a slight increase in the opportunity for harvest of brown bears over bait where it is allowed for sport hunters. As a result, there could also be localized decreases in the number of predators available for federal subsistence users and increases in the number of prey animals available. There is also a small potential for encounters with bears attracted to the vicinity of subsistence hunting and fishing camps. Overall, the opportunities for harvest of wildlife by federal subsistence users are expected to remain similar to the opportunities currently available.

3.3.3 Effects on Subsistence of Alternative 2

No Action (Retain NPS harvest regulations at 36 CFR 13.42 paragraphs (f) and (g))

Opportunities for subsistence users to harvest predator and prey populations would remain similar to current levels. If predators, weather, and other factors reduce prey populations sufficiently, the Federal Subsistence Board could restrict sport harvest to protect the ANILCA 804 subsistence priority.

Federally qualified subsistence users only harvested three black bears over bait in an 18-year period (Hilderbrand, et al. 2013b). Therefore, continuing to prohibit sport harvest of black bears over bait would have no discernable effect on federal subsistence users' harvest of black bears. By continuing to prohibit hunting brown bear over bait, no change would result in opportunities for federal subsistence users. There would continue to be a low potential to condition bears to human foods, and encounters between bears and subsistence users at their hunting and fishing camps and in and near their communities would remain similar to current conditions.

Cumulative Effects:

Other effects on wildlife and habitat are expected to be the same under this alternative as described above for the proposed action. The incremental effects of the no-action alternative would continue to maintain federal subsistence harvest opportunities similar to those that currently exist. Any changes that could occur would be a result of actions taken by entities other than the NPS.

Conclusion:

Retaining the prohibitions found at 36 CFR 13.42 paragraphs (f) and (g) would result in little to no effects on federal subsistence wildlife harvest in national preserves in Alaska.

3.4 Public Use and Experience

3.4.1 Current Public Use and Experience

ANILCA Title II, national preserve area General Management Plans (GMPs), and more recent NPS Foundation Statements describe the public uses and values to be managed for and protected in each national preserve area, including the Alagnak Wild River. ANILCA section 1313 requires that National preserves be managed like national parks, except as otherwise provided in ANILCA and except that the taking of wildlife for sport purposes and subsistence uses and trapping shall be allowed under applicable State and federal law and regulation. Guided sport hunting concessions are offered in all of the national preserves in Alaska.

Most of the park and/or preserve GMPs (NPS 1984 through 1986) describe in more detail the public access and facilities needed to meet public use objectives, and further clarify Congressional intent for public uses. The Denali National Park and Preserve Final Backcountry Management Plan (NPS 2006b) and Foundation Statement (NPS 2014) further address area

management goals and zones for public uses, including for the preserve additions. Other preserve area Foundation Statements (NPS 2009, 2010) articulate primary public uses and objectives, scientific values, and interpretive themes for the various areas.

Visitor use statistics for these areas are available at: <https://irma.nps.gov/Stats>. In general, public visitation to the relatively remote and wild preserves is dispersed and low in number, from a few visitors to several thousands of visitors per year, depending on the area and year. National preserves located on the road system see higher visitation numbers. In 2017, a total of 2.786 million visitors experienced national parks and preserves in Alaska (*2017 National Park Service Visitor Spending Effects Report*). Visitor pursuits in national preserves are highest during the summer season for fishing, hunting, wildlife viewing, river floating, backpacking, mountain climbing, photography, and scientific study. Smaller numbers of visitors enter these areas during the winter season for skiing, dog mushing, snowmobiling, and other winter use activities, including trapping.

3.4.2 Effects on Public Use and Experience of Alternative 1

Remove NPS harvest regulations at 36 CFR 13.42 paragraphs (f) and (g)

Public use and experience would be both adversely and beneficially impacted under the proposed action, depending on the type of activity visitors wish to enjoy. Some hunters could take wolves for a longer season where authorized. The harvest of brown bears could increase for sport hunters (including subsistence users hunting under State regulations) because these animals could be attracted to and harvested over bait.

If wolf or bear numbers are sufficiently reduced, there is the potential for sport hunting to be restricted or eliminated by the Federal Subsistence Board to protect the ANILCA 804 subsistence priority. However, such a reduction is unlikely because the State has a responsibility to manage resources under the sustained yield principle and because, as discussed in the “Wildlife” section, levels of additional take are expected to be low. The State has assured the NPS that if harvests were to increase beyond sustainable levels the ADFG would close seasons by emergency order if immediate action was necessary, and/or would recommend more conservative seasons, bag limits, and/or methods to the BOG for future hunting seasons.

The State maintains that increased hunting seasons do not necessarily lead to increased harvest or reduced potential sightings of wolves, and that locations where wolf hunting seasons have been extended have not experienced meaningful increases in harvest of wolves (SOA 2014). However, Borg et al. (2016) reported that increased harvest of wolves outside Denali National Park was associated with reduced sightings inside the park, particularly along nearby access corridors. Wolf population size, pack size and den site location were strong drivers of sighting opportunities for wolves, and sightings in the park were more than twice as high in years when a wolf harvest buffer was in place adjacent to the park. The study also found that harvest of wolves from road packs (packs whose home range overlapped park roads) may have a larger influence on sightings than harvest of other wolves, and noted that harvest is likely to have particularly strong effects on sightings when it reduces population size or affects breeding

behavior within protected regions. While wildlife viewing opportunities depend on a number of factors, localized reductions in opportunities to view wolves are expected compared to opportunities that currently exist, due to the increase in take of wolves expected under the proposed action. A corresponding increase in opportunities to view prey species would be expected as well.

Because of their low reproductive rates, bear populations are easily reduced by hunting and recover more slowly than wolves. Depending on a number of factors including the number of bears taken and their location, localized decreases in opportunities for visitors to view bears could occur. The non-visiting public, such as those viewing wildlife through remote cameras, would not be meaningfully affected by localized decreases in viewing opportunities, but might be slightly affected by the perception of lost opportunities to view wildlife.

State regulations for bear bait stations are designed to prevent user conflicts by prohibiting stations within one-quarter mile of maintained roads or trails and within one mile of a house, cabin, campground, or other developed recreational area. In addition, State regulations require that stations be signed and that all bait, litter, and equipment be removed from the bait site when hunting is completed. Bear bait stations would be allowed when authorized seasons are open, generally April 15 to June 30, and, in GMU 16, July 1 to October 15 (see Appendix B for exact dates per GMU), which can overlap with the primary visitor season. For the most part, adverse impacts to non-hunting visitors would be expected to occur during the primary visitor season under the proposed action. Some visitors would likely avoid signed bear bait station areas because they would not want to interfere with an authorized hunt situation and because of perceived safety issues. Further, bait piles can be smelly and irritating to other outdoor recreationists. Some bears attracted to bait stations but not harvested could pose a threat to public safety. The State maintains, however, that it registers thousands of black bear bait stations yearly and has done so for many years, but to date, has not detected problems that can be directly attributed to the practice of bear baiting (SOA 2014). Food conditioning and safety issues related to bear baiting are therefore expected to be rare, but such incidents could potentially lead to injury or death. Although the NPS has documented low compliance with State regulations along the McCarthy Road in Wrangell-St. Elias NP, the NPS will work with the State to take actions to ensure compliance and will attempt to address any site-specific issues related to bear baiting with the BOG, to the maximum extent allowed by Federal law. The NPS maintains the ability to enact specific closures, if necessary in the future, under ANILCA Section 1313.

Opportunities to conduct research on or observe relatively un-manipulated predator species (bears, wolves) and their relationships with other species and corresponding ecosystem functions would be adversely impacted under the proposed action due to the potential localized impacts to predators and prey, as discussed in the "Wildlife" section. However, these impacts would be minimal in most cases because predators and prey in preserves are already subject to sport hunting, and only low numbers of additional take are expected under the proposed action.

Cumulative Effects:

Other impacts on public use and experience could result from actions inside and immediately adjacent to national park, monument, and preserve areas. There are several guided commercial activities visitors use for wildland adventures, hunting, and sport fishing trips. As of January 1, 2018, there were 32 hunt guide concessions operating in national preserves, nearly half of which are in Wrangell-St. Elias NP.

Bear baiting is an authorized federal subsistence use in some areas. Harvest methods and seasons on predators such as bears and wolves inside and outside of national preserves could reduce predators occurring inside preserves, as well as the opportunity to view and study them.

Combined with the impacts of the proposed action, the impacts of other cumulative actions could be beneficial for sport hunting in preserves in the short term and adverse for other public uses and experience of the affected national preserves, especially those seeking opportunities to view wolves and bears in certain preserves. The proposed action would contribute a meaningful, incremental impact to the overall cumulative impacts.

Conclusion:

The proposed action could result in increased sport hunting opportunities in certain localized areas of the preserves. It could also result in reduced opportunities for some visitors to observe predators in certain locations, especially opportunities to view wolves and bears along access corridors, and a corresponding increase in opportunities to view prey species. Visitors may avoid areas around bear baiting stations, resulting in a reduction in public uses other than hunting. Visitor experience may also be negatively impacted by bear baiting. However, due to the low level of additional take expected under the proposed action most opportunities to view wildlife, and opportunities for scientific studies would remain similar to those that currently exist in most areas of national preserves. Overall, given the remote location of most preserves and the lack of visitor facilities, it is likely that few visitors would experience any impacts from the proposed action, except possibly along access corridors.

3.4.3 Effects on Public Use and Experience of Alternative 2

No Action (Retain NPS harvest regulations at 36 CFR 13.42 paragraphs (f) and (g))

This alternative would maintain the status quo for sport hunting and other public uses in national preserves. Sport hunting opportunities to harvest predator and prey species would remain similar to recent years. Opportunities to view wildlife and for scientific study would remain similar to those currently available, and could improve over time in certain areas because the black bear baiting prohibitions in the 2015 rule not prohibited via compendium have only been in place for two full hunting seasons.

Cumulative Effects:

The cumulative impacts on public use and experience would be the same as described for the proposed action. When combined with the impacts of the no-action alternative, overall cumulative impacts would provide for the same or similar levels of public use and experience that currently exist. Any changes that could occur, either adverse or beneficial, would be a result of actions taken by entities other than the NPS.

Conclusion:

Current NPS harvest regulations restricting methods of wildlife take in preserves would remain in place, allowing for a similar level of public use and experience that currently exists. Over time, additional opportunities for viewing of predators could improve, and there could be increased opportunities to study more natural predator and prey species.

3.5 Wilderness Character

3.5.1 Current Status of Wilderness Character

The Wilderness Act directs federal agencies to manage wilderness so as to preserve its wilderness character. NPS Management Policies 6.3.1 requires the NPS to preserve wilderness character of lands in any category of wilderness. Section 701 of ANILCA designated wilderness areas in National Park System units in Alaska, including parts of national preserves. There are five tangible qualities of wilderness character (Landres et al. 2015): (1) untrammeled; (2) natural; (3) undeveloped; (4) opportunities for solitude or primitive and unconfined recreation; and (5) other features of historical, scientific, educational and scenic value.

National preserves in Alaska contain approximately 8,095,000 acres of designated wilderness and more than 9.4 million acres of eligible wilderness (see Appendix D). Wilderness character in national preserves in Alaska is generally exceptional. While ongoing hunting and trapping activities do detract somewhat from the natural and untrammeled qualities, these lands contain vast areas largely in their natural condition and are largely untrammeled. The fact that these lands remain largely free from modern human influences sets them apart from wilderness areas in the lower 48 and from Alaska lands outside the wilderness boundaries. Encompassing vast acreages with few permit requirements or other management controls, these lands and waters provide outstanding opportunities for solitude or primitive and unconfined recreation. Aside from an occasional cabin or scientific instrument, there are minimal modern human developments.

Impacts to opportunities for solitude or primitive and unconfined recreation would be minimal under the proposed action due to the large size of wilderness areas and eligible wilderness in national preserves in Alaska. Impacts to other features of value would be minimal, as discussed under "Public Use and Enjoyment." Analyzing these qualities is not necessary to make a reasoned choice between alternatives and the environmental impacts associated with these issues would not be significant; therefore, these qualities are not carried forward for detailed analysis. The three other qualities are carried forward, and are described below:

Untrammeled. The Wilderness Act states that wilderness is “an area where the earth and its community of life are untrammeled by man,” that “generally appears to have been affected primarily by the forces of nature” and “retain[s] its primeval character and influence.”

Natural. The Wilderness Act states that wilderness is “protected and managed so as to preserve its natural conditions.”

Undeveloped. The Wilderness Act states that wilderness is “an area of undeveloped Federal land ... without permanent improvements or human habitation,” “where man himself is a visitor who does not remain” and “with the imprint of man’s work substantially unnoticeable.”

3.5.2 Effects on Wilderness Character of Alternative 1

Remove NPS harvest regulations at 36 CFR 13.42 paragraphs (f) and (g)

Natural. Under the proposed action, the natural quality of wilderness could be adversely impacted because ecological systems may be altered by the take of additional predators, which, as discussed in the “Wildlife” section, could reduce numbers of predators and increase numbers of prey in localized areas. The additional take of predators and the practice of bear baiting would also affect wildlife behavior. These changes to numbers and behavior of wildlife could further alter natural systems in localized areas within wilderness, where sport hunting already occurs.

Untrammeled. The proposed action could adversely affect the untrammeled quality of wilderness character in localized areas because the baiting of bears involves intentional manipulation of wildlife.

Undeveloped. The proposed action may result in increases in the number of bear baiting stations and associated debris. While the State requires that all bait, litter, and equipment be removed when hunting is completed, bait stations and debris have been left onsite in the past and could be highly visible and a clear sign of human modification and occupation of the area. These actions would degrade the undeveloped quality of wilderness while they are present on the landscape. However, bait stations and associated debris would occur in small and scattered locations within large areas of designated wilderness. In addition, ANILCA Section 1316 includes a special provision for wilderness areas that authorizes the establishment and use of temporary facilities and equipment directly and necessarily related to the taking of wildlife. These special provisions are referred to as “non-conforming” uses. The establishment and use of bait stations in wilderness areas for the purpose of taking bears under State laws and regulations qualifies as an allowed, non-conforming use under this provision.

Cumulative Effects:

Past, present, and reasonably foreseeable future actions that affect wilderness character include illegal harvest of wildlife, including the taking of bears over bait, State predator control programs on the boundaries of national preserves, and motorized access. Hunting and illegal

harvest of wildlife could have the potential to influence natural ecosystems and processes by removing certain species, including predator species that are also the target of recreational hunting activities. Ongoing motorized access by the public and for administrative activities, including maintenance of scattered communications and weather station sites could negatively impact the undeveloped quality of wilderness areas. The BLM and NPS are also processing an application for a road to the Ambler Mining District near the upper Kobuk River. If built, this road could impact wilderness values in Gates of the Arctic NP. When the incremental impacts of the proposed action are added to past, present, and reasonably foreseeable future impacts, the overall cumulative impacts to the untrammeled, natural, and undeveloped qualities would be adverse. The incremental impacts of the proposed action would provide a meaningful contribution, especially to the untrammeled character.

Conclusion:

The proposed action would have a minimal adverse impact on the natural and untrammeled qualities of wilderness by affecting numbers of predator and prey in localized areas and intentionally altering wildlife behavior. In addition, while present and prior to removal, bait stations and associated debris would degrade the undeveloped quality of wilderness. Overall, due to the low level of additional take expected under the proposed action and the large areas of wilderness and eligible wilderness in national preserves in Alaska, wilderness character would continue to exist in a manner similar to current conditions.

3.5.3 Effects on Wilderness Character of Alternative 2

No Action (Retain NPS harvest regulations at 36 CFR 13.42 paragraphs (f) and (g))

Natural. There would be no changes to the natural quality of wilderness. The NPS would not take any actions that would detract from this quality.

Untrammeled. There would be no changes to the untrammeled quality of wilderness. The NPS would not take any actions that would detract from this quality.

Undeveloped. There would be no changes to the undeveloped quality of wilderness. The NPS would not take any actions that would detract from this quality.

Cumulative Effects:

Overall past, present, and reasonably foreseeable future actions would be the same as described for the proposed action. These cumulative effects would result in adverse impacts to wilderness character. The no-action alternative would not add any incremental impacts.

Conclusion:

The no-action alternative would result in no change to wilderness character as described in the affected environment. By retaining the current NPS harvest regulations, more natural processes would continue to be allowed to play out compared to the proposed action.

4. Agencies and Persons Consulted

Personnel from the NPS Alaska Regional Office, Alaska National Preserves, and Washington Office were involved with the preparation of this Revised EA. The NPS also consulted with the Alaska Department of Fish and Game.

A press release was issued on September 5, 2018 to announce availability of the environmental assessment for a 30-day public review period. The comment period was subsequently extended for an additional 30 days, through November 5, 2018. Approximately 14,000 comments were received. In response to the comments received, the NPS made a number of revisions to the document, and issued this Revised EA containing those changes.

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6. APPENDICES

Appendix A – 36 CFR 13.42 paragraphs (f) and (g)

(f) State of Alaska management actions or laws or regulations that authorize taking of wildlife are not adopted in park areas if they are related to predator reduction efforts. Predator reduction efforts are those with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes, in order to increase harvest of ungulates by humans.

(1) The Regional Director will compile a list updated at least annually of State laws and regulations not adopted under this paragraph (f).

(2) Taking of wildlife, hunting or trapping activities, or management actions identified in this paragraph (f) are prohibited. Notice of activities prohibited under this paragraph (f)(2) will be provided in accordance with § 13.50(f).

(g) This paragraph applies to the taking of wildlife in park areas administered as national preserves except for subsistence uses by local rural residents pursuant to applicable Federal law and regulation. As of January 1, 2016, the following are prohibited:

Table A-1. Prohibited acts and exceptions for the taking of wildlife in national preserves

Prohibited acts	Any exceptions?
(1) Shooting from, on, or across a park road or highway	None.
(2) Using any poison or other substance that kills or temporarily incapacitates wildlife	None.

Prohibited acts	Any exceptions?
(3) Taking wildlife from an aircraft, off-road vehicle, motorboat, motor vehicle, or snowmachine	If the motor has been completely shut off and progress from the motor's power has ceased.
(4) Using an aircraft, snowmachine, off-road vehicle, motorboat, or other motor vehicle to harass wildlife, including chasing, driving, herding, molesting, or otherwise disturbing wildlife	None.
(5) Taking big game while the animal is swimming	None.
(6) Using a machine gun, a set gun, or a shotgun larger than 10 gauge	None.
(7) Using the aid of a pit, fire, artificial salt lick, explosive, expanding gas arrow, bomb, smoke, chemical, or a conventional steel trap with an inside jaw spread over nine inches	Killer style traps with an inside jaw spread less than 13 inches may be used for trapping, except to take any species of bear or ungulate.

Prohibited acts	Any exceptions?
(8) Using any electronic device to take, harass, chase, drive, herd, or molest wildlife, including but not limited to: artificial light; laser sights; electronically enhanced night vision scope; any device that has been airborne, controlled remotely, and used to spot or locate game with the use of a camera, video, or other sensing device; radio or satellite communication; cellular or satellite telephone; or motion detector	(i) Rangefinders may be used. (ii) Electronic calls may be used for game animals except moose. (iii) Artificial light may be used for the purpose of taking furbearers under a trapping license during an open season from Nov. 1 through March 31 where authorized by the State. (iv) Artificial light may be used by a tracking dog handler with one leashed dog to aid in tracking and dispatching a wounded big game animal. (v) Electronic devices approved in writing by the Regional Director.
(9) Using snares, nets, or traps to take any species of bear or ungulate	None.
(10) Using bait	Using bait to trap furbearers.
(11) Taking big game with the aid or use of a dog	Leashed dog for tracking wounded big game.
(12) Taking wolves and coyotes from May 1 through August 9	None.
(13) Taking cub bears or female bears with cubs	None.
(14) Taking a fur animal or furbearer by disturbing or destroying a den	Muskrat pushups or feeding houses.

Appendix B – Summary of Methods of Take

Table B-1. Methods of Take That Would be Allowed Under the Proposed Action (that are carried forward for detailed analysis)

Prohibited under current State hunting regulations	Summary of exceptions to current State hunting regulation prohibitions (actions that would be allowed under the proposed action)
1- Using bait to harvest bears	<p><u>Where allowed generally (GMUs with national preserve overlap):</u></p> <p>GMUs 5, 9, 11, 12, 13*, 19, 20, 23, 24, and 25B, 25C April 15 - June 30, GMU 16* July 1 - October 15, April 15 - June 30, GMU 17 April 15 - May 31, GMU 19D East Predation Control Area: those portions of the Kuskokwim River drainage within GMU 19D upstream from Selatna River drainage and the Black River drainage. GMU 24C, *Bait restrictions (see State hunting regulations for more details)</p> <p><u>Conditions applicable to specific GMUs:</u></p> <p>-In GMUs 9, 11-13, 16, 17, 19-20, 24, and 25, a registered guide may operate up to ten bait stations at a time in each guide use area that they are registered to operate in. A guide contract is required for each hunter.</p> <p>- In GMUs 9, 11-13, 16, 17, 19, 20, 23-25, black bears (and brown bears where allowed-see GMUs listed below) may be taken at permitted bait stations the same day you have flown provided you are at least 300 feet from the airplane. This is NOT allowed on National Park Service lands.</p> <p>- In GMUs 11, 12, 13, 19D, 20C, 20E, 23, 24C, and 24D brown/grizzly bears may be taken at bear bait stations. Hunters must comply with seasons, bag limits, salvage, and sealing requirements for brown/grizzly bears (registration permits and locking-tags may be required in some areas, contact ADF&G for details).</p>
2- Taking big game with the aid or use of a dog	Dogs may be used to hunt black bears under a permit issued by ADF&G.
3- Taking wolves from May 1 through August 9	<p><u>Wolf Seasons per 2017-2018 State hunting regulations and corresponding national preserve:</u></p> <p>GMU 9, 10: August 10- June 30 (Preserve in this GMU- Aniakchak, Lake Clark)</p>

Prohibited under current State hunting regulations	Summary of exceptions to current State hunting regulation prohibitions (actions that would be allowed under the proposed action)
	<p>GMU 12: August 10-May 31 (Preserve in this GMU- Wrangell-St. Elias)</p> <p>GMU 19: August 10-May 31 (Preserve in this GMU- Denali)</p> <p>GMU 20C, 21: August 10- May 31 (Preserve in this GMU- Denali and Yukon-Charley Rivers)</p> <p>GMU 22: August 1- May 31 (Preserve in this GMU- Bering Land Bridge)</p> <p>GMU 23: August 1 - Apr 30 (Preserve in this GMU- Noatak)</p> <p>GMU 24, 25: August 10- May 31 (Preserve in this GMU- Gates of the Arctic)</p>
4- Taking big game while the animal is swimming	Caribou may be taken while swimming in Noatak NP and portions of Bering Land Bridge NP and Gates of the Arctic NP (GMUs 23 and 26)

Appendix C – Actions Dismissed from Detailed Analysis

Many of the prohibited actions in paragraph (g) of 36 CFR 13.42 are also prohibited by the State or other authorities, and therefore they would not occur under the proposed action. Other actions would only occur in limited cases under State hunting regulations. These actions, which include the following, are dismissed from detailed analysis in this Revised EA:

- Shooting from, on, or across a park road or highway. (36 CFR 13.42 (g)(1))
 - Prohibited by the State
- Using any poison or other substance that kills or temporarily incapacitates wildlife. (36 CFR 13.42 (g)(2))
 - The Alaska Board of Game (BOG) has issued no authorizations since 2008, when it authorized U.S. Fish and Wildlife Service to use poison to remove invasive rats on Hawadax Island in Alaska Maritime National Wildlife Refuge. The State is unaware of any private citizen ever being authorized use of poison by the State (SOA 2018a).
- Taking wildlife from an aircraft, off-road vehicle, motorboat, motor vehicle, or snowmachine. (36 CFR 13.24 (g)(3))
- Taking big game by aircraft remains prohibited by 36 CFR 13.42(d) Using an aircraft, snowmachine, off-road vehicle, motorboat, or other motor vehicle to harass wildlife, including chasing, driving, herding, molesting, or otherwise disturbing wildlife. (36 CFR 13.42 (g)(4))
 - Prohibited by the State
- Using a machine gun, a set gun, or a shotgun larger than 10 gauge. (36 CFR 13.42 (g)(6))
 - Prohibited by the State
- Using the aid of a pit, fire, artificial salt lick, explosive, expanding gas arrow, bomb, smoke, chemical, or a conventional steel trap with an inside jaw spread over nine inches, except killer style traps with an inside jaw spread less than 13 inches may be used for trapping, except to take any species of bear or ungulate (36 CFR 13.42 (g)(7))
 - Prohibited by the State
- Using any electronic device to take, harass, chase, drive, herd, or molest wildlife, including but not limited to laser sights, electronically enhanced night vision scope, any device that has been airborne controlled remotely, and used to spot or locate game with the use of camera, video or other sensing device, radio or satellite communication,

cellular or satellite telephone, or motion detector in accordance with State restrictions (36 CFR 13.42 (g)(8))

- Prohibited by the State, except communications equipment may be used for safety.
- Using snares, nets, or traps to take any species of bear or ungulate (36 CFR 13.42 (g)(9))
 - Generally prohibited by the State. There is an exception that allows bears to be trapped under a formal predator control program, with a special permit. However, no formal predator control program for black bears currently exists.
- Taking black bears (including cubs and sows) with or without use of artificial light under customary and traditional use activities at den sites Oct 15 - Apr 30
 - This activity would occur in only one portion of one GMU that overlaps with one national preserve (GMU 24C). Only 2.85% of that one GMU overlaps with Gates of the Arctic NP. The State does not have data regarding number of cubs and sows harvested specifically, and black bears in GMU 24 are not required to be sealed, but in GMU 24C the State reported that four female black bears were harvested in 2012, and three male black bears were harvested in 2016, with no harvests in 2013, 2014, or 2015. Additionally, this activity is only authorized for customary and traditional use by resident hunters. Given both the low harvest rate and the small percentage overlap, this action is dismissed from detailed analysis.
- Taking coyotes (including pups) during an extended hunting season (current seasons would be extended between May 1 and August 9 per State regulations).
 - Coyotes are uncommon and seldom harvested in all GMUs that overlap with national preserves, except for Gates of the Arctic NP and Yukon-Charley NP, where they are lightly harvested (SOA 2014).

Appendix D – Project Area Summary

Table D-1. ANILCA National Preserve Areas, Wilderness Areas

NPS AREAS AND ACRES	Aniakchak National Preserve	Bering Land Bridge National Preserve	Denali National Preserve	Gates of the Arctic National Preserve	Glacier Bay National Preserve	Katmai National Preserve (includes Alagnak Wild	Lake Clark National Preserve	Noatak National Preserve	Wrangell- Saint Elias National Preserve	Yukon-Charley Rivers National Preserve
Acres	458,124	2,632,522	1,304,242	948,203	58,406	359,819	1,294,116	6,548,727	4,306,002	2,236,875
Designated Wilderness ¹	0	0	0	0	0	60,000	348,000	5,821,000	1,866,000	0
Eligible Wilderness ¹	TBD	2,509,360	TBD	914,000	100	268,000	903,000	759,000	2,249,000	1,815,000

¹Rounded to the nearest 1,000 acres. TBD indicates the acres are to be determined. The 100 eligible acres in Glacier Bay would be contiguous with designated wilderness in the park. Estimated eligible areas for Noatak and Yukon-Charley are from the 1986 GMPs and are not yet updated.

Table D-2. Presence of Key Wildlife Species in Alaska National Preserves

NPS AREAS AND SPECIES	Aniakchak National Preserve	Bering Land Bridge National Preserve	Denali National Preserve	Gates of the Arctic National Preserve	Glacier Bay National Preserve	Katmai National Preserve (includes Alagnak Wild River)	Lake Clark National Preserve	Noatak National Preserve	Wrangell- Saint Elias National Preserve	Yukon-Charley Rivers National Preserve
Wolves	✓	X	X	X	✓	✓	✓	X	X	X
Brown Bear	X	X	X	X	✓	X	X	X	X	X
Moose	X	X	X	X	✓	✓	✓	X	X	X
Caribou	X	✓	X	X	O	✓	X	X	X	X
Dall Sheep	O	O	X	X	O	O	X	X	X	X

Note: ANILCA Title II specifically identifies protecting habitat for and populations of certain wildlife species, but the Act is not limited to protecting only those species and habitat. Section 701 of ANILCA describes areas designated as wilderness in National Park System units. ANILCA Section 1301 required park area general management plans (GMPs) and ANILCA Section 1317 required wilderness area reviews for suitability or unsuitability, which are included with the GMP documents.

X means this key species was specifically noted in ANILCA for this area

O means this key species was not specifically noted in ANILCA for this area

✓ means this species is present in the area, but not highlighted in ANILCA as a key species

Appendix E – State of Alaska Game Management Units

Figure E-1. Alaska Game Management Units and National Park Service Units



Appendix F – ANILCA Section 810 Subsistence Evaluation and Finding

I. Introduction

Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA) requires Federal agencies having jurisdiction over lands in Alaska to evaluate the potential impacts of proposed actions on subsistence uses and needs. This analysis evaluates the potential restrictions to ANILCA Title VIII subsistence uses and needs that could result should the National Park Service (NPS) revise sport wildlife harvest restrictions in NPS Alaska preserve units where ANILCA Title VIII subsistence is allowed.

The NPS is considering whether to amend its regulations for sport hunting and trapping in national preserves in Alaska (80 FR 65325), deleting prohibitions in paragraphs (f) and (g) of 36 CFR 13.42, to align more closely with State regulations and to enhance consistency with harvest regulations on surrounding non-federal lands and waters in furtherance of Secretarial Orders 3347 and 3356.

II. The Evaluation Process

Section 810(a) of ANILCA states:

In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands . . . the head of the Federal agency . . . over such lands . . . shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency

(1) gives notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to Section 805;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and

(3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity would involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps would be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Section 201 of ANILCA created new preserve units in Aniakchak National Monument and Preserve, Bering Land Bridge National Preserve (NP), Gates of the Arctic NP, Lake Clark NP, Noatak NP, Wrangell-Saint Elias NP, and Yukon-Charley NP. Section 202 of ANILCA created

preserve additions to existing units at Glacier Bay National Preserve, Katmai National Preserve, and Denali National Preserve. Section 603(a) of ANILCA designated the Alagnak wild and scenic river to be administered by the Secretary of the Interior.

III. Proposed Action on Federal Lands

The potential for significant restriction must be evaluated for the proposed action's effect upon "...subsistence uses and needs, the availability of other lands for the purposes sought to be achieved and other alternatives which would reduce or eliminate the use" (Section 810(a)).

The NPS is considering whether to amend its regulations for sport hunting and trapping in national preserves in Alaska (80 FR 65325) to align more closely with State regulations and to enhance consistency with harvest regulations on surrounding non-federal lands and waters in furtherance of Secretarial Orders 3347 and 3356.

The following is a brief summary of the proposed alternatives considered in the environmental assessment (EA):

Alternative 1

Remove NPS Harvest Regulations at 36 CFR 13.42 paragraphs (f) and (g) (Proposed Action and Preferred Alternative)

Under the proposed action, the prohibitions in paragraphs (f) and (g) of 36 CFR 13.42, the current NPS wildlife regulation governing hunting and trapping in national preserves in Alaska, would be removed. All State hunting laws and regulations that do not conflict with other existing federal laws or regulations would apply on national preserves. Paragraph (f) states that State management actions or laws or regulations that authorize taking of wildlife are not adopted in park areas if they are related to predator reduction efforts, which is defined as efforts with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes, in order to increase harvest of ungulates by humans. Paragraph (g) sets forth a table of prohibited methods of taking wildlife for sport purposes in national preserves in Alaska. The full text of paragraphs (f) and (g) is included in Appendix A. While State hunting regulations are subject to change, future changes are not currently foreseeable, and therefore this Revised EA considers the existing State hunting regulations.

The NPS would continue to monitor wildlife, as appropriate, and could take actions in the future if necessary to protect NPS resources and values. For any such actions, the NPS would complete additional NEPA reviews, as appropriate. Before proposing NPS actions, the NPS would attempt to address any issues with the Alaska Board of Game.

Alternative 2

No Action (Retain NPS Harvest Regulations at 36 CFR 13.42 paragraphs (f) and (g))

Under the no-action alternative, the prohibitions on certain types of harvest practices included in paragraphs (f) and (g) of the current NPS wildlife regulation governing hunting and trapping in national preserves in Alaska would remain in place.

IV. Affected Environment

Subsistence uses, as defined by ANILCA, Section 810, means “The customary and traditional use by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of non-edible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.” Subsistence activities include hunting, fishing, trapping, and collecting berries, edible plants, and wood or other materials.

ANILCA and National Park Service regulations authorize subsistence use of resources in all Alaska national parks, monuments, preserves and components of the Wild and Scenic River System with the exception of Glacier Bay National Park, Katmai National Park, Kenai Fjords National Park, Klondike Gold Rush National Historical Park, “old” Mount McKinley National Park, and Sitka National Historical Park (Codified in 36 CFR Part 13, Subparts A, B, and C). ANILCA provides a preference for local rural residents over other consumptive users should a shortage of subsistence resources occur and allocation of harvest becomes necessary.

In addition to the summary of current conditions of wildlife and subsistence uses, comprehensive descriptions of the affected subsistence environment within each Alaska national park system unit can be found in the following:

- “General Management and Land Protection Plans” for each NPS unit (See online: <http://www.nps.gov>);
- Alaska Department of Fish and Game General and Subsistence Harvest Information and Publications (See online: <http://www.state.ak.us/adfg>);
- Federal Subsistence Management Regulations, Office of Subsistence Management, FWS, (See online: <http://www.doi.gov/subsistence>);
- National Park Service Management Policies, NPS, 2006 (See online: <http://www.nps.gov/policy>);
- Alaska Subsistence: A National Park Service Management History, NPS 2002; and
- Title 36 Code of Federal Regulations, Part 13 National Park System Units in Alaska.

The NPS recognizes that patterns of subsistence use vary from time to time and from place to place depending on the availability of wildlife and other renewable natural resources. A subsistence harvest in a given year may vary considerably from previous years because of weather, migration patterns, and natural population cycles.

V. Subsistence Uses and Needs Evaluation

To determine the potential impacts on existing subsistence activities for the proposed action, the following three evaluation criteria were analyzed relative to existing subsistence resources:

- the potential to reduce important subsistence fish and wildlife populations by (a) reductions in number, (b) redistribution of subsistence resources, or (c) habitat losses;
- what effect the action might have on subsistence fisherman or hunter access; and

- the potential for the action to increase fisherman or hunter competition for subsistence resources.

Potential Impacts of Alternative 1

Remove NPS Harvest Regulations at 36 CFR 13.42 paragraphs (f) and (g) (Proposed Action and Preferred Alternative)

1. The potential to impact populations:

(a) Effects on Population Levels:

The elimination of the restrictions in paragraphs (f) and (g) of the current regulations action could result in localized impacts to individual animals, family groups, and packs, resulting from the removal of current prohibitions on methods of take. However, due to the low level of additional take anticipated as a result of removing the current prohibitions, little to no population-level effects are anticipated.

(b) Redistribution of Resources:

Redistribution of resources is not anticipated. Reductions in opportunities for take of predator species over the long-term or increases in prey species are expected to be minimal and localized, because the levels of additional take are expected to be low.

(c) Habitat Loss:

Habitat loss is not anticipated due to the proposed change in regulations.

2. Restriction of Access:

Access for federally qualified subsistence users would not be restricted under this rule.

3. Increase in Competition:

While federally qualified subsistence users would compete with sport hunters engaging in the same activity where authorized under both Federal subsistence and State harvest regulations, it is not expected to have a significant impact on subsistence uses.

Potential Impacts of Alternative 2

No Action (Retain NPS Harvest Regulations at 36 CFR 13.42 paragraphs (f) and (g))

1. The potential to impact populations:

(a) Effects on Population Levels:

Retaining the prohibitions found at 36 CFR 13.42 paragraphs (f) and (g) would maintain long-standing subsistence harvest opportunities authorized since preserves were established in 1980. The overall effect on population levels and federal subsistence wildlife harvest in national preserves in Alaska would change very little compared to current conditions and the past

several decades. Population levels and opportunities for subsistence harvest of predator and prey populations are expected to remain similar to current levels.

(b) Redistribution of Resources:

Redistribution of resources is not anticipated. The NPS has no evidence suggesting any meaningful impacts to subsistence uses and resources under the current NPS wildlife regulations.

(c) Habitat Loss:

Habitat loss is not anticipated if existing regulations are retained.

2. Restriction of Access:

Access for federally qualified subsistence uses would not change if the current regulations were retained.

3. Increase in Competition:

Competition for ANILCA Title VIII subsistence resources on federal public lands within the affected areas would not change if existing regulations are retained.

VI. Availability of Other Lands

While the methods and means of sport hunting can and do occur on lands other than NPS Preserves, not allowing these activities on NPS Preserves does not meet the purpose and need for the action, which is to more closely align sport hunting regulations in national preserves in Alaska with State regulations, and to enhance consistency with harvest regulations on lands and waters surrounding national preserves in Alaska.

VII. Alternatives Considered

No other alternatives were identified that would reduce or eliminate the use of NPS public lands needed for subsistence purposes.

VIII. Findings

This analysis concludes that the proposed actions would not result in a significant restriction of subsistence uses.

EXHIBIT B



Tom Betts

06/03/2002 02:36 PM
YDT

To: Mary Beth Cook/WRST/NPS@NPS
cc: Danny Rosenkrans/WRST/NPS@NPS, Devi Sharp/WRST/NPS@NPS,
Jim Baker/WRST/NPS@NPS, Jim Wilder/WRST/NPS@NPS, Mason
Reid/WRST/NPS@NPS, Steven Hunt/WRST/NPS@NPS, Vicki
Ables/WRST/NPS@NPS, Vicki Snitzler/WRST/NPS@NPS, Will
Tipton/WRST/NPS@NPS
Subject: Re: McCarthy EA, Crystalline Hills

Just for information, we found a bait station about 100 feet off of the new trail. Right where the trail turns left before branching to the first overlook, the bait station went off to the right. We located it prior to any bears getting into it and had the owner move it immediately. Since no bears found the station there should not be any problem but worth keeping your eyes open anyway.

Tom
Mary Beth Cook



Mary Beth Cook

06/03/2002 09:08 AM
YDT

To: Devi Sharp/WRST/NPS@NPS, Steven Hunt/WRST/NPS@NPS, Vicki
Ables/WRST/NPS@NPS, Vicki Snitzler/WRST/NPS@NPS, Mason
Reid/WRST/NPS@NPS, Jim Wilder/WRST/NPS@NPS, Danny
Rosenkrans/WRST/NPS@NPS, Jim Baker/WRST/NPS@NPS
cc: Will Tipton/WRST/NPS@NPS, Tom Betts/WRST/NPS@NPS
Subject: McCarthy EA, Crystalline Hills

Hello All,

It looks like we need to move the McCarthy EA field assessment back to June 18 since Steve Hunt is on annual leave June 19. Steve, Vicki Ables and MB will be flying from Chitina to McCarthy 8:30 am and meeting Mason, Jim Wilder, Jim Baker (?) and Vicki Snitzler in McCarthy. For those able to join us, the following day, June 19, Vicki Snitzler and some of the resource staff (Devi?, Mason, Jim Wilder, MB) will be walking the Crystalline Hills trails to talk about resource issues.

Mary Beth

Stephens,

Here is a brief synopsis of black bear baiting activity and use patterns that has occurred along the McCarthy Road in GMU 11 since we began collecting data in 1996. Our purpose for collecting the data was to understand what problems, or violations, were reoccurring during each black bear baiting season. With this understanding, we were (are) able to change, or at least reduce, the negative impacts caused by improper bear baiting practices. Stephens, use your discretion with how much of the following information you want to give (you know the community and its politics better than I).

Good luck,

Rich

- Currently, we have record of **22** known black bear bait stations that been in place along the McCarthy Road since 1996. Of these 22 bait stations, at least **4** bait stations have been active for more than two consecutive bear baiting seasons.
- Of these 22 stations:
 - **76%** have occurred in **National Preserve**
 - **9%** have occurred on **State Of Alaska DNR Lands**
 - **5%** have occurred in **National Park**
 - **5%** have occurred on **University Of Alaska Lands**
 - **5%** have occurred on **Native Allotments**
- Bait types used at these 22 stations:
 - **32%** used **bread**
 - **10%** used **grease**
 - **10%** used **oil**
 - **7%** used **fish and/or fish parts**
 - **3%** used **trash**
 - **3%** used **dog food**
 - **35% unknown**, because bait had been eaten or removed
- Of the 22 stations:
 - **49%** removed by the **register hunter**
 - **27%** removed by the **NPS**
 - **14%** removed by a **local resident**
 - **5%** removed by the **register hunter and a secondary hunter**
 - **5%** removed by a **secondary hunter**
- Of these 22 stations:
 - **73%** were **NOT in compliance** of a State or Federal Law
 - **27%** were **in compliance** of both State or Federal Law
- The common State violations were:
 - **70%** **"within a ¼ mile of the McCarthy Road"**
 - **24%** **"failure to remove bait and/or baiting equipment"**
 - **6%** **"within a mile of house or other permanent dwelling"**
- The common Federal violations were:
 - **59%** **"tree cutting"**
 - **25%** **"illegal ORV use"**
 - **8%** **"sport hunting within a National Park"**
 - **8%** **"improperly disposing of refuse (trash)"**

Hunter Sharp

Statement of Problem

Bear Baiting stations are permitted along the McCarthy and Nabesna Roads. Park Wildlife Biologists and management staff are concerned that the practice of baiting for bears leads to several results that are not compatible with National Park Service management objectives.

- 1) Bait stations are indiscriminate and attract both species
- 2) Bait stations are a deliberate attempt to habituate bears to human supplied food and therefore have the potential to increase bear human interactions
- ✓ 3) Bait stations tend to be placed where the hunter has the easiest access to the station. Our records indicate that many stations are not placed the required ¼ mile from a road and that even the legally placed stations are frequently along trails or other access which invite the unaware to approach the station.
- 4) Legally placed bait stations must be 1 mile from a house. Even 1 mile is far too close. The McCarthy Rd has homes both vacation and year round scattered along the length of the road. Bears roam much further than 1 mile and may approach buildings after habituation to bear baiting stations.
- 5) Bear Baiting is incompatible with the Natural and Healthy standard of management mandated by congress, and is at odds with bear management practices where it is desired to have bear populations that are shy of humans.

Compendium Entry under 13.21 Taking of fish and wildlife (e)

Wrangell-St. Elias National Park and Preserve is closed to bear baiting

The practice of establishing bear baiting stations within WRST is not permitted because...



Sandy Rabinowitch

01/13/2004 04:06 PM
YST

To: Clarence Summers/AKSO/NPS@NPS, Bruce Greenwood/AKSO/NPS@NPS, Paul Hunter/AKSO/NPS@NPS, Barbara Cellarius/WRST/NPS@NPS, Bob Gerhard/AKSO/NPS@NPS, Charles Lean/WEAR/NPS@NPS, Chuck Young/GLBA/NPS@NPS, Dave Nelson/AKSO/NPS@NPS, David Krupa/YUGA/NPS@NPS, David Mills/YUGA/NPS@NPS, Devi Sharp/WRST/NPS@NPS, Dianne McKinley/AKSO/NPS@NPS, Don Callaway/AKSO/NPS@NPS, Eric Veach/WRST/NPS@NPS, Fred Andersen/YUGA/NPS@NPS, Gary Youngblood/GAAR/NPS@NPS, Greg Moss/YUCH/NPS@NPS, Herbert Anungazuk/AKSO/NPS@NPS, Hollis Twitchell/DENA/NPS@NPS, Hunter Sharp/WRST/NPS@NPS, James Capra/GLBA/NPS@NPS, Janet Cohen/AKSO/NPS@NPS, John Morris/ANCH/NPS@NPS, Jon Murphy/BLRI/NPS@NPS, Karen Gaul/LACL/NPS@NPS, Ken Adkisson/WEAR/NPS@NPS, Lee Fink/LACL/NPS@NPS, Linda Cook/AKSO/NPS@NPS, Lois Dalle-Molle/WEAR/NPS@NPS, Marshall Neeck/WRST/NPS@NPS, Mary McBurney/LACL/NPS@NPS, Mason Reid/WRST/NPS@NPS, Rachel Mason/AKSO/NPS@NPS, Terry DeBruyn/AKSO/NPS@NPS, Thomas Liebscher/YUGA/NPS@NPS, Troy Hamon/KATM/NPS@NPS, Wayne Howell/GLBA/NPS@NPS

cc:

Subject: newsclip on bear baiting

FYI

Bear baiting opponents deliver signatures aplenty

PETITION: Voters may have final say this fall on proposed ban.

By JOEL GAY

Anchorage Daily News

(Published: January 9, 2004)



Opponents of bear baiting have more than enough signatures to put the question of banning the controversial practice before Alaska voters this fall, but pro-hunting groups are mobilizing for a fight they say will be one of the most important in the nation.

"The bottom line is that the anti-hunting movement has decided bear hunting is the next target," said Rob Sexton of the U.S. Sportsmen's Alliance. Along with a similar ban proposed in Maine, he said, "I expect this will be the biggest issue in 2004."

In Alaska and eight other states, hunters can set out barrels stuffed with pastries, bacon grease, fish carcasses and other aromatic goodies to attract black bears. Drawn to the bait station for an easy meal, the animals are killed by camouflaged hunters lying in wait with rifle or bow and arrow.

OSP Rate Based
Accountant Matanuska

Telephone Association is seeking Rate [More...](#)

Homewood Suites by Hilton Now hiring for the following positions: [More...](#)

Finance Director Qualifications: [More...](#)

Umialik Insurance Co., a Subsidiary of Ukpeagvik Inupiat Corporation in [More...](#)

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PROGRAM MANAGER Arctic Slope World Services, a premier Alaskan technical [More...](#)

PHARMACIST Hiring now for 30-40hrs/ wk. Weekdays only, flexible hours. [More...](#)

OFFICE ASSISTANT Small office seeking FT Office Asst. Duties to [More...](#)

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Bear hunters say bait stations are necessary in areas of thick brush, and they note that drawing bears into the open ensures a clean shot on a legal animal. State law requires bait stations stay at least a mile from homes and a quarter-mile from roads or trails and be cleaned up afterward.

But opponents call bear baiting unsafe, unsportsmanlike and inhumane. The practice has been banned in 18 states, and a bill to prohibit baiting on federal lands is before Congress. Baiting opponents have failed to convince the Alaska Board of Game to outlaw baiting statewide.

Now they want Alaska voters to strike the law off the books for good.

On Wednesday, sponsors of an initiative to prohibit feeding bears for any reason turned in a stack of blue signature books more than 3 feet high containing about 33,500 names. They need only 23,000 signatures of registered Alaska voters to qualify for the Nov. 4 ballot. The Division of Elections now has 60 days to certify the signatures as valid.

The initiative effort should not have been necessary, said initiative sponsor and former Lt. Gov. Lowell Thomas Jr.

"If we had a (game) board that was truly representative of all Alaskans, I think this (baiting) would've been done away with, without the need for people to go directly to poll," he said.

Thomas, along with longtime hunters George Pollard and John Erickson, were the official petition sponsors, but the signatures were gathered by Citizens United Against Bear Baiting. Spokesman Paul Joslin said the group easily exceeded its signature goal because Alaskans, including some hunters, find the practice repugnant.

"Many hunters feel like you should go out there and hunt, not wait for bears to come to the site," said Joslin, who is wildlife director for the Alaska Wildlife Alliance.

Bear baiting also flies in the face of state prohibitions against feeding animals, he said. And some people fear that bears accustomed to free dinners at a bait station will follow their noses to the nearest house.

"Bear baiting is a thing of the past we shouldn't be doing," he said.

United States and Fund for Animals.

Indeed, Alaska could be in for a major political campaign, said Humane Society senior vice president Wayne Pacelle.

"We will certainly encourage our 13,000 Alaska members to become involved and vote yes on the initiative," he said. The group will also encourage "indigenous" fund raising.

Because the group is currently focused on Maine, "we're unlikely to invest major money in Alaska," Pacelle said. "But it would depend on what the national hunting groups in the Lower 48 do." The Humane Society doesn't want to see the Alaska initiative fail, he said.

The local supporters would prefer not to get money from Outside groups, said Maury Mason, director of the Alaska Wildlife Alliance. "For every dollar you get, the other side can say you're funded by Outside help."

On the other hand, he said, "we can't outgun these guys (financially). These guys are really well-heeled. But we're going to try," he said. "There's some pretty well-heeled people who are opposed to bear baiting too."

Daily News reporter Joel Gay can be reached at jgay@adn.com or at 257-4310.

Bear baiting

WHERE IT'S LEGAL

- * Alaska
- * Idaho
- * Maine
- * Michigan
- * Minnesota
- * New Hampshire
- * Utah
- * Wisconsin
- * Wyoming

BANNED BY INITIATIVE

- * Colorado (1992)
- * Oregon (1994)
- * Washington (1996)

EXHIBIT C



Sears, Andee <andee_sears@nps.gov>

Follow up on non-fatal bear attacks and baiting

1 message

Payer, David <david_payer@nps.gov>

Tue, May 21, 2019 at 10:49 AM

To: Debora Cooper <debora_cooper@nps.gov>, Andee Sears <andee_sears@nps.gov>, "Merrell, Brooke" <brooke_merrell@nps.gov>, "Hilderbrand, Grant" <ghilderbrand@usgs.gov>

Please see below for some follow up information re. non fatal black bear attacks and baiting.

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

From: **Scharhag, Janel M** <[REDACTED]>

Date: Tue, May 21, 2019 at 10:16 AM

Subject: Re: [EXTERNAL] Non-fatal black bear attacks and agency risk management final

To: Payer, David <David_Payer@nps.gov>

Hi David,

Sorry it took me a bit to get back to you. I just moved to Virginia where I have limited cellular and internet.

I looked through my database and I have no recorded incidents of attacks or injuries related to baiting that did not occur on hunters. There are several injuries, which I did not classify as attacks, on hunters who were baiting. They often involved the hunter approaching a wounded bear. There are a half a dozen cases of injury or attack involving intentional feeding/baiting not for the purpose of hunting. I hope this helps.

I will definitely pass along the publications.

Thank you so much for your help and your interest.

Janel Scharhag
Graduate student/Teaching assistant
College of Natural Resources-Wildlife
University of Wisconsin-Stevens Point

PII**From:** Payer, David <david_payer@nps.gov>**Sent:** Wednesday, May 15, 2019 12:45:05 PM**To:** Scharhag, Janel M**Subject:** Re: [EXTERNAL] Non-fatal black bear attacks and agency risk management final

Thanks, Janel, and congratulations on completing your thesis! Your work will be a significant contribution to understanding the causes and avoidance of non-fatal black bear attacks. Did you encounter any records of attacks related to baiting of black bears where its allowed for hunting? I have been grappling with this issue. The state puts mitigations in place including signage, setbacks and clean-up requirements for bait stations, but concern about potential conflict with recreationists remains. However, verified cases of baited bears attacking humans other than the hunter responsible for the bait station are lacking.

Please send reprints when your papers are published.

Thanks,
Dave

David Payer, DVM, PhD

Regional Natural Resource Team Leader (Acting) & Regional Wildlife Biologist

National Park Service - Alaska Region | [240 W. 5th Ave. | Anchorage, Alaska 99501](#)

Phone (907) 644-3578 | Fax (907) 644-3809 | david_payer@nps.gov

On Wed, May 15, 2019 at 7:44 AM Scharhag, Janel M <[REDACTED] PII wrote:
Hello All,

My name is Janel Scharhag and I am emailing you because you have participated in some way with my Master's thesis project *Non-fatal Black Bear Attacks and Agency Risk Management*. As requested by many of you, attached is a copy of my final thesis. Chapter 2 is the study on non-fatal black bear attacks, and Chapter 3 is the attack risk management survey. Both chapters will be submitted for publication shortly.

Please feel free to read as much or as little as you prefer. If you have any comments questions or concerns, please feel free to contact me.

Thank you all so much for your support and help during this project.

Janel Scharhag
Graduate student/Teaching assistant
College of Natural Resources-Wildlife
University of Wisconsin-Stevens Point

[REDACTED] PII

EXHIBIT D

Congress of the United States

Washington, DC 20515

February 28, 2023

The Honorable Deb Haaland
Secretary, U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Secretary Haaland:

We write to urge you to withdraw the National Park Service's (NPS) proposed rule, "Alaska; Hunting and Trapping in National Preserves," as published in the Federal Register on January 9, 2023. This rule, which was proposed without consultation with the State of Alaska, recalls a similar 2015 NPS rule prohibiting select hunting practices and management techniques on national preserves. We find it unacceptable that the proposed rule would reverse a 2020 NPS Rule that better aligned the agency's regulations with Alaska state laws for hunting and trapping in national preserves in Alaska.

We object to the proposed rule because (1) it was written without consultation with the State of Alaska or affected stakeholders, (2) it would effectively reimpose a 2015 Rule that prohibited harvest methods allowed under Alaska state law without any supporting scientific data, (3) it disregards the importance of traditional hunting practices of Alaska Natives residing in non-rural areas, and (4) it ignores recent congressional actions to overturn a substantively similar rule barring specific hunting techniques promulgated by the U.S. Fish and Wildlife Service (USFWS).

Hunting, fishing, and trapping are methods of harvesting wildlife by the public and are specifically authorized activities under ANILCA in Alaska national preserves. Section 1313 of ANILCA establishes the extent to which NPS has authority to restrict the take of fish and wildlife, and explicitly does not provide NPS with authority to regulate the "methods or means" for harvesting wildlife, as those practices are governed by the State. Even if one assumes that NPS holds the authority to regulate the "methods or means" for harvesting wildlife, which it does not, Section 1313 calls for the promulgation of regulations to be put into effect "only **after** consulting with the appropriate State agency having responsibility over hunting, fishing, and trapping activities" (emphasis added). As Commissioner Doug Vincent-Lang's letter to Director Sams on January 11, 2023, attests, such consultation did not occur.

Further, in a meeting between Delegation and NPS staff on January 20, 2023, NPS staff agreed that the bear baiting rule was not predicated on data indicating a clear threat to public safety, nor that the practice was widespread enough to implicate the promulgation of a rule banning bear baiting across all of Alaska's national preserves. The evidence underlying the rule was purely anecdotal, relying upon the testimony of in-state NPS officials and the practice mainly carried out

in the Wrangell-St. Elias National Preserve. Neither of these reasons are solid grounds upon which to promulgate the bear baiting ban now proposed by NPS.

Additionally, NPS fails to consider the impacts its bear baiting rule will have on Athabascan non-federal subsistence users. Bear baiting is a traditional hunting practice for many Athabascan hunters, a great number of whom now reside in non-rural areas. Because of this, they are not considered federally-qualified subsistence users and would be subsequently barred from practicing their traditional hunting practice under this proposed rule. Regardless of the explicit carve-out separating federal subsistence from this proposed rule, the restriction still would negatively harm Athabascan hunters whose right to practice their traditional hunting technique should be respected regardless of where they reside.

Congress' intent on this issue is unambiguous, and this was clearly demonstrated in its response to a 2015 rule. In 2015, NPS promulgated a rule that effectively banned State-authorized hunting practices that it had identified as "predator control." Soon after, in 2016, the U.S. Fish and Wildlife Service (USFWS) promulgated its own "Statewide Refuge Rule," which was nearly identical to NPS's 2015 Rule in prohibiting specific hunting practices allowed by State law. Congress responded by enacting a disapproval resolution under the Congressional Review Act to nullify the Statewide Refuge Rule. (P.L. 115-50, 131 Stat. 86 (2017)). Therefore, today's "methods and means" of hunting on Refuges in Alaska are governed by state law. Given that NPS's 2023 Proposed Rule is substantively identical to the 2015 Rule, and Congress has rejected the alleged "legal mandate" that underlies its reimposition, NPS is obligated to abandon this effort and comply with ANILCA's clear terms.

The U.S. Supreme Court has also unanimously affirmed Alaska's right to manage its fish and wildlife. In the unanimous opinion, *Sturgeon v. Frost*, Chief Justice Roberts wrote that, ANILCA "repeatedly recognizes that Alaska is different"¹—from its unrivaled scenic and geological values, to the unique situation of its rural residents dependent on subsistence uses, to the need for development and use of Arctic resources with appropriate recognition and consideration given to the unique nature of the Arctic environment. NPS cannot supersede the law – only Congress can do that – and it would be well-advised to re-examine the *Sturgeon v. Frost* ruling before attempting to finalize the 2023 Proposed Rule.

¹ *Sturgeon v. Frost*, 139 S. Ct. 1066, 1078, 203 L. Ed. 2d 453 (2019).

NPS holds only the legal and statutory authority granted by Congress. Any attempt to move forward with the 2023 Proposed Rule would disregard congressional intent; confuse hunters, trappers, and anglers about the rules in national preserves; and significantly reduce the State's lawful ability to manage healthy, effective, sustainable wildlife populations for all Alaskans, especially subsistence users.

Sincerely,



Lisa Murkowski
United States Senator



Dan Sullivan
United States Senator



Mary Sattler Peltola
Representative for All Alaska

EXHIBIT E

HOUSE JOINT RESOLUTION NO. 10

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES CRONK, Sumner, Stutes, McCabe, Armstrong, Rauscher, C.Johnson, Schrage, Vance, D.Johnson, Patkotak, Carpenter, Saddler, Tilton, Allard, Tomaszewski, Stapp, Wright

SENATORS Wilson, Giessel, Bishop, Bjorkman, Kaufman, Hughes

Introduced: 3/6/23

Referred: Resources

A RESOLUTION

- 1 **Disapproving the proposed rule by the National Park Service limiting non-subsistence**
2 **hunting methods; and urging the National Park Service to withdraw the rule.**

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **WHEREAS** the United States Supreme Court has long interpreted the United States
5 Constitution to provide state primacy in wildlife management; and

6 **WHEREAS** art. VIII, sec. 4, Constitution of the State of Alaska, provides for the
7 conservation and sustainable use of wildlife, including the maintenance of healthy predator
8 populations; and

9 **WHEREAS** federal law recognizes the state's authority to manage wildlife, including
10 the Alaska Statehood Act and the Alaska National Interest Lands Conservation Act; and

11 **WHEREAS** the state has managed wildlife on both state and federal land in Alaska
12 since the United States Department of the Interior granted the state management authority in
13 1959; and

14 **WHEREAS** the Alaska National Interest Lands Conservation Act established each of
15 the national preserves in the state as National Park Service land that would remain open to
16 hunting and trapping under state management; and

1 **WHEREAS** the National Park Service proposed a rule to amend its regulations for
2 non-subsistence hunting and trapping in national preserves that would prohibit certain hunting
3 practices that have been approved by the Alaska Board of Game following a public process
4 with significant input from biologists, local residents, and other stakeholders; and

5 **WHEREAS**, ignoring the state's objection, the National Park Service has labeled
6 certain hunting practices as predator control or predator reduction actions and has prohibited
7 that predator control or predator reduction in national preserves; and

8 **WHEREAS**, as a result, the ability of state residents to hunt bears, wolves, and even
9 caribou is limited, without biological basis and with contrary evidence from the Alaska
10 Department of Fish and Game, which shows that those practices do not pose conservation,
11 public safety, or public administration concerns; and

12 **WHEREAS** the proposed National Park Service rule would limit the ability of state
13 residents to engage in traditional hunting practices; and

14 **WHEREAS** the proposed National Park Service rule is contrary to the Alaska
15 National Interest Lands Conservation Act and the Alaska Statehood Act; and

16 **WHEREAS** the proposed National Park Service rule is an overreach of federal
17 authority and would inappropriately limit the state's authority to manage wildlife on national
18 preserves;

19 **BE IT RESOLVED** that the Alaska State Legislature disapproves of the proposed
20 National Park Service rule; and be it

21 **FURTHER RESOLVED** that the Alaska State Legislature strongly urges the
22 National Park Service to withdraw the proposed rule without adoption and to affirm the
23 mandates within its 2020 national preserves rule in any new rule that is prepared in response
24 to court order; and be it

25 **FURTHER RESOLVED** that this resolution is the policy of the Alaska State
26 Legislature until it is withdrawn or modified by another resolution.

27 **COPIES** of this resolution shall be sent to the Honorable Joseph R. Biden, President
28 of the United States; the Honorable Kamala D. Harris, Vice President of the United States and
29 President of the U.S. Senate; the Honorable Kevin McCarthy, Speaker of the U.S. House of
30 Representatives; the Honorable Deb Haaland, United States Secretary of the Interior; the
31 Honorable Charles F. Sams III, Director, National Park Service; and the Honorable Lisa

- 1 Murkowski and the Honorable Dan Sullivan, U.S. Senators, and the Honorable Mary Peltola,
- 2 U.S. Representative, members of the Alaska delegation in Congress.

33rd Legislature(2023-2024)

BILL HISTORY/ACTION FOR LEGISLATURE

Next Bill

BILL	HJR 10	BILL
CURRENT STATUS	PASSED (S)	VERSION
STATUS DATE	03/27/2023	SHORT TITLE NAT'L PARK SERVICE; HUNTING IN PRESERVES
SPONSOR(S)	REPRESENTATIVES CRONK, Sumner, Stutes, McCabe, Armstrong, Rauscher, C.Johnson, Schrage, Vance, D.Johnson, Patkotak, Carpenter, Saddler, Tilton, Allard, Tomaszewski, Stapp, Wright SENATORS Merrick, Wilson, Giessel, Bishop, Bjorkman, Kaufman, Hughes	
TITLE	Disapproving the proposed rule by the National Park Service limiting non-subsistence hunting methods; and urging the National Park Service to withdraw the rule.	

Bill Number:

Search Bill

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Actions	Full Text	Fiscal Notes	Amendments	Minutes and AudDocuments
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Jrn Date	Jrn Page	Text		
3/6/2023	326	(H) READ THE FIRST TIME - REFERRALS		
3/6/2023	326	(H) RES		
3/13/2023	376	(H) COSPONSOR(S): RAUSCHER		
3/15/2023	383	(H) RES RPT 9DP		
3/15/2023	383	(H) DP: MEARS, ARMSTRONG, DIBERT, MCCABE, RAUSCHER, PATKOTAK, WRIGHT, SADDLER, MCKAY		
3/15/2023	383	(H) FN1: ZERO(H.RES)		
3/15/2023	389	(H) COSPONSOR(S): C.JOHNSON		

3/17/2023	408	(H) RULES TO CALENDAR 3/17/2023
3/17/2023	408	(H) READ THE SECOND TIME
3/17/2023	408	(H) ADVANCED TO THIRD READING 3/20 CALENDAR
3/17/2023	413	(H) COSPONSOR(S): SCHRAGE, VANCE, D.JOHNSON, PATKOTAK, CARPENTER, SADDLER, TILTON
3/20/2023	429	(H) READ THE THIRD TIME HJR 10
3/20/2023	429	(H) PASSED Y31 N5 E4
3/20/2023	431	(H) COSPONSOR(S): ALLARD, TOMASZEWSKI, STAPP, WRIGHT
3/20/2023	432	(H) TRANSMITTED TO (S)
3/20/2023	432	(H) VERSION: HJR 10
3/22/2023	545	(S) READ THE FIRST TIME - REFERRALS
3/22/2023	545	(S) RES
3/22/2023	553	(S) CROSS SPONSOR(S): WILSON, GIESSEL, BISHOP, BJORKMAN
3/24/2023	570	(S) CROSS SPONSOR(S): KAUFMAN, HUGHES
3/24/2023		(S) RULES TO CALENDAR PENDING RES RPT
3/27/2023		(S) RES RPT 5DP 1NR 1AM
3/27/2023		(S) DP: BISHOP, GIESSEL, DUNBAR, KAUFMAN, WIELECHOWSKI
3/27/2023		(S) NR: CLAMAN
3/27/2023		(S) AM: KAWASAKI
3/27/2023		(S) FN1: ZERO(H.RES)
3/27/2023		(S) READ THE SECOND TIME
3/27/2023		(S) ADVANCED TO THIRD READING UC
3/27/2023		(S) READ THE THIRD TIME HJR 10
3/27/2023		(S) PASSED Y18 N2

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