

Current Federal Issues

- 1. Federal Oversight=Land Manager/Concession Permits and Land Use Authorizations**
- 2. Government shutdown/USFWS Proposed Rule**
 - a. Background/personal**
 - b. Highlighted flow**
- 3. Park Service Proposed Regs/Concession Reauthorization**
 - a. State sovereignty**
 - b. Real Threat to Alaska Guide Businesses**
- 4. "Less is Best"**
 - a. brief reference to "less is best" awards**
- 5. Park Service Sheep Management Plan**
 - a. Issue of preempting State Sheep Management**
 - b. Allude to the plan in the packet**
- 6. BLM Concessions**
- 7. Transporters/ANWR CCP**

2013 Lawsuit re: Closure of Alaska's Refuges During Federal Government Shutdown

During the Federal appropriations lapse (shutdown) in October 2013, the State of Alaska and APHA filed a federal lawsuit in the U.S. District Court for the District of Alaska against the U.S. Fish and Wildlife Service after the FWS Director ordered that all refuges be closed (Case No. 4:13-cv-00034-SLG). Along with the State, we sought an injunction prohibiting from closing Alaska's vast national wildlife refuges merely because the lapse of appropriations limited the number of federal personnel available to staff visitor centers and some other facilities within the refuges (federal law enforcement personnel remained on the job throughout). APHA's guides hold permits from FWS to guide on the Refuges and have the equipment and training needed to conduct long-planned hunting trips in the remote areas of the Refuges without the Refuges being fully staffed by federal personnel. At least for a time, FWS also limited access by State of Alaska personnel to the Refuge, although FWS eventually lifted that restriction.

FWS Director Daniel Ashe's October 4, 2013 Closure Notice specifically provided that the closure would "expire automatically at the end of the shutdown period except that the provisions applicable to Alaska will expire no later than October 31, 2013." This addition was presumably because FWS regulations pertaining to Alaska's refuges require that, "No emergency closure or restriction shall be for a period exceeding 30 days." 50 CFR 36.42(c)(4).

However, the issue of whether or not FWS could close Alaska's refuges during the federal government shutdown was never decided by the court. The lawsuit was ultimately dismissed for mootness, because Congress passed the Continuing Appropriations Act the day after the lawsuit was filed, which restored funding to all federal agencies, and thereby reopened the refuges, although by then trips led by APHA members had been disrupted. The State and APHA contended that the case was not moot because the dispute was "capable of repetition, yet evading review," because it would likely occur again at the time of the next lapse of

appropriations. However, Judge Sharon Gleason held that, because this was the first federal lapse of appropriations in which FWS closed the Alaska refuges, it was too uncertain whether FWS would order another closure at the time of the next lapse of appropriations, and so the “capable of repetition” exception to mootness did not apply. Order dated July 29, 2014, p. 9 (copy attached). The State of Alaska and APHA did not appeal this mootness dismissal.

Current FWS Efforts to Amend Closure Regulations

FWS has announced that it proposes to change its regulations regarding closures and restrictions on Alaska’s refuges. Current regulations allow a refuge manager to close an area or to restrict an activity on a refuge on an emergency, temporary, or permanent basis. 50 CFR 36.42(a). However, emergency closures may not last longer than 30 days. 50 CFR 36.42(c)(4). This is the provision I mentioned above that apparently caused FWS to limit the closure of Alaska Refuges to just under 30 days. Temporary closures are limited to one year, but require an advance hearing before they can be ordered. 50 CFR 36.42(d)(3). Temporary closures or restrictions “shall not be effective prior to notice and hearing in the vicinity of the area(s) affected by such closures or restriction, and other locations as appropriate,” (50 CFR 36.42(d)(1)). “Permanent closures or restrictions shall be made only after notice and public hearings in the affected vicinity and other locations as appropriate, and after publication in the Federal Register.” 50 CFR 36.42(e). Even emergency closures or restrictions related to taking fish and wildlife require notice with a hearing after the closure begins. 50 CFR 36.42(c)(2).

Based on documents released by FWS, FWS is expected to issue a proposed rule under which the allowable length of an emergency closure would expand from 30 days to 60 days. This presumably would result in a longer period in which FWS could order a closure without a hearing in the event of another shutdown. The same delay before a hearing is held would apply to an emergency shutdown ordered by FWS for some other reason.. Additionally, the maximum length of temporary closures and

restrictions(which do not require as much protections for the public as permanent closures) would be dramatically increased from one year to 5 years. Once a temporary closure is ordered, it could remain in effect for the full 5 years, without further review of whether it was needed.

How Amendments Could Affect Future Government Shutdown Procedures

User groups are concerned that any extension for the allowable length of emergency closures of Alaska's refuges could harm user groups in an even more significant fashion than occurred in October 2013. Because emergency closures do not require prior hearings or meeting with affected users, Alaska's refuges will now be subject to emergency closures that could last up to two months without any input from affected groups. This would be especially troubling in the event of a lengthy federal government shutdown. The State of Alaska and affected user groups should continue to be entitled to prior notice and public hearing regarding refuge closures in excess of 30 days.



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National Wildlife Refuge

Search



HOME

WILDLIFE SERVICES

PUBLIC PARTICIPATION

ABOUT US

1996 IMPROVEMENTS

NATIONAL WILDLIFE REFUGES

ALASKA NATIONAL WILDLIFE REFUGES

PROPOSED

REGULATORY CHANGES

ALASKA NATIONAL WILDLIFE REFUGES

ALASKA NATIONAL WILDLIFE REFUGES

Proposed Regulatory Changes



The U.S. Fish and Wildlife Service is considering amending regulations (under 50 CFR 36) to ensure that we are managing National Wildlife Refuges (refuges) in Alaska consistent with our mandates to conserve fish, wildlife and habitats in their natural diversity, and to ensure that biological integrity, biological diversity, and environmental health are maintained.

Over the last decade, the State of Alaska has allowed particular practices for the harvest of wildlife that are inconsistent with our Federal mandates for the administration of refuges in Alaska. Predator reduction activities that alter or manipulate the natural diversity of the landscape (e.g., artificially increasing decreasing wildlife populations to provide for more harvest opportunity) on refuges in Alaska, conflict with laws and policies that the USFWS is required to implement. The proposed regulatory changes we are considering would clarify allowable practices for the take of wildlife and closures and restrictions procedures on refuges in Alaska to ensure consistency with existing Federal law and to more effectively engage the public.

These proposed regulatory changes would not change Federal subsistence regulations (36 CFR 242 and 50 CFR § 100) or restrict taking of fish or wildlife under Federal subsistence regulations. Under ANILCA, all refuges in Alaska (except the Kenai refuge) have a purpose to provide the opportunity for continued subsistence use by local rural residents, as long as this use is not in conflict with the conservation of fish and wildlife populations and habitats their natural diversity or in conflict with fulfilling the international treaty obligations of the United States with respect to fish and wildlife and their habitats. We continue to recognize subsistence uses of fish and wildlife and other renewable resources as priority consumptive uses on Refuges in Alaska.

The changes we are considering would:

- **Prohibit predator reduction activities that alter or manipulate the natural diversity of species populations or habitats (e.g., artificially increasing or decreasing wildlife populations to provide for more harvest opportunity) on refuges in Alaska**
- **Prohibit the following methods and means for hunting and trapping on National Wildlife Refuges in Alaska under state regulations:**
 - take of bear cubs or sows with cubs (exception allowed for resident hunters to take black bear cubs or sows with cubs under customary and traditional use activities at a den site October 15 – April 30 in specific game management units in accordance with State law)
 - take of brown bears over bait;
 - take of bears using traps or snares;

- take of wolves and coyotes during the spring and summer denning season;
- engaging in trapping activities as the employee of another person, and
- taking bears, wolves, or wolverines from an aircraft or on the same day as air travel has occurred.

- **Update the procedures for closures and restrictions on refuges in Alaska to make them more consistent with other Federal regulations a more effectively engage the public.**

Current Procedures

Criteria used to determine whether to close an area or restrict an activity

50 CFR 36.42(b) sets forth the criteria the Refuge Manager uses to determine whether to close an area or restrict an activity otherwise allowed.

Proposed Procedures

Proposed 50 CFR 36.42(b) retains the current list of criteria and adds that protecting the biological integrity, biological diversity, and environmental health of the refuge is an appropriate reason for a closure or restriction.

Public notice

Newspaper, radio, and signs are the primary methods of notifying the public of closures or restrictions.

Any combination of the following may be used: the Internet, newspaper, radio, signs or other methods to notify the public of closures or restriction

Emergency closures or restrictions

Duration: 30 days; no extensions.

Duration: 60 days; extensions beyond 60 days subject to nonemergency procedures.

Fish- and wildlife-related: The emergency closure is effective upon notice and subsequent hearing.

Fish- and wildlife-related: The emergency closure would be effective upon notice posted on the Internet, published in the newspaper, broadcast on the radio, and/or posted on local signs.

Other closures and restrictions

Duration: Temporary closures cannot exceed 12 months (no extensions). Permanent closures do not expire.

Duration: Non-emergency temporary closures would last for the minimum time necessary, not to exceed 5 years. Closures lasting for a period of 5 years or more are subject to permanent closure requirements and will be published in the Federal Register and Code of Federal Regulations at 50 CFR 36.

Fish- and wildlife-related: Prior to adopting a temporary closure or restriction, we require:

- Consultation with the State and representatives of affected user groups, and
- Notice and hearing in the vicinity of the area directly affected.

Fish- and wildlife-related: Prior to adopting a nonemergency closure or restriction, we would require:

- Consultation with the State and affected Tribes and Native Corporations, and
- Opportunity for public comment or meeting in area directly affected.

A permanent closure or restriction requires the steps outlined above for a temporary closure or restriction, as well as publication in the Federal Register.

Questions and Answers on Proposed Regulatory Changes for Sport Hunting and Trapping, Public Use, and Closures and Restrictions on Alaska Nation Wildlife Refuges.

For more information, contact Heather Abbey Tonnerson with the National Wildlife Refuge System at 907-786-3872.

Last updated: December 19, 2014



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[Land Management](#)
[Wildlife Resources](#)
[Refuges & Parks](#)
[Wildlife](#)
[Proposed Changes](#)
[Contact Us](#)
[Privacy Policy](#)
[Alaska Region](#)

Proposed Regulatory Changes



Brown bear sow with cub at sunset in Kodiak
Photo Credit Lisa Hupp/USFWS

National Wildlife Refuges (refuges) in Alaska are mandated to conserve species and habitats in their natural diversity and ensure that the biological integrity, diversity, and environmental health of the National Wildlife Refuge System are maintained for the continuing benefit of present and future generations of Americans. The U.S. Fish and Wildlife Service (USFWS) is considering amending regulations governing administration of Alaska refuges (under 50 CFR 36) to ensure that we are managing Alaska refuges in accordance with our mandates; to increase consistency with other Federal laws, regulations, and policies; and to more effectively engage the public.

Over the last decade, the State of Alaska has allowed particular practices for the harvest of predators that are inconsistent with our Federal mandates for the administration of refuges in Alaska. Predator reduction activities with the intent or potential to alter or manipulate natural diversity, biological integrity, environmental health on refuges in Alaska conflict with laws and policies that the USFWS is required to follow. The proposed regulatory changes we are considering would clarify allowable practices for the take of wildlife on refuges in Alaska, as well as update existing Alaska refuge regulations for closure and restrictions.

We recognize the importance of the fish, wildlife and other natural resources in the lives and cultures of Alaska Native peoples and in the lives of all rural Alaskans. These proposed regulatory changes would not change Federal subsistence regulations (36 CFR 242 and 50 CFR 100) or restrict taking of fish and wildlife under Federal subsistence regulations. The Alaska National Interest Lands Conservation Act (ANILCA) provides a priority to rural Alaskans for the nonwasteful taking of fish and wildlife for subsistence uses on refuges in Alaska. Under ANILCA all refuges in Alaska (except the Kenai Refuge) also have a purpose to provide the opportunity for continued subsistence use by rural residents, as long as this use is not in conflict with refuge purposes to conserve fish and wildlife populations and habitats in their natural diversity or fulfill international treaty obligations of the United States.

The changes we are considering would:

- Clarify existing Federal mandates for conserving the natural diversity, biological integrity, and environmental health on refuges in Alaska in relation to predator harvest. Predator reduction activities with the intent or potential to alter or manipulate the natural diversity of species populations or habitat (e.g., artificially increasing or decreasing wildlife populations to provide for more harvest opportunity) would be prohibited on refuges in Alaska.

- Prohibit the following methods and means for predator harvest on refuges in Alaska (would not apply to the taking of fish or wildlife under Federal subsistence regulations):
 - take of bear cubs or sows with cubs (exception allowed for resident hunters to take black bear cubs or sows with cubs under customary and traditional use activities at a den site October 15 – April 30 in specific game management units in accordance with State law)
 - take of brown bears over bait;
 - take of bears using traps or snares;
 - take of wolves and coyotes during the spring and summer denning season;
 - engagement in trapping activities as the employee of another person, and
 - take of bears from an aircraft or on the same day as air travel has occurred. Note: take of wolves or wolverines from an aircraft or on the same day as air travel has occurred is already prohibited under current refuge regulations.
- Update the Public Participation and Closure Procedures to make them more consistent with other Federal regulations and more effectively engage the public. The following table summarizes portions of the current regulations and potential updates we are considering.

Public Participation and Closure Procedures

Current

Authority

Refuge Manager may close an area or restrict an activity on an emergency, temporary, or permanent basis.

Criteria (50 CFR 36.42(b))

Criteria includes: public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with refuge purposes.

Emergency closures or restrictions (50 CFR 36.42(c))

Emergency closure may not exceed 30 days.

Closure effective upon notice as prescribed in 50 CFR 36.42 (f) (see below for details). Closures related to the taking of fish and wildlife shall be accompanied by notice with a subsequent hearing.

Temporary closures or restrictions (50 CFR 36.42(d))

May extend only for as long as necessary to achieve the purpose of the closure or restriction, not to exceed or be extended beyond 12 months.

Closure effective upon notice as prescribed in 50 CFR 36.42 (f) (see below for details). Closures related to the taking of fish and wildlife effective upon notice and hearing in the vicinity of the area(s) affected by such closures or restriction, and other locations as appropriate

Potential Updates

No updates being considered

Add conserving the natural diversity, biological integrity, and environmental health of the refuge to the current list of criteria.

Increase the period from 30 to 60 days, with extensions beyond 60 days being subject to nonemergency closure procedures (i.e. temporary or permanent).

Closure effective upon notice as prescribed in 50 CFR 36.42 (f) (see below for details).

May extend only for as long as necessary to achieve the purpose of the closure or restriction, May not exceed or be extended beyond 5 years; In most cases, extensions beyond 5 years would be subject to revised permanent closure requirements, including publication in the Federal Register and Code of Federal Regulations at 50 CFR 36.

Closure subject to notice procedures as prescribed in 50 CFR 36.42 (f) (see below for details). Closures related to the taking of fish and wildlife would require consultation with the State and affected Tribes and Native Corporations, as well as the opportunity for public comment or a public meeting in the affected area.

Permanent closures or restrictions (50 CFR 36.42(e))
No time

Permanent closures or restrictions (50 CFR 36.42(e))

No time limit.

Closure effective after notice and public hearings in the affected vicinity and other locations as appropriate, and after publication in the Federal Register.

No time limit.

Closures related to the taking of fish and wildlife would require consultation with the State and affected Tribes and Native Corporations, as well as the opportunity for public comment or a public meeting in the affected area. Closures would continue to be published in the Federal Register. Permanent closures that will result in a significant alteration in the public use pattern; adversely affect the natural, aesthetic, scenic, or cultural values; or require a long-term modification in the resource management objectives of the area would be published in the Code of Federal Regulations under 50 CFR 36.

Notice (50 CFR 36.42(f))

Notice is to be provided through newspapers, signs, and radio.

Add the use of the Internet or other available methods, in addition to continuing to use the more traditional methods of newspapers, signs, and radio.

Questions and Answers on Proposed Regulatory Changes for Sport Hunting and Trapping, Public Use, and Closures and Restrictions on Alaska National Wildlife Refuges.

For more information, contact Heather Abbey Tonneson with the National Wildlife Refuge System at 907-786-3872.

Last updated: January 13, 2015

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Code of Federal Regulations

Title 50. Wildlife and Fisheries

Chapter I. United States Fish and Wildlife Service, Department of the Interior

Subchapter C. The National Wildlife Refuge System

Part 36. Alaska National Wildlife Refuges (Refs & Annos)

Subpart F. Permits and Public Participation and Closure Procedures (Refs & Annos)

50 C.F.R. § 36.42

§ 36.42 Public participation and closure procedures.

Currentness

(a) Authority. The Refuge Manager may close an area or restrict an activity on an emergency, temporary, or permanent basis.

(b) Criteria. In determining whether to close an area or restrict an activity otherwise allowed, the Refuge Manager shall be guided by factors such as public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, endangered or threatened species conservation, and other management considerations necessary to ensure that the activity or area is being managed in a manner compatible with the purposes for which the Alaska National Wildlife Refuge area was established.

(c) Emergency closures or restrictions.

(1) Emergency closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation shall be made after notice and hearing;

(2) Emergency closures or restrictions relating to the taking of fish and wildlife shall be accompanied by notice with a subsequent hearing;

(3) Other emergency closures or restrictions shall become effective upon notice as prescribed in § 36.42(f); and

(4) No emergency closure or restriction shall be for a period exceeding 30 days.

(d) Temporary closures or restrictions.

(1) Temporary closures or restrictions relating to the use of aircraft, snowmachines, motorboats or nonmotorized surface transportation, or to the taking of fish and wildlife, shall not be effective prior to notice and hearing in the vicinity of the area(s) affected by such closures or restriction, and other locations as appropriate:

(2) Other temporary closures shall be effective upon notice as prescribed in § 36.42(f);

(3) Temporary closures or restrictions shall extend only for so long as necessary to achieve their purposes, and in no case may exceed 12 months or be extended beyond that time.

(e) Permanent closures or restrictions. Permanent closures or restrictions shall be made only after notice and public hearings in the affected vicinity and other locations as appropriate, and after publication in the Federal Register.

(f) Notice. Emergency, temporary or permanent closures or restrictions shall be

(1) Published in at least one newspaper of general circulation in the State and in at least one local newspaper if available, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of the Refuge Manager and other places convenient to the public; or

(2) Designated by the posting of appropriate signs; or

(3) Both.

(g) Openings. In determining whether to open an area to public use or activity otherwise prohibited, the Refuge Manager shall provide notice in the Federal Register and shall, upon request, hold a hearing in the affected vicinity and other location, as appropriate prior to making a final determination.

(h) Except as otherwise specifically permitted under the provision of this part, entry into closed areas or failure to abide by restrictions established under this section is prohibited.

SOURCE: 46 FR 31827, June 17, 1981; 51 FR 31629, Sept. 4, 1986; 51 FR 32332, Sept. 11, 1986; 64 FR 14151, March 24, 1999; 75 FR 16639, April 1, 2010, unless otherwise noted.

AUTHORITY: 16 U.S.C. 460(k) et seq., 668dd–668ee, 3101 et seq.

Current through Jan. 22, 2015; 80 FR 3181.

Code of Federal Regulations

Title 50. Wildlife and Fisheries

Chapter I. United States Fish and Wildlife Service, Department of the Interior

Subchapter C. The National Wildlife Refuge System

Part 36. Alaska National Wildlife Refuges (Refs & Annos)

Subpart B. Subsistence Uses

50 C.F.R. § 36.16

§ 36.16 Closure to subsistence uses of fish and wildlife.

Currentness

(a) Notwithstanding any other provision of this part, the Refuge Manager, after consultation with the State and adequate notice and public hearing in the affected vicinity and other locations as appropriate, may temporarily close all or any portion of an Alaska National Wildlife Refuge to subsistence uses of a particular fish or wildlife population only if necessary for reasons of public safety, administration, or to assure the continued viability of such population. For the purposes of this section, the term "temporarily" shall mean only so long as reasonably necessary to achieve the purpose of the closure.

(b) If the Refuge Manager determines that an emergency situation exists and that extraordinary measures must be taken for public safety or to assure the continued viability of a particular fish or wildlife population, he may immediately close all or any portion of a refuge to the subsistence uses of such population. Such emergency closure shall be effective when made, shall not exceed sixty (60) days, and may not subsequently be extended unless the Refuge Manager establishes, after notice and public hearing in the affected vicinity and other locations as appropriate, that such closure should be extended.

(c) Notice of administrative actions taken pursuant to this section and the reasons justifying such actions shall be published in at least one newspaper of general circulation within the State and in at least one local newspaper if available, and information about such actions and justifying reasons shall be made available for broadcast on local radio stations in a manner reasonably calculated to inform local rural residents in the affected vicinity. All closures shall be designated on a map which shall be available for public inspection at the office of the Refuge Manager of the affected refuge area and the post office or postal authority of every affected community within or near the refuge area, or by the posting of signs in the vicinity of the closures, or both.

SOURCE: 46 FR 31827, June 17, 1981; 51 FR 31629, Sept. 4, 1986; 51 FR 32332, Sept. 11, 1986; 64 FR 14151, March 24, 1999; 75 FR 16639, April 1, 2010, unless otherwise noted.

AUTHORITY: 16 U.S.C. 460(k) et seq., 668dd–668ee, 3101 et seq.

Current through Jan. 22, 2015; 80 FR 3181.

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Joel Hard
Deputy Regional Director
National Park Service
Alaska Regional Office
240 West 5th Avenue
Anchorage, AK 99501

November 25, 2014

Dear Mr. Hard:

I am writing to express the Alaska Professional Hunters Association's (APHA's) opposition to the National Park Service rule proposed September 4, 2014 regarding hunting on national preserves in Alaska. 79 Fed.Reg. 52595, RIN 1024-AE21.

I have enclosed detailed objections prepared by APHA's attorneys at the firm Birch, Horton, Bittner, and Cherot.

Thank you for your consideration.

Sincerely,

Sam Rohrer

Sam Rohrer
President,
Alaska Professional Hunters Association

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November 25, 2014

Submitted electronically to www.regulations.gov

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240 West 5th Avenue
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Re: Comments on Proposed Rule – Hunting on National Preserves
79 Fed.Reg. 52595; RIN 1024-AE21

Dear Mr. Hard:

On behalf of this law firm's client Alaska Professional Hunters Association (APHA), I am writing to detail the reasons for APHA's opposition to the rule the National Park Service proposed on September 4, 2014 regarding hunting on national preserves in Alaska. 79 Fed.Reg. 52595. APHA members are among the world's most experienced hunting guides. They provide a public service by assisting the public in attaining a safe and enjoyable experience hunting in the wilds of Alaska, including on public lands where allowed by applicable law.

1. Objection to NPS Proposal to Eliminate User Groups from Consultation Process

APHA strongly objects to your proposal to remove user groups from the consultation that must accompany any closures or restrictions. The proposed rule explains that NPS will be reducing in-person meetings in favor of increased internet outreach. APHA certainly supports the attempt to adopt modern practices. APHA is concerned, however, that an overreliance on internet outreach will lead to the voices of Alaskans who actually hunt or guide hunts on the National Preserves in Alaska being drowned out by special interest groups outside Alaska.

More alarmingly, the proposed rule inexplicably proposes striking consultation with affected user groups from the procedures that must precede imposition of closures or restrictions. It appears from the rule that you intend to eliminate the existing requirement in 36 C.F.R. § 13.40(e) that says closures and restrictions can take effect only after NPS has consulted with "representatives of affected users." There is no justification for eliminating this consultation requirement. Closures can have enormous negative consequences for APHA members, and a pre-closure consultation can have value for both NPS and those who frequent the preserves.

In short, NPS should not make the existing inclusive consultation process less inclusive. NPS should adhere to its current rule in which users groups are consulted, and should not modify its rules to exclude user groups from the consultation process.

2. Objection to Proposed Preemption of State Wildlife Regulation

Your proposal would illogically and quite possibly illegally preempt state authority under the Alaska National Interest Lands Conservation Act (ANILCA) to regulate the taking of resident wildlife. We urge you to rescind the portions of the rule that encroach on Alaska's state rights and reduce public participation.

APHA is committed to hunting in accordance with ethical fair chase and conservation of wildlife principles. To these ends, we have a long history of effective cooperation with both the National Park Service (NPS) and the Alaska Department of Fish and Game (ADFG). We believe in the state's primacy regarding the management of resident fish and wildlife, including the promulgation of hunting-related regulations. We also recognize the land-management authorities conferred to NPS.

Your proposed rule represents a departure from settled law on state primacy. Since the founding of our country, states have been vested with the primary authority over resident species of fish and wildlife. This authority has been a critical element of state sovereignty in our federal system. State primacy over resident species extends onto federal land, with a few limited exceptions, such as federal reserves created before statehood.

This delineation of the respective spheres of authority was carefully preserved in Alaska by two federal statutory enactments. First, the 1958 Alaska Statehood Act provided for transfer of authority over fish and wildlife from the federal territory to the new State.¹ The State acquired authority for "the administration, management, and conservation" of the "fish and wildlife resources of Alaska."² This is the same sovereign authority over resident fish and wildlife enjoyed by the other states that preceded Alaska into the Union.

Congress later exercised care to protect State the "status quo" state authority when creating a vast network of federal reserves with passage in 1980 of Alaska National Interest Lands Conservation Act (ANILCA).³ ANILCA specifically provided that "the taking of fish and wildlife for sport purposes....shall be allowed in a national preserve under applicable State and Federal law and regulation."⁴ ANILCA limited the scope of federal involvement to protecting habitat.⁵ More specifically, the law grants NPS the authority to designate zones and periods where no hunting or

¹ P.L. 85-509 § 6(e).

² *Id.*

³ Senate Report No. 96-413 § 1314 (saying ANILCA "preserves the status quo with regard to the responsibility and authority of the State to manage fish and wildlife").

⁴ P.L. 96-487 § 1313. The Senate report confirms our reading of this language by saying that § 1313 intends to protect "all forms of hunting," including "guided hunting."

⁵ Senate Report § 1314 (saying ANILCA "confirms the status quo with regard to the authority of the Secretary to manage the wildlife habitat on Federal lands.").

fishing may occur, but these NPS restrictions are only allowed for "public safety, administration, floral and faunal protection, or public use and enjoyment."⁶ It is doubtful that any of these reasons would support the current proposal. State regulation of the means and manner of hunting (the topic of this rulemaking) may implicate different competing views on what is ethical hunting and fair chase, but such state regulations do not generally implicate the areas of public safety, administration, floral and faunal protection, or public use and enjoyment in which there is a federal role under ANICLA, and so cannot be preempted by the NPS on National Preserves.

Thus, NPS does not have authorization to regulate particular means, methods, and seasons for the take of particular species. Further, because ANILCA specifies that hunting must occur under "applicable State and Federal law," and there is no generally applicable federal law regulating the means and manner of hunting, NPS must allow state law to apply, except in the limited circumstances where ANICLA allows federal administrative action under ANILCA to take precedence. By banning specific practices in your proposed rule that are expressly authorized by State law, the NPS would diminish Alaska's rights that were protected in the Statehood Act and ANILCA. The proposed rule is incorrect in arguing that various Congressional statements and reports support the proposed action. The role of state law is preserved in the statutory text, which governs.

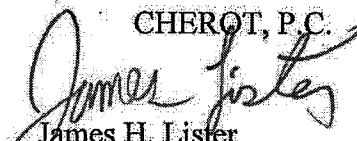
APHA is particularly concerned about your proposed restrictions regarding the taking of wolves and coyotes at certain times. These specific proposed restrictions would be an unauthorized encroachment on Alaska's primary authority to set species-particular methods, means, and seasons for the taking of resident wildlife. The proposed rule calls year-round wolf and coyote hunting "predator harvest," but offers no justification for this classification. Surely you are aware that the ADFG disagrees with this characterization.⁷ By overruling Alaska's determination, NPS is second guessing the State in a way that is not permitted by law.

3. Conclusion

APHA asks NPS to rescind the portions of the proposed rule that encroach on Alaska's primacy over wildlife and block stakeholder involvement. Thank you for your consideration.

Regards,

BIRCH HORTON BITTNER AND
CHEROT, P.C.


James H. Lister
Zachary D. Olson

⁶ P.L. 96-487 § 1314.

⁷ *Vincent-Lang: Pre-empted Alaska hunting regulations are not 'predator control,' Alaska Dispatch News*, September 20, 2014. Available online at <http://www.adn.com/article/20140920/vincent-lang-pre-empted-alaska-hunting-regulations-are-not-predator-control>.

cc:

The Honorable Lisa Murkowski
The Honorable Mark Begich
The Honorable Don Young

Sam Rohrer (President, APHA)
William P. Horn (BHBC)

Objectives

These specific objectives are intended to help meet the broad management goals of this plan listed in the previous section. It is understood that some objectives conflict and must be considered simultaneously.

1. Minimize the influence of harvest on Dall's sheep population trends.
2. Minimize the effects of harvest on the sex/age structure of the population.
3. Minimize the effects of harvest on the long-term genetic structure and diversity of the population.
4. Maximize subsistence harvest opportunity over the long-term.
5. Minimize complexity of hunting regulations.
6. Maximize sport hunting opportunity over the long-term, so long as it conforms to the other objectives.
7. Maximize opportunity for solitude.

Current State of Knowledge

Population Overview

Dall's sheep populations in the Brooks Range are at the northernmost limit of their range. The highest recorded sheep numbers in GAAR were from the earliest comprehensive surveys in the early 1980's. Helicopter minimum counts were conducted from 1982-1984 across most available sheep habitat in GAAR. Those data, plus count data from fixed-wing aircraft in 1974 and 1976 in southern GAAR, indicated that there were 10,939 Dall's sheep in GAAR in the early 1980s (Singer 1984). Although no formal large-scale surveys were conducted in the late 1980s and early 1990s, population declines were observed across the region following winters with icing events and higher than average snowfall (Whitten 1997, Shults 2004). Two localized areas were surveyed using minimum count methods in 1987 near Anaktuvuk Pass (Adams 1988). In 1996, a larger area around Anaktuvuk Pass, including the Itkillik subarea (referred to here collectively as the 'Anaktuvuk-Itkillik area', FIGURE 1), was surveyed using double sampling methods (Whitten 1997, Brubaker and Whitten 1998). From 1998-2002 surveys were conducted directly west and south of Anaktuvuk Pass as part of a sheep collaring project (Lawler 2004). In 2005 the Dall's sheep vital sign was established as part of the Arctic Network Inventory and Monitoring Network Program (ARCN; Lawler et al. 2009). From 2005-2007, stratified random sampling using minimum count methods were attempted in GAAR (NPS unpublished data). In 2008 the Itkillik subarea was surveyed using minimum count methods (Rattenbury and Lawler 2010). Surveys conducted between 2000 and 2009 in GAAR and the western Baird Mountains of Noatak National Preserve (NOAT; Shults 2004, NPS unpublished data) showed recovery of

How the Federal Government Got Control of Alaska's Guide Industry

- 1. Weight of History-freedom to move forward**
- 2. Bill Horn's Timeline**