4.

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

[NPS-AKRO-33913; PPAKAKROZ5, PPMPRLE1Y.L00000]

RIN 1024-AE70

Alaska; Hunting and Trapping in National Preserves

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to amend its regulations for sport hunting and trapping in national preserves in Alaska. This proposed rule would prohibit certain harvest practices, including bear baiting; and prohibit predator control or predator reduction on national preserves.

DATES: Comments on the proposed rule must be received by 11:59 PM ET on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024-AE70, by either of the following methods:

- *Federal eRulemaking Portal*: http://www.regulations.gov. Follow the instructions for submitting comments.
- *Mail or hand deliver to:* National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Comments delivered on external electronic storage devices (flash drives, compact discs, etc.) will not be accepted.
- *Instructions*: Comments will not be accepted by fax, email, or in any way other than those specified above. Comments delivered on external electronic storage

devices (flash drives, compact discs, etc.) will not be accepted. All submissions received must include the words "National Park Service" or "NPS" and must include the docket number or RIN (1024-AE70) for this rulemaking. Comments received will be posted without change to https://www.regulations.gov, including any personal information provided.

- *Docket*: For access to the docket to read background documents or comments received, go to https://www.regulations.gov and search for "1024-AE70."

FOR FURTHER INFORMATION CONTACT: Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501; phone (907) 644–3510; email: AKR_Regulations@nps.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background.

The Alaska National Interest Lands Conservation Act (ANILCA) allows harvest of wildlife in national preserves in Alaska for subsistence purposes by local rural residents under Federal regulations. ANILCA also allows harvest of wildlife for sport purposes by any individual under laws of the State of Alaska (referred to as the State) that do not conflict with federal laws. ANILCA requires the National Park Service (NPS) to manage national preserves consistent with the NPS Organic Act of 1916, which directs the NPS "to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 54 U.S.C. 100101(a).

On June 9, 2020, the NPS published a final rule (2020 Rule; 85 FR 35181) that removed restrictions on sport hunting and trapping in national preserves in Alaska that were implemented by the NPS in 2015 (2015 Rule; 80 FR 64325). These included restrictions on the following methods of taking wildlife that were and continue to be authorized by the State in certain locations: taking black bear cubs, and sows with cubs, with artificial light at den sites; harvesting 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; and using dogs to hunt black bears. The 2015 Rule prohibited other harvest practices that were and continue to be similarly prohibited by the State. These prohibitions were also removed by the 2020 Rule. The 2020 Rule also removed a statement in the 2015 Rule that State laws or management actions that seek to, or have the potential to, alter or manipulate natural predator populations or processes in order to increase harvest of ungulates by humans are not allowed in national preserves in Alaska. The NPS based the 2020 Rule in part on direction from the Department of the Interior (DOI) to expand recreational hunting opportunities and align hunting opportunities with those established by states. Secretarial Orders 3347 and 3356. The 2020 Rule also responded to direction from the Secretary of the Interior to review and reconsider regulations that were more restrictive than state provisions, and specifically the restrictions on harvesting wildlife found in the 2015 Rule.

The harvest practices at issue in both the 2015 and 2020 Rules are specific to harvest under the authorization for sport hunting and trapping in ANILCA. Neither rule addressed subsistence harvest by rural residents under title VIII of ANILCA.

The 2015 Rule

Some of the harvest methods prohibited by the 2015 Rule targeted predators. When the NPS restricted these harvest methods in the 2015 Rule, it concluded that these methods were allowed by the State for the purpose of reducing predation by bears and

wolves to increase populations of prey species (ungulates) for harvest by human hunters. The State's hunting regulations are driven by proposals from members of the public, fish and game advisory entities, and State and Federal government agencies. The State, through the State of Alaska Board of Game (BOG), deliberates on the various proposals publicly. Many of the comments made in the proposals and BOG deliberations on specific hunting practices showed that they were intended to reduce predator populations for the purpose of increasing prey populations. Though the State objected to this conclusion in its comments on the 2015 Rule, the NPS's conclusion was based on State law and policies;[1] BOG proposals, deliberations, and decisions;[2] and Alaska Department of Fish and Game actions, statements, and publications leading up to the 2015 Rule.[3] Because NPS Management Policies state that the NPS will manage park lands for natural processes (including natural wildlife fluctuations, abundances, and behaviors) and explicitly prohibit predator control, the NPS determined that these harvest methods authorized by the State were in conflict with NPS mandates. NPS Management Policies (4.4.1, 4.4.3) (2006). For these reasons and because the State refused to exempt national preserves from these authorized practices, the NPS prohibited them in the 2015 Rule and adopted a regulatory provision consistent with NPS policy direction on predator control

---

[1] Alaska Statutes (AS) section 16.05.255(k) (definition of sustained yield); Findings of the Alaska Board of Game, 2006-164-BOG, Board of Game Bear Conservation and Management Policy (May 14, 2006) (rescinded in 2012).

[2] *See, e.g.,* Alaska Board of Game Proposal Book for March 2012, proposals 146, 167, 232.

[3] *See, e.g.,* AS section 16.05.255(e); State of Alaska Department of Fish and Game Emergency Order on Hunting and Trapping 04-01-11 (Mar. 31, 2011) (*available at* Administrative Record for Alaska v. Jewell et al., No. 3:17-cv-00013-JWS, D. Alaska pp. NPS0164632-35), State of Alaska Department of Fish and Game Agenda Change 11 Request to State Board of Game to increase brown bear harvest in game management unit 22 (2015); Alaska Department of Fish and Game Wildlife Conservation Director Corey Rossi, "Abundance Based Fish, Game Management Can Benefit All," ANCHORAGE DAILY NEWS (Feb. 21, 2009); ADFG News Release—Wolf Hunting and Trapping Season extended in Unit 9 and 10 in response to caribou population declines (3/31/2011); Alaska Department of Fish and Game Craig Fleener, Testimony to US Senate Committee on Energy and Natural Resources re: Abundance Based Wildlife Management (Sept. 23, 2013); Alaska Department of Fish and Game, Hunting and Trapping Emergency Order 4-01-11 to Extend Wolf Hunting and Trapping Seasons in GMU [Game Management Unit] 9 and 10 (LACL and KATM) (Nov. 25, 2014); ADFG Presentation Intensive Management of Wolves, Bears, and Ungulates in Alaska (Feb. 2009).

related to harvest. The 2015 Rule further provided that the Regional Director would compile, annually update, and post on the NPS website a list of any State predator control laws or actions prohibited by the NPS on national preserves in Alaska.

As stated above, the 2015 Rule only restricted harvest for "sport purposes." Although this phrase is used in ANILCA, the statute does not define the term "sport." In the 2015 Rule, the NPS reasoned that harvest for subsistence is for the purpose of feeding oneself and family and maintaining cultural practices, and that "sport" or recreational hunting invokes Western concepts of fairness which do not necessarily apply to subsistence practices. Therefore, the 2015 Rule prohibited the practices of harvesting swimming caribou and taking caribou from motorboats under power which the NPS concluded were not consistent with generally accepted notions of "sport" hunting. This conclusion also supported restrictions in the 2015 Rule on the practices of taking bear cubs and sows with cubs; and using a vehicle to chase, drive, herd, molest, or otherwise disturb wildlife. To illustrate how the 2015 Rule worked in practice, a federally qualified local rural resident could harvest bear cubs and sows with cubs, or could harvest swimming caribou (where authorized under federal subsistence regulations), but a hunter from Anchorage, Fairbanks, Juneau or other nonrural areas in Alaska, or a hunter from outside Alaska, could not.

In the 2015 Rule, the NPS also concluded that the practice of putting out bait to attract bears for harvest poses an unacceptable safety risk to the visiting public and leads to unnatural wildlife behavior by attracting bears to a food source that would not normally be there. The NPS based this conclusion on the understanding that bears are more likely to attack when defending a food source and therefore visitors who encountered a bait station would be at risk from bear attacks. In addition, the NPS concluded that baiting could cause more bears to become conditioned to human food, creating unacceptable public safety risks. The NPS based this conclusion on the fact that

not all bears that visit bait stations are harvested; for example, a hunter may not be present when the bear visits the station, or a hunter may decide not to harvest a particular bear for a variety of reasons. Additionally, other animals are attracted to bait stations. Because bait often includes dog food and human food, including items like bacon grease and pancake syrup, which are not a natural component of animal diets, the NPS was concerned that baiting could lead to bears and other animals associating these foods with people, which would create a variety of risks to people, bears, and property. For these reasons, the 2015 Rule prohibited bear baiting in national preserves in Alaska.

The NPS received approximately 70,000 comments during the public comment period for the 2015 Rule. These included unique comment letters, form letters, and signed petitions. Approximately 65,000 comments were form letters. The NPS also received three petitions with a combined total of approximately 75,000 signatures. The NPS counted a letter or petition as a single comment, regardless of the number of signatories. More than 99% of the public comments supported the 2015 Rule. Comments on the 2015 Rule can be viewed on regulations.gov by searching for "RIN 1024-AE21".

The 2020 Rule

The 2020 Rule reconsidered the conclusions in the 2015 Rule regarding predator control, sport hunting, and bear baiting. First, the 2020 Rule reversed the 2015 Rule's conclusion that the State intended to reduce predator populations through its hunting regulations. As explained above, the NPS's conclusion in the 2015 Rule was based on BOG proposals, deliberations, and decisions; and Alaska Department of Fish and Game actions, statements, and publications that preceded the 2015 Rule. However, in their written comments on the 2015 and 2020 Rules, the State denied that the harvest practices for predators were part of their predator control or intensive management programs and therefore were not efforts to reduce predators. In its written comments, the State argued that the liberalized predator harvest rules were simply a means to provide new

opportunities for hunters to harvest predators, in response to requests received by the BOG. The State argued that it provided these new opportunities under a "sustained yield" management framework, which is distinct from what the State considers "predator control." The State asserted that it has a separate, formal predator control program which is not considered "hunting" by the State. According to the State, predator control occurs only through its "intensive management" program.

The NPS afforded the State's written comments on the 2020 Rule more weight than it did on the State's similar comments on the 2015 Rule, both of which were in conflict with other contemporaneous public State positions on the matter. The NPS took into account the analysis in the environmental assessment supporting the 2020 Rule, which concluded that the hunting practices in question would not likely alter natural predator-prey dynamics at the population level or have a significant foreseeable adverse impact to wildlife populations, or otherwise impair park resources. The NPS also considered what it viewed as the legislative requirements of ANILCA with respect to hunting. Based upon these considerations, the NPS concluded the hunting practices did not run afoul of NPS Management Policies section 4.4.3, which prohibits predator reduction to increase numbers of harvested prey species. This led the NPS to remove two provisions that were implemented in the 2015 Rule: (1) the statement that State laws or management actions intended to reduce predators are not allowed in NPS units in Alaska, and (2) prohibitions on several methods of harvesting predators. With prohibitions on harvest methods removed, the 2020 Rule went back to deferring to authorizations under State law for harvesting predators. To illustrate how the 2020 Rule works in practice, Alaska residents, including rural and nonrural residents, and out-of-state hunters may take wolves and coyotes (including pups) for sport purposes in national preserves during the denning season in accordance with State law.

The 2020 Rule also relied upon a different interpretation of the term "sport" in

ANILCA's authorization for harvest of wildlife for sport purposes in national preserves in Alaska. As explained above, the 2015 Rule gave the term "sport" its common meaning associated with standards of fairness, and prohibited certain practices that were not compatible with these standards. In the 2020 Rule, the NPS stated that in the absence of a statutory definition, the term "sport" merely served to distinguish sport hunting from harvest under federal subsistence regulations. Consequently, under the 2020 Rule, practices that may not be generally compatible with notions of "sport" – such as harvesting swimming caribou or taking cubs and pups or mothers with their young – may be used by anyone in national preserves in accordance with State law.

Finally, the 2020 Rule reconsidered the risk of bear baiting to the visiting public. The NPS noted that peer-reviewed data are limited on the specific topic of hunting bears over bait. Additionally, the NPS concluded that human-bear interactions are likely to be rare, other than for hunters seeking bears, due to a lack of observed bear conditioning to associate bait stations with humans and the relatively few people in such remote areas to interact with bears. In making this risk assessment, the NPS took into account state regulations on baiting that are intended to mitigate safety concerns, and NPS authority to enact local closures if and where necessary. For these reasons and because of policy direction from the DOI and the Secretary of the Interior requiring maximum deference to state laws on harvest that did not exist in 2015, the 2020 Rule rescinded the prohibition on bear baiting that was implemented in the 2015 Rule. As a result, any Alaska resident, including rural and nonrural residents, or out-of-state hunter may take bears over bait in national preserves in Alaska in accordance with State law, including with the use of human and dog foods.

The NPS received approximately 211,780 pieces of correspondence, with a total of 489,101 signatures, during the public comment period for the 2020 Rule. Of the 211,780 pieces of correspondence, approximately 176,000 were form letters and

approximately 35,000 were unique comments. More than 99% of the public comments opposed the 2020 Rule. Comments on the 2020 Rule can be viewed on regulations.gov by searching for "RIN 1024-AE38".

Proposed Rule.

In this proposed rule, the NPS reconsiders the conclusions that supported the 2020 Rule. This proposed rule addresses three topics that were considered in the 2015 and 2020 Rules: (1) bear baiting; (2) the meaning and scope of hunting for "sport purposes" under ANILCA; and (3) State law addressing predator harvest. After reconsidering these topics, the NPS proposes in this rule to prohibit the same harvest methods that were prohibited in the 2015 Rule. The proposed rule also would prohibit predator control or predator reduction on national preserves. Finally, the proposed rule would clarify the regulatory definition of trapping for reasons explained below. The NPS has begun consulting and communicating with Tribes and Alaska Native Claims Settlement Act (ANCSA) Corporations that would be most affected by this proposed rule and the feedback provided to date has been incorporated by the NPS in this proposed rule as discussed below.

Bear Baiting.

The NPS proposes to prohibit bear baiting in national preserves in Alaska. Bait that hunters typically use to attract bears includes processed foods like bread, pastries, dog food, and bacon grease. As explained below, this proposal would lower the risk that bears will associate food at bait stations with humans and become conditioned to eating human-produced foods, thereby creating a public safety concern. This proposal would also lower the probability of visitors encountering a bait station where bears may attack to defend a food source. The proposal to prohibit baiting is supported by two primary risk factors and other considerations that are discussed below.

Risk of Bears Defending a Food Source.

The risks caused by humans feeding bears (including baiting them with food) are widely recognized.[4] Bears are more likely to attack when defending a food source, putting visitors who encounter a bear at or near a bait station or a kill site at significant risk.[5] Visitors to national preserves in Alaska may inadvertently encounter bears and bait stations while engaging in sightseeing, hiking, boating, hunting, photography, fishing, and a range of other activities. This is because despite the vast, relatively undeveloped nature of these national preserves, most visitation occurs near roads, trails, waterways, or other encampments (e.g., cabins, residences, communities). Establishing and maintaining a bait station requires the transport of supplies, including bait, barrels, tree stands, and game cameras. The same roads, trails, and waterways used by visitors are, therefore, also used by those setting up a bait station. Thus, despite the vast landscapes, bear baiting and many other visitor activities are concentrated around the same limited access points. Processed foods are most commonly used for bait because they are convenient to obtain and are attractive to bears. Processed foods do not degrade quickly nor are they rapidly or easily broken down by insects and microbes. As a result, they persist on the landscape along with the public safety risk of bears defending a food source.

The NPS recognizes that there are restrictions in State law intended to mitigate

---

[4] Herrero, S. 2018. Bear attacks: their causes and avoidance. Lyons Press, Guilford, Connecticut, USA at p. 22; Glitzenstein, E., Fritschie, J. The Forest Service's Bait and Switch: A Case Study on Bear Baiting and the Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 47, 55-56 (1995). *See also*, Denali State Park Management Plan, 69 (2006) ("The practice has the potential for creating serious human-bear conflicts, by encouraging bears to associate campgrounds and other human congregation points with food sources."); City and Borough of Juneau, Living with Bears: How to Avoid Conflict (*available at* https://juneau.org/wp-content/uploads/2017/03/2004_living_w_pamphlet_finaljustified.pdf), City and Borough of Juneau, Living in Bear Country (*available at* https://juneau.org/wp-content/uploads/2017/03/living_in_bear_country_color.pdf) ("It is well known that garbage kills bears—that is, once bears associate people with a food reward, a chain of events is set into motion and the end result, very often, is a dead bear."); Biologists say trash bears in Eagle River will be killed—but people are the problem, Anchorage Daily News (*available at* www.adn.com/alaska-news/wildlife/2018/06/18/biologists-say-trash-bears-in-eagle-river-will-be-killed-but-people-are-the-problem/).

[5] Herrero, S. 2018. Bear attacks: their causes and avoidance. Lyons Press, Guilford, Connecticut, USA. at p. 22; Glitzenstein, E., Fritschie, J. The Forest Service's Bait and Switch: A Case Study on Bear Baiting and the Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 47, 55-56 (1995).

the risks described above. Bait stations are prohibited within ¼ mile of a road or trail and within one mile of a dwelling, cabin, campground, or other recreational facility. State regulations also require bait station areas to be signed so that the public is aware that a bait station exists. Although these mitigation measures may reduce the immediate risk of park visitors approaching a bear defending bait, NPS records indicate that bait stations established at Wrangell-St. Elias National Park and Preserve often do not comply with the State's minimum distance requirements. Further, as discussed below, these requirements do not mitigate the risk of other adverse outcomes associated with baiting that are discussed below.

Risk of Habituated and Food-Conditioned Bears.

Another aspect of bear baiting that poses a public safety and property risk is the possibility that bears become habituated to humans through exposure to human scents at bait stations and then become food conditioned, meaning they learn to associate humans with a food reward (bait). This is particularly true of processed foods that are not part of a bear's natural diet because virtually all encounters with processed foods include exposure to human scent.

It is well understood that habituated and food-conditioned bears pose a heightened public safety risk.[6] The published works of Stephen Herrero, a recognized authority on human-bear conflicts and bear attacks explain the dangers from bears that are habituated to people or have learned to feed on human food, highlight that habituation combined with food-conditioning has been associated with a large number of injuries to humans, and indicate food-conditioning of bears may result from exposure to human food at bait stations.

---

[6] Herrero, S. 2018. Bear attacks: their causes and avoidance. Lyons Press, Guilford, Connecticut, USA. at p. 22; Glitzenstein, E., Fritschie, J. The Forest Service's Bait and Switch: A Case Study on Bear Baiting and the Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 47, 55-56 (1995).

The State's mitigation measures mentioned above, including requirements for buffers and signage, do not adequately address the risk associated with habituated and food-conditioned bears because bears range widely, having home ranges of tens to hundreds of square miles.[7] The buffers around roads, trails, and dwellings are therefore inconsequential for bears that feed at bait stations but are not harvested there. These bears have the potential to become habituated to humans and conditioned to human-produced foods, resulting in increased likelihood of incidents that compromise public safety, result in property damage and threaten the lives of bears who are killed in defense of human life and property.

In the 2020 Rule, the NPS determined that the lack of conclusive evidence that bear baiting poses safety concerns justified allowing bear baiting. While the NPS acknowledges the lack of peer-reviewed data demonstrating that bear baiting poses a public safety risk, this data gap exists primarily because rigorous studies specific to this point are logistically and ethically infeasible. The determination made by the NPS in the 2020 Rule did not fully consider the vast experience and knowledge of recognized experts and professional resource managers. In April 2022, the NPS queried 14 NPS resource managers and wildlife biologists from 12 different National Park System units in Alaska about bear baiting. These technical experts' unanimous opinion was that bear baiting will increase the likelihood of defense of life and property kills of bears and will alter the natural processes and behaviors of bears and other wildlife. Considering the potential for significant human injury or even death, these experts considered the overall risk of bear baiting to the visiting public to be moderate to high. These findings generally agree with the universal recognition in the field of bear management that food conditioned bears result in increased bear mortality and heightened risk to public safety

---

[7] *See, e.g.*, Glitzenstein, E., Fritschie, J. The Forest Service's Bait and Switch: A Case Study on Bear Baiting and the Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 52-53 (1995).

and property, and that baiting, by its very design and intent, alters bear behavior. The findings also are consistent with the State's management plan for Denali State Park. The management plan expresses concern that bear baiting "teaches bears to associate humans with food sources" and states that bear baiting is in direct conflict with recreational, non-hunting uses of the park. The plan further notes that bear baiting has "the potential for creating serious human-bear conflicts, by encouraging bears to associate campgrounds and other human congregation points with food sources."[8]

Other Considerations

In addition to the risks explained above, there are other considerations that support the proposal to prohibit all bear baiting. The NPS is guided by its mandates under the NPS Organic Act to conserve wildlife and under ANILCA to protect wildlife populations. Food-conditioned bears are more likely to be killed by authorities or by the public in defense of life or property.[9] While the NPS supports wildlife harvest as authorized in ANILCA, it cannot promote activities that increase non-harvest mortalities of bears.

Feedback from Tribes and ANCSA Corporations on Bear Baiting

Feedback received to date from Tribes and ANCSA Corporations indicates baiting bears is not a common activity in or near national preserves and not something done commonly by local rural residents. Many of the entities voiced support for prohibiting baiting altogether, limiting bait to natural items, increasing buffer zones

---

[8] Denali State Park Management Plan, 69 (2006).

[9] *See e.g.*, City and Borough of Juneau, Living with Bears: How to Avoid Conflict (*available at* https://juneau.org/wp-content/uploads/2017/03/2004_living_w_pamphlet_finaljustified.pdf), City and Borough of Juneau, Living in Bear Country (*available at* https://juneau.org/wp-content/uploads/2017/03/living_in_bear_country_color.pdf) ("It is well known that garbage kills bears—that is, once bears associate people with a food reward, a chain of events is set into motion and the end result, very often, is a dead bear."); Biologists say trash bears in Eagle River will be killed—but people are the problem, Anchorage Daily News (*available at* www.adn.com/alaska-news/wildlife/2018/06/18/biologists-say-trash-bears-in-eagle-river-will-be-killed-but-people-are-the-problem/); Glitzenstein, E., Fritschie, J. The Forest Service's Bait and Switch: A Case Study on Bear Baiting and the Service's Struggle to Adopt a Reasoned Policy on a Controversial Hunting Practice within the National Forests. 1 Animal Law 52-53 (1995).

around developments, or requiring a permit. On the other hand, a minority— mostly entities affiliated with the Wrangell-St. Elias area— recommended continuing to allow sport hunters to harvest bears over bait, including with use of processed foods like donuts and dog food. Consultation and communication with Tribes and ANCSA Corporations is ongoing and feedback will continue to be considered by the NPS throughout the rulemaking process.

The Meaning and Scope of Hunting for "Sport Purposes" under ANILCA

Hunting is prohibited in National Park System units except as specifically authorized by Congress. 36 CFR 2.2(b). Title VIII of ANILCA allows local rural residents to harvest wildlife for subsistence in most, but not all, lands administered by the NPS in Alaska. Title VIII also created a priority for federal subsistence harvest over other consumptive uses of fish and wildlife. Separate from subsistence harvest, ANILCA authorized anyone to harvest wildlife for "sport purposes." When first authorized under ANILCA, the State managed subsistence harvest by local rural residents under Title VIII as well as harvest for sport purposes by anyone. After a ruling from the State Supreme Court that the State Constitution barred the State from implementing the rural subsistence provisions of ANILCA, the Federal government assumed management of subsistence harvest under title VIII. Following this decision, the State only regulates harvest for sport purposes under ANILCA.[10] Under the State's current framework, Alaska residents have a priority over nonresidents but there is no prioritization based upon where one resides in Alaska. Accordingly, all residents of Alaska have an equal opportunity to harvest wildlife for "sport purposes" in national preserves under State law.

The NPS is re-evaluating whether it was appropriate for the 2020 Rule to change

[10] The State of Alaska also uses the term "subsistence" when referencing harvest of fish and wildlife by state residents. It is important to recognize, however, that state subsistence harvest is not the same as federal subsistence under title VIII of ANILCA, which is limited to only local rural residents. When the term "subsistence" is used in this document, it refers to subsistence under title VIII of ANILCA and harvest of fish and wildlife under federal regulations.

its interpretation of the term "sport" in the 2015 Rule. An important implication of that change is that the 2020 Rule expanded sport hunting opportunities for nonlocal residents who are not qualified to harvest wildlife under federal subsistence laws. As mentioned above, in the spring of 2022 the NPS reached out to Tribes and ANCSA Corporations that are most likely to be impacted by this proposed rule. In these discussions, most of these entities expressed concern that increasing harvest opportunities under ANILCA's authorization for sport hunting and trapping could result in increased competition from individuals that are not local to the area. In addition, most of these entities do not believe there is a demand to engage in these harvest practices in national preserves (other than limited demand to bait bears in Wrangell-St. Elias) and expressed a preference that the NPS not authorize practices that could encourage more nonlocal hunters to visit the area and compete for wildlife resources.

This feedback from Tribes and ANCSA Corporations illustrates a tension between the interests conveyed and the outcome of the 2020 Rule which increased harvest opportunities for nonlocal rural residents. In the 2015 Rule, the NPS said harvest of wildlife for "sport purposes" carries with it concepts of fairness or fair chase. These constructs do not necessarily apply to subsistence practices which emphasize cultural traditions and acquisition of calories for sustenance. In the 2020 Rule, the NPS changed its interpretation by saying the term "sport" only serves to differentiate harvest under State regulations from harvest under federal subsistence regulations. As a result, practices that some might consider only appropriate for subsistence harvest by local rural residents now may be used by anyone harvesting for "sport purposes" under State law. As conveyed by the Tribes and ANCSA Corporations, this increases competition between federal subsistence hunters and sport hunters by expanding hunting opportunities to those who are not local rural residents. It also allows for sport hunters to engage in practices that are not considered sporting under notions of the term as described above. The

examples below illustrate how this issue plays out in national preserves in Alaska today:

- *Swimming caribou.* Under the 2015 Rule, only qualified rural residents could harvest swimming caribou in national preserves in accordance with federal subsistence regulations, which recognize the practice as part of a customary and traditional subsistence lifestyle. Individuals from Anchorage, Fairbanks, Juneau and other nonrural areas in Alaska, as well as out-of-state hunters, could not harvest swimming caribou in national preserves. Under the 2020 Rule, residents of nonrural areas in Alaska (including Anchorage, Fairbanks, and Juneau) and out-of-state hunters can harvest swimming caribou in national preserves in accordance with State law under ANILCA's authorization for harvest for "sport purposes."
- *Black bear cubs and sows with cubs.* Under the 2015 Rule, only a qualified rural resident could harvest bear cubs and sows with cubs in accordance with federal subsistence regulations, which recognize this practice as an uncommon but customary and traditional harvest practice by some Native cultures in northern Alaska. Accordingly, while the NPS supported the activity under federal subsistence regulations, the NPS did not support it under ANILCA's authorization for "sport" hunting." Under the 2020 Rule which deferred to State law, harvest of bear cubs and sows with cubs is not limited based on where one resides. Accordingly, under the 2020 Rule individuals who are not local to the area can harvest bear cubs and sows with cubs at den sites in national preserves under ANILCA's authorization for harvest for "sport" purposes.
- *Take of wolves and coyotes, including pups, during the denning season.* The 2015 Rule prohibited sport hunters from taking wolves and coyotes during the denning season, a time when their pelts are not in prime condition, which can leave pups and cubs orphaned and left to starve. Under the 2020 Rule, any hunter (including

those from out of state) can harvest wolves and coyotes year-round, including pups during the denning season. This reduces the number of wolves and coyotes available to harvest when their pelts are fuller and therefore more desirable to subsistence users and other trappers.

These examples demonstrate that the NPS's interpretation of the term "sport" under the 2015 Rule created a result that is more in line with the majority of feedback received to date from Tribes and ANCSA Corporations. The NPS Organic Act directs the NPS to conserve wildlife. Based upon this conservation mandate, hunting is prohibited in National Park System units except as authorized by Congress. 36 CFR 2.2(b). ANILCA authorizes harvest for Federal subsistence and "sport purposes" in national preserves in Alaska. The NPS interprets the term "sport" to include the concept of fair chase as articulated by some hunting organizations,[11] as not providing an unfair advantage to the hunter and allowing the game to have a reasonable chance of escape. This involves avoiding the targeting of animals that are particularly vulnerable, such as while swimming, while young, or while caring for their young. While the NPS understands that the exact boundaries of this concept involve some level of ambiguity, the NPS believes the practices addressed in this proposed rule fall outside the norms of "sport" hunting.

The NPS requests comment on this concept of "sport" and whether the practices described in these examples should be allowed as a "sport" hunt in national preserves in Alaska. Giving meaning of the term "sport" also prioritizes harvest for subsistence by local rural residents by avoiding competition with nonlocal residents who are hunting for sport purposes under ANILCA. This is consistent with the priority that Congress placed on the customary and traditional uses of wild renewable resources by local rural residents under ANILCA (*see* Sec. 101(c)). For these reasons, the proposed rule would reinstate

[11] The Hunting Heritage Foundation, www.huntingheritagefoundation.com (last visited July 25, 2022); Boone and Crockett Club, www. boone-crockett.org/principles-fair-chase (last visited July 25, 2022).

the prohibitions in the 2015 Rule on methods of harvest that are not compatible with generally accepted notions of "sport" hunting. The proposed rule would define the terms "big game," "cub bear," "fur animal," and "furbearer," which are used in the table of prohibited harvest methods, in the same way they were defined in the 2015 Rule.

State Law Addressing Predator Harvest.

The proposed rule also would address opportunities to harvest predators that are authorized by the State. NPS policy interprets and implements the NPS Organic Act. NPS Management Policies require the NPS to manage National Park System units for natural processes, including natural wildlife fluctuations, abundances, and behaviors, and specifically prohibit the NPS from engaging in predator reduction efforts to benefit one harvested species over another or allowing others to do so on NPS lands. (NPS Management Policies 2006, Ch. 4). These activities are prohibited by policy even if they do not actually reduce predator populations or increase the number of prey species available to hunters. The NPS believes the 2020 Rule is in tension with these policies based upon the information it collected over a period of years before the publication of the 2015 Rule. This information indicates that the predator harvest practices that were allowed by the State were allowed for the purpose of benefited prey species over predators. For this reason, the proposed rule would reinstate the prohibitions in the 2015 Rule on methods of harvest that target predators for the purpose of increasing populations of prey species for human harvest. In addition, the proposed rule would add the following statement to its regulations to clarify that predator control is not allowed on NPS lands: "Actions to reduce the numbers of native species for the purpose of increasing the numbers of harvested species (e.g., predator control or predator reduction) are not allowed."

Trapping Clarification.

Finally, the proposed rule would revise the definition of "trapping" in part 13 to

clarify that trapping only includes activities that use a "trap" as that term is defined in part 13. The definition of "trapping" promulgated in the 2015 Rule inadvertently omitted reference to the use of traps, instead referring only to "taking furbearers under a trapping license." The proposed revision would resolve any question about whether trapping can include any method of taking furbearers under a trapping license, which could include the use of firearms depending upon the terms of the license. This change would more closely align the definition of "trapping" in part 13 with the definition that applies to System units outside of Alaska in part 1.

Compliance with Other Laws, Executive Orders and Department Policy.

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the OMB will review all significant rules. The Office of Information and Regulatory Affairs has determined that this proposed rule is significant because it raises novel legal or policy issues. The NPS has assessed the potential costs and benefits of this proposed rule in the report entitled "Cost-Benefit and Regulatory Flexibility Analyses: Alaska Hunting and Trapping Regulations in National Preserves" which can be viewed online at https://www.regulations.gov by searching for "1024-AE70." Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this proposed rule in a manner consistent with

these requirements.

Regulatory Flexibility Act.

This proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report entitled "Cost-Benefit and Regulatory Flexibility Analyses: Alaska Hunting and Trapping Regulations in National Preserves" which can be viewed online at https://www.regulations.gov by searching for "1024-AE70.

Unfunded Mandates Reform Act.

This proposed rule does not impose an unfunded mandate on Tribal, State, or local governments or the private sector of more than $100 million per year. The proposed rule does not have a significant or unique effect on Tribal, State, or local governments or the private sector. It addresses public use of national park lands and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630).

This proposed rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required**.**

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule only affects use of federally administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This proposed rule complies with the requirements of Executive Order 12988. This proposed rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian Tribes and ANCSA Corporations (Executive Order 13175 and Department Policy).

The DOI strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The NPS has begun consulting and communicating with Tribes and ANCSA Corporations that would be most affected by this proposed rule and the feedback provided to date has been incorporated by the NPS in this proposed rule. The NPS has evaluated this proposed rule under the criteria in Executive Order 13175 and under the Department's Tribal consultation and ANCSA Corporation policies. This proposed rule would restrict harvest methods for sport hunting only; it would not affect subsistence harvest under Title VIII of ANILCA. Feedback from Tribes and ANCSA Corporations indicates that these harvest methods are not common or allowed in many areas by the State. For these reasons, the NPS does not believe the proposed rule will have a substantial direct effect on federally recognized Tribes or ANCSA Corporation lands, water areas, or resources. Consultation and communication with Tribes and ANCSA Corporations is ongoing and feedback will continue to be considered by the NPS throughout the rulemaking process.

Paperwork Reduction Act.

This proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act

is not required. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act.

The NPS will prepare an environmental assessment of this proposed rule to determine whether this proposed rule will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969. The environmental assessment will include new information, as appropriate, as well as an impact analysis similar to what was provided in the environmental assessments prepared for the 2015 Rule and the 2020 Rule, both of which resulted in a finding of no significant impact.

Effects on the Energy Supply (Executive Order 13211).

This proposed rule is not a significant energy action under the definition in Executive Order 13211; the proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the proposed rule has not otherwise been designated by the Administrator of Office of Information and Regulatory Affairs as a significant energy action. A Statement of Energy Effects is not required.

Clarity of this rule.

The NPS is required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the NPS publishes must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that the NPS has not met these requirements, send the NPS comments by one of the methods listed in the **ADDRESSES** section. To better help the NPS revise the rule, your comments should be as specific as possible. For example, you should identify the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation.

It is the policy of the DOI, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section of this document.

Public availability of comments.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask the NPS in your comment to withhold your personal identifying information from public review, the NPS cannot guarantee that it will be able to do so.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 13 as set forth below:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 54 U.S.C. 100101, 100751, 320102; Sec. 13.1204 also issued under Pub. L. 104-333, Sec. 1035, 110 Stat. 4240, November 12, 1996.

2. In § 13.1:

a. Add in alphabetical order the definitions for “Big game”, “Cub bear”, “Fur animal”, and “Furbearer”.

b. Revise the definition of “Trapping”.

The additions and revision read as follows:

§ 13.1 Definitions.

* * * * *

Big game means black bear, brown bear, bison, caribou, Sitka black-tailed deer, elk, mountain goat, moose, muskox, Dall’s sheep, wolf, and wolverine.

* * * * *

Cub bear means a brown (grizzly) bear in its first or second year of life, or a black bear (including the cinnamon and blue phases) in its first year of life.

* * * * *

Fur animal means a classification of animals subject to taking with a hunting license, consisting of beaver, coyote, arctic fox, red fox, lynx, flying squirrel, ground squirrel, or red squirrel that have not been domestically raised.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, least weasel, short-tailed weasel, muskrat, land otter, red squirrel, flying squirrel, ground squirrel, Alaskan marmot, hoary marmot, woodchuck, wolf and wolverine.

* * * * *

Trapping means taking furbearers with a trap under a trapping license.

* * * * *

3. In § 13.42, add paragraphs (f) and (k) to read as follows:

§ 13.42 Taking of wildlife in national preserves.

* * * * *

(f) Actions to reduce the numbers of native species for the purpose of increasing the numbers of harvested species (e.g., predator control or predator reduction) are prohibited.

* * * * *

(k) 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. The following are prohibited:

Table 1 to paragraph (k)

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.
(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.
(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.

Shannon Estenoz,

Assistant Secretary

for Fish and Wildlife and Parks.

[FR Doc. 2023-00142 Filed: 1/6/2023 8:45 am; Publication Date: 1/9/2023]