

ALASKA STATE HOUSE



Session:

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REPRESENTATIVE MIKE CRONK

Sponsor Statement HJR-10

This resolution is a companion to SJR – 8 and lays out a history of Alaska’s right to manage fish and wildlife.

It further lays out the most recent federal erosion of those rights.

Finally, HJR – 10 expresses strenuous objection to the National Park Service incursion into Alaska’s management prohibiting long-standing hunting practices allowed under state law.

No matter how opinions may differ on management practices, there should be no disagreement about our state’s right to manage fish and wildlife.

I would ask for your support for HJR – 10.

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 Merrick, Wilson, Giessel, Bishop, Bjorkman

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.



James H. Lister
Jon M. DeVore
Respond to Washington, D.C. Office
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MEMORANDUM

DATE: February 27, 2023

TO: Senator Lisa Murkowski
Senator Dan Sullivan
Representative Mary Peltola

FROM: James H. Lister
Jon M. DeVore
Attorneys for Alaska Professional Hunters Association

SUBJECT: How the Kenai Refuge and Alaska National Preserves Litigation Connects to the National Park Service Proposed Regulations on Hunting and Predator Control on NPS Preserves

This memo describes the relationship between three proceedings: (1) the FWS Kenai Refuge litigation, (2) the NPS Alaska National Preserves litigation, and (3) the NPS rulemaking in which NPS proposes to repeal a 2020 rule that had restored State management on Alaska National Preserves. The comment deadline in the NPS rulemaking is March 10, 2023 and the State, SCI, and our client APHA have all requested comment period extensions.

In the FWS Kenai litigation, the Ninth Circuit surprisingly held that the State of Alaska did not obtain management responsibility over all of Alaska’s wildlife at the time of Statehood.¹ Rather, based on the Ninth Circuit’s reading (or misreading) of Section 6(e) of the Alaska Statehood Act, the Court held that the State only obtained fish and wildlife management authority on those lands that were not set aside as refuges for the preservation of wildlife.² The United States retained title (land ownership) for refuges at the time of Statehood, but the Ninth Circuit inferred that the United States also retained plenary wildlife management authority, not just title.

Most but not all of what is now the Kenai National Wildlife Refuge was set aside as the Kenai Moose Range in the 1940s. Having found that the State did not obtain management authority over fish and wildlife on refuges at the time of Statehood, the Ninth Circuit decided that the Federal Government has “plenary” authority to manage fish and wildlife on these refuges. Thus, the Ninth

¹ *Safari Club International v. Haaland*, 31 F.4th at 1157, 1165, 1168-69 (9th Cir. 2022) (also referred to as “FWS Kenai” case), *cert. pending*, U.S. Supreme Court Case No. 22-401.

² The Alaska Statehood Act is Public Law No. 85-508.

Circuit upheld a 2016 rule in which U.S. FWS in the Obama Administration preempted State rules allowing hunting of brown bear through use of bait on the 1.8 million-acre Kenai National Wildlife Refuge.³ That rule also preempted other State hunting laws regarding the Kenai Refuge.

Various Acts of Congress grant federal land managers certain specific powers over wildlife on refuges and other federal lands, e.g. the powers to prevent hunting that might put a species in danger of extinction, would cause a legitimate public safety issue, or would be “incompatible” with achieving a refuge’s statutory purposes. However, the State has always believed that the State was the default regulator and exercised general hunting management authority, unless the criteria in one of the specific statutes for federal preemption was met, e.g. documented public safety risk. Thus, the State’s position has been that it exercised general management authority over hunting on federal lands in Alaska, and that federal land managers held limited constrained powers to step in and preempt in certain circumstances defined by statutes.

The Ninth Circuit, in the FWS Kenai case, upset this apple cart by essentially holding that the “plenary” default authority resides in the federal land manager, not the State.⁴ The result appears to be that the federal land manager can essentially preempt State hunting rules whenever he or she wishes, as opposed to only in limited circumstances in which a specific federal statute specifically authorizes preemption. The State and SCI were the plaintiffs who challenged the FWS Kenai rule, leading to the Ninth Circuit’s decision. The State has petitioned the U.S. Supreme Court for certiorari to hear the case. SCI filed a brief in support of the State’s petition. APHA and its partners Sportsmen’s Alliance Foundation and Alaska Outdoor Council also filed an amicus brief in support of the State. U.S. FWS and anti-hunting groups filed briefs in January opposing the State’s petition for certiorari, and the State filed a reply. The Supreme Court will now decide whether to accept the case for review.

It should also be noted that the Ninth Circuit in the FWS Kenai case read narrowly a 2017 Act of Congress that had abrogated, under the Congressional Review Act (CRA), another FWS rule that was very similar to the FWS Kenai Rule but applied to all National Wildlife Refuges in Alaska.⁵ The Ninth Circuit held that the CRA resolution did not in any way invalidate the FWS Kenai rule in spite of the Kenai NWR being a subset of the NWR system in Alaska and the two rules both banning the baiting of brown bears.

APHA is a direct participant (defendant intervenor) in another ongoing litigation involving federal authority over hunting on Alaskan National Park Preserves. Anti-hunting groups (plaintiffs) sued to repeal a rule adopted by NPS in June 2020 that restored preempted State hunting seasons and methods and means on Alaska National Preserves.⁶ The current NPS declined to defend the rule. In September of 2022, the U.S. District Court for the District of Alaska ruled the recently discovered plenary wildlife management authority on NWRs in Alaska also extends to Alaska

³ 81 Fed.Reg. 27030 (May 5, 2016) (“FWS Kenai Rule”).

⁴ *Safari Club International*, 31 F.4th at 1165, 1168-69.

⁵ The CRA resolution that repealed the similar FWS rule is Pub. L. No. 115-20.

⁶ The citations are: January 2023 Proposed Rule, 88 Fed.Reg. 1176 (Jan. 9, 2023); 2020 Rule, 85 Fed.Reg. 25181 (June 9, 2020).

National Preserves.⁷ Extension of the FWS Kenai “plenary” precedent to Alaska National Preserves expands plenary federal jurisdiction over wildlife management within Alaska by approximately 21 million acres. Alaskan NWR and National Preserves, combined, total 98 million acres of land within Alaska. On a more favorable note, the District Court still determined that the 2020 rule restoring State management did not substantially harm the environment, resulting in the rule remaining in effect in the short term but being remanded for further consideration by NPS (“remand without vacatur”). All parties (plaintiffs, defendants, defendant-intervenors) appealed the decision in the Ninth Circuit where the appeals are now on long term hold pending the outcome of the 2023 NPS rulemaking which seeks to repeal the 2020 NPS rule and reinstate federal management. The FWS Kenai precedent has substantially impacted the Alaska National Preserves case.

This memo has discussed the Kenai Refuge litigation, the “plenary” jurisdiction precedent announced in it, and the expansion of this precedent from Alaska NWR to lands managed as Alaska National Preserves. Neither of these actions are final at this time: Kenai is under appeal to SCOTUS and the Alaska Preserves decision is under appeal to the Ninth Circuit.

The third side of this triangle of conflict over wildlife management in Alaska is the January 2023 Alaska NPS Preserve proposed rule. The proposed 2023 rule would repeal the 2020 AK NPS rule and result in an outcome similar to that which would occur if the plaintiffs prevail in the litigation over the NPS 2020 rule (at this point the 2020 rule has, for the moment, survived the plaintiffs’ lawsuit, because it was remanded to NPS without vacatur, rather than with vacatur).

In the AK National Preserves rulemaking docket, a new document, “Cost Benefit and Regulatory Flexibility Analysis” (Cost Benefit Analysis), goes deeper into NPS’s motivations for issuing its January 2023 proposed rule to repeal the 2020 AK NPS rule (both documents are attached to this memorandum). This document provides part of the rationale as to why the new rule has been proposed. This Cost Benefit Analysis is not easily located and might be more logically part of the original proposed rule. Many people would not easily locate it if just looking at the AK Preserves proposed rule.

Although in the January 2023 proposed rule, NPS mentions neither the Ninth Circuit’s decision in the FWS Kenai case nor the term “plenary”, NPS does mention both in the Cost Benefit Analysis for the proposed rule. In the Cost Benefit Analysis, NPS explains that the Ninth Circuit’s decision shows that federal agencies have “plenary” authority over hunting on federal land reservations and that the decision rejects the concept that the State acquired management authority over such lands at Statehood. NPS says that the Kenai decision is one of three primary supports for NPS now proposing to repeal the 2020 rule. One can search Cost Benefit Analysis for the word “plenary” and for the party names to the FWS Kenai case to find the various pages of discussion in the document.

In the Cost Benefit Analysis, the DOI/NPS played up the precedential impact of the case. Nearly simultaneously, in opposing certiorari for the FWS Kenai case decision, DOI/USFWS played down the precedential impact. The Cost Benefit Analysis did not get posted to www.regulations.gov until 1/9/23 at the earliest, and maybe after that date.

⁷ *Alaska Wildlands Alliance v. Haaland*, 2022 WL 17422412, *14 (D. Alaska Sept. 30, 2022), *appeals pending*, Ninth Circuit Case No. 22-36001, et al.

The potential impacts of the FWS Kenai precedent if certiorari is denied by the U.S. Supreme Court, making the Ninth Circuit decision in that case final, will mostly certainly come at the expense of state interests. Should the Ninth Circuit FWS Kenai precedent stand and the 2023 NPS proposed rule be implemented, the precedential impacts on all Conservation Units in Alaska (National Forests and BLM Lands) are likely significant. Recognizing and understanding the complex relationship of the litigation and the proposed regulations is critical. At the least, it provides a strong rationale for an extension of the public comment period on the new NPS proposed regulations. Even if SCOTUS decides to grant or deny certiorari in the FWS Kenai case at the earliest possible time (the Justices are scheduled to consider the State's certiorari petition at conference on March 3, 2023), the public will not have sufficient time to draft comments with the benefit of the SCOTUS decision before the current March 10 comment deadline set by NPS.

(Litigation status report providing public non-confidential information)

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



DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

[NPS-AKRO-33913; PPAKAKROZ5, PPMRLE1Y.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](https://www.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]



Senator Cathy Giessel, Senator Click Bishop
Co-chairs, Senate Resources Committee
33rd Alaska State Legislature

Re: Support for House Joint Resolution 10 NAT'L PARK SERVICE; HUNTING IN PRESERVES

March 21, 2023

Dear Senators Bishop, Giessel, and members of the Senate Resources Committee,

The Safari Club International Alaska Chapter supports House Joint Resolution 10 NAT'L PARK SERVICE; HUNTING IN PRESERVES.

Founded in 1971, Safari Club International is the country's leading hunter rights advocate and additionally promotes worldwide wildlife conservation. SCI's approximately 50,000 members and 200 Chapters represent all 50 of the United States as well as 106 other countries. The Safari Club International Alaska Chapter (SCI AK) and Kenai Peninsula Chapter (KPSCI) are 501c4 conservation non-profit corporations. SCI AK was established in Alaska in 1977, and currently has 670 members. Our joint mission statement is "First for Hunters - First for Wildlife."

House Joint Resolution 10 (HJR 10) urges the National Park Service (NPS) to withdraw the proposed "2023 NPS Rule" without adoption. The resolution's language further affirms the mandates of the previous 2020 national preserves rule; which did not seek to preempt state management authority of wildlife on federal public lands. The 2020 NPS Rule better aligned NPS's regulations with the state's laws for hunting and trapping in national preserves in Alaska. The 2023 Rule was proposed without consultation with the Alaska Department of Fish & Game, and is substantially similar to a 2015 NPS rule prohibiting select hunting practices and management techniques on national refuges.

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—those practices are governed by the State.

Alaska is facing unprecedented pressure from the federal government to control access and resources on lands that Congress intended to be used by the state's residents. The proposed 2023 NPS Rule would further erode the state's ability to ensure Alaskan interests are able to make a living, engage in commercial and traditional hunting practices, and continue utilizing national preserve lands in a responsible and respectful manner—as they have done for generations.

We thank Representative Cronk Giessel for introducing HJR 10 and offer our full support for this valuable piece of legislation.

Best regards,

John Sturgeon

SCI Alaska Chapter President

SCI Alaska Chapter

Eagle River, Alaska 99577

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Safari Club International Alaska Chapter
First for Hunters - First for Wildlife

Senate Resources Committee,

My name is Joey Klutsch and I am a second generation hunting guide. I am a rural resident of King Salmon, AK, and I have lived here my entire life. I've been involved in the guiding business for the whole of my working life and have been going to guide camp from the time I could walk. I first earned my guide license 20 years ago, and have operated my own guiding business since 2014. Guiding is and always has been nearly my entire means of income. I am not a part time guide. I am a professional. Guiding is a way of life for me, a job that a truly love and care about, and one that allows me to provide for my family (both from the money I bring in and the meat I take home) in a sustainable way. I hope to someday get my two children involved in guiding. In addition to being my primary means of income, guiding is also extremely important for those who I hire to work with me, nearly all of whom live in Alaska. And the economic effect trickles down from there, especially in rural communities like mine. Air Taxis, stores, hotels, restaurants; all of them depend a great deal on the influx of out of state hunters, which happens during a time that is otherwise void of tourists, and which were it not for hunters, would have far less economic opportunity for those who operate and live in these communities.

Much of the guiding that I do (and which many others do) takes place on National Park Preserves, for brown bear and wolf, so should the proposed NPS rule go into effect, it would greatly affect me, my family, and those who work with us, many of whom have been guiding with us for 20 years or more. My dad, Joe Klutsch, has been guiding in what is now Aniakchak Preserve since the early 1970s. His guiding main camp is located directly in Aniakchak Preserve and he has held an NPS concession contract to guide there since the early 1980s. This is a huge part of his business. He has spent most of his working life guiding in this Preserve. I guide for him in this area, so naturally a closure of brown bear and wolf hunting would affect me greatly, as a very significant portion of the hunters he takes in Aniakchak Preserve are for brown bear. Obviously, it would affect him tremendously. I hope to someday acquire this area from him, and it has long been my goal, but the area would lose most all of its value should brown bear hunting be closed. Furthermore, many resident Alaskan hunters enjoy hunting brown bears and wolves not just in Aniakchak Preserve, but all of the National Preserves throughout Alaska. It is not fair that resident hunters lose out on hunting opportunity, especially where there is absolutely no biological concern for these species, and no reasonable justification whatsoever for closure. This is simply another example of federal agencies asserting themselves by attempting to manage what is a state resource. And again, with zero biological justification for doing so.

Much of GMU 9 has been listed as a predator management area for wolves due to the extremely abundant populations of these highly efficient predators. They take a large toll on prey species. You cannot blame the wolves for doing what they do, but at the same time you absolutely cannot expect to take them out of the management equation by forbidding hunting of them on Preserve units. Predators such as brown bears and wolves should not be given any elevated status amongst animals when there is a harvestable level of them to be taken. The Alaska Board of Game sets season and bag limits for these animals and it is not the place of the National Park Service to usurp the BOG, especially when the seasons and bag limits set by the BOG are based largely on biological evidence and data.

Furthermore, closure of hunting of these predator species could, and likely would, adversely impact subsistence users in the area. Hunting for food may not be important in Washington DC and other major population centers where NPS policy makers come up with these ideas, but it is very important in rural Alaska where I live, and across countless communities and villages like it, many of which are in close proximity to National Preserves (the communities of King Salmon, Naknek and South Naknek are right next to Katmai Preserve, and this area is hunted for subsistence by me and many other locals from the area) . The elimination of hunting for the two major predator species (wolf and brown bears) would surely be detrimental to the game in the area, which is game that rural residents of the area subsist on and have done so for thousands of years. I doubt that most of the Park Service authorities who proposed this rule have any idea that brown bears can kill up to 70% of moose calves born, or that wolves can tear down a similar number of caribou calves. I am not saying that bears and wolves don't have their place. Quite the opposite. They are a vital part of the ecosystem. But there is no logical reason that we should not be able to harvest them when their numbers are healthy, which they are, and when the Alaska Board of Game sets seasons and bag limits for doing so. The state of Alaska does a fine job of managing its game through the Board of Game process – a process open to the public. It has proven itself for many years. We do not need the federal agencies overruling seasons that are in place and work extremely well.

Finally, I would like to comment regarding the lack of notice to the general public regarding this extremely serious NPS rule, especially in rural Alaska. As someone who actually lives year round in a rural AK, in a community that is a short snowmobile or boat ride from Katmai Preserve where locals routinely hunt and subsist, and that is within relative proximity of two other Preserves (Lake Clark and Aniakchak Preserves), I find it particularly alarming that no one that I have spoken with in my community, including members of our Naknek/Kvichak Advisory Committee (of which I am a member of) have heard of this rule, which could potentially affect them so greatly. This is absolutely inexcusable and just illustrates perfectly how NPS does not care about local members of these rural communities, the very people who this could potentially affect the most. This is completely unfair to the everyday person who lives in these communities, who does not have time or even know about checking the Federal Register online to find out about things like this that greatly affects their way of life. There are no notices to the public in our community; nothing in public places like the Post Office, stores, or bank where people of the community can go to find information. NPS didn't even bother to post anything online, for example, Facebook groups such as the Bristol Bay Exchange, where community information and public notices are regularly shared. And this is in a community that is in direct proximity to a preserve where locals hunt and subsist! This is inexcusable and shows a complete lack of understanding, care, and utter disregard for the way of life people value so much in rural areas. This is in no way a public process because most people don't even know that it is happening, and NPS is making no effort to inform them, much less ask for comments from those affected. How is that in anyway a democratic process?

I thank you for your time and effort in this matter.

Sincerely,

Joey Klutsch
Registered Guide 1277
Aniakchak Guide Service

From: [Mike Zweng](#)
To: [House Resources](#); [Senate Resources](#); [Sen. Click Bishop](#); [Sen. Cathy Giessel](#); [Rep. Mike Cronk](#)
Subject: Opposition to NPS rule limiting no subsistence hunting methods
Date: Friday, March 10, 2023 8:22:48 AM

I am writing this letter opposing the NPS Preserve Rule limiting non-subsistence hunting methods and urging the National Park Service to withdraw the rule. I am a registered big game guide in Alaska and hire many local individuals. This rule would greatly impact many stakeholders negatively.

There are many impacts to predator hunt closures. Although brown bears are predators, the term predator hunt implies that these hunts are only being performed to reduce predation impact to other animals. This is not the case. Brown bears are a big game animal in their own rite and hunting of them is guaranteed in ANILCA. Many user groups take advantage of this renewable resource and have been for many decades. I rely on brown bear hunts for my livelihood. This will have a very negative effect on subsistence users that rely on moose and caribou as well as other meat animals.

The state of Alaska has a very well established method for game management that has been a great success. This management process relies on local input including Advisory Comities as well as a Board of Game that is made up of experts in game management. Members of the public are also able to give input on proposed game laws. This is a grass roots model and I believe it is much more effective than a top down authoritative style.

Please consider these points and withdraw this new rule and allow the state to manage these the wildlife resources as they have been doing successfully since statehood.

Mike Zweng

From: [Sen. Cathy Giessel](#)
To: [Julia OConnor](#)
Subject: FW: Opposition to HR 10
Date: Friday, March 17, 2023 7:35:58 AM
Attachments: [NPS-2023-0001-8011 .pdf](#)

From: Richard Steiner <richard.g.steiner@gmail.com>
Sent: Friday, March 17, 2023 7:32 AM
Subject: Opposition to HR 10

Dear Legislators,

I am among many Alaskas who strongly support the proposed NPS rules to manage wildlife on National Preserves (see attached scientists letter signed by many Alaskan scientists), and respectfully **ask that you oppose House Resolution 10.**

I refer to the sections of the Alaska Constitution below, provisions that HR 10 would violate....I have bolded the phrases that State of Alaska wildlife management consistently, and blatantly, violate.....ADFG/BOG management consistently promotes uses of wildlife by a minority of Alaskans, ignoring the uses by a majority. That is clearly unconstitutional.

Article 8 - Natural Resources

§ 1. Statement of Policy

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use **consistent with the public interest.**

§ 2. General Authority

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for **the maximum benefit of its people.**

§ 3. Common Use

Wherever occurring in their natural state, fish, wildlife, and waters are **reserved to the people for common use.**

§ 4. Sustained Yield

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, **subject to preferences among beneficial uses.**

Thus, I respectfully ask that you oppose this Resolution.

Regards,

Rick Steiner, Professor

Univ. of Alaska

Oasis Earth

Anchorage, Alaska

www.oasis-earth.com

907-360-4503

From: [Anne Rittgers](#)
To: [Senate Resources](#)
Subject: FW: New Pom:Fish & Game (game)
Date: Thursday, March 16, 2023 10:36:30 AM

-----Original Message-----

From: poms@akleg.gov <poms@akleg.gov>
Sent: Thursday, March 16, 2023 9:24 AM
To: Sen. Click Bishop <Sen.Click.Bishop@akleg.gov>
Subject: New Pom:Fish & Game (game)

Franc Wright
1180 Float Rd

Fairbanks 99709-7202,

I would like to voice my support for the passage of HJR 10 and SJR 8, thank you.