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November 2, 2018

Herbert C. Frost, Regional Director  
National Park Service - Alaska Regional Office  
240 W. 5th Avenue  
Anchorage, AK 99501

Re: *RIN 1024-AE38 Alaska; Hunting and Trapping in National Preserves*

Dear Mr. Frost:

The State of Alaska reviewed the proposed rule published May 22, 2018 at 83 Federal Register 23621, which would rescind 36 CFR 36.42(f) and (g) and select related definitions. These and other regulatory changes were promulgated in a final rule dated October 23, 2015 (80 FR 64325). The following comments represent the consolidated views of state resource agencies.

The State supports the proposed regulatory revisions to 36 CFR 36.42 because these provisions, which stem from the 2015 rule:

- overstep state authority to manage wildlife given to the State of Alaska at statehood, which was not subsequently withdrawn by Congress in the Alaska National Interest Lands Conservation Act (ANILCA) or any other statute;
- prevent state authorized fishing, trapping and hunting for subsistence purposes on national preserves in Alaska; and
- supersede state management absent any biological data or conservation concerns

The State is particularly concerned that the vast majority of public attention on this and the 2015 rulemaking focus on certain hunting and trapping methods and means without a full understanding of the basis for the State Board of Game's decisions or who would be affected by the regulatory changes. While both rules indicate that they only apply to sport hunting, affected users include rural residents who would conduct subsistence under state regulations, and former rural residents who now live in urban areas but still practice subsistence. As recognized in the proposed rule, the 2015 rule contained inaccurate information, yet misleading and false information surrounding this, and the 2015 rulemaking, continue to prevail in the public eye.

To clarify, the underlying issue and the attached comments focus on the framework of wildlife management, sustained yield of wildlife, and mandated public use in Alaska, which had been in place since ANILCA's passage in 1980 but was upended by the 2015 rule. The State has a long and distinguished history of excellent wildlife management, which the proposed changes will allow to continue on all lands in Alaska, as was the intent of Congress through the Alaska Statehood Act and ANILCA. We encourage the Service to discuss any wildlife-related biological or conservation concerns with appropriate state representatives. We believe that many issues can be resolved through ongoing cooperative efforts.

We incorporate by reference our previous comments, including those dated:

November 26, 2014 – Comments on NPS Proposed 36 CFR Part 13 Regulations and EA

October 28, 2014 – Comments on NPS Proposed Regulatory Changes

May 21, 2014 – Response to Deputy Regional Director's Response

April 4, 2014 – Comments on the 2014 Compendium affecting Wildlife Hunting Restrictions

February 14, 2013 – Compendium Comments Cover Letter

February 14, 2013 – 2013 Comments Regarding the NPS 2013 Proposed Compendium

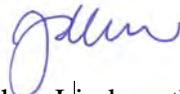
February 15, 2012 – 2012 Superintendent's Proposed Compendium Comments

February 15, 2011 – Draft 2011 Superintendent's Proposed Compendiums Comments

February 16, 2010 – Draft 2010 Superintendent's Proposed Compendium Comments

Thank you for your consideration of these comments.

Sincerely,



Jahna Lindemuth  
Attorney General

Enclosures

cc: The Honorable Lisa Murkowski, United States Senator  
The Honorable Dan Sullivan, United States Senator  
The Honorable Don Young, United States Representative

The Honorable Ryan Zinke, Secretary of the Interior  
Steve Wackowski, Department of Interior, Senior Advisor for Alaska Affairs  
Sam Cotten, Commissioner, Alaska Department of Fish and Game  
Andy Mack, Commissioner, Alaska Department of Natural Resources  
John Crowther, Director, Office of the Governor, Washington DC  
Ted Spraker, Chair, Alaska Board of Game  
Susan Magee, State ANILCA Program Coordinator

**State of Alaska Comments**

**Regarding the National Park Service 2018 Proposed Rule**

**for Alaska; Hunting and Trapping in National Preserves,**

**RIN 1024-AE38**

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## **State of Alaska supports the proposed rule**

The State of Alaska strongly supports the proposed rule because it properly restores the State's ability to manage hunting as a mandated use on Alaska preserves. The State is pleased that the National Park Service (NPS) is acknowledging that Federal law did not require (or support) the 2015 final rule which preempted state management authority over fish and wildlife. Alaska strongly supports the changes that are currently proposed (i.e. the repeal of 36 CFR 13.42(f) and (g) and certain related definitions from 36 CFR 13.1) as being fully consistent with NPS laws and policies, as we explain in detail below. The 2018 proposed rule corrects mistaken actions taken by NPS in adopting the 2015 Rule and further recognizes that, as stated by NPS in 2015, the 2015 hunting restrictions were not supported by any conservation concern. The State supports the recognition that the Alaska Board of Game (BOG) and the Alaska Department of Fish and Game (ADF&G) have the legal authority to effectively and professionally manage wildlife in Alaska, which will continue under the adoption of the proposed rule.

### **The proposed rule is consistent with Secretarial Orders 3347 and 3356**

The NPS issued a Notice of Intent in the Federal Register on November 15, 2017 (82 FR 52868) indicating that it would be reviewing the final 2015 36 CFR Part 13 regulatory changes affecting "sport hunting and trapping in national preserves in Alaska." The notice indicated that NPS will consider changes to the provisions in the 2015 final rule, while also taking into consideration Secretarial Order (SO) 3347 *Conservation Stewardship and Outdoor Recreation* "...to advance conservation stewardship and increase outdoor recreation opportunities." Further, the notice indicated it would "...identify ways to improve recreational hunting and fishing cooperation, consultation and communication with State of Alaska wildlife managers."

The proposed rule issued on May 22, 2018 (83 FR 23621) cites SO 3347, as well as SO 3356 *Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with State, Tribes, and Territories* as the basis for proposing revisions to the Alaska Part 13 regulations, the purpose of which is to "align sport hunting regulations in national preserves in Alaska with State of Alaska regulations and to enhance consistency with harvest regulations on surrounding non-federal lands and waters..." (83 FR 23622). The 2018 proposed rule indicates that the justification for the restrictions in the 2015 rule went beyond the plain meaning of section 4.4.3 of the 2006 NPS Management Policies and was inconsistent with the State's position on issues related to fish and wildlife management. The State agrees and supports the efforts of NPS to correct these errors.

### **The proposed rule is consistent with the recent Secretarial directive memo**

The proposed rule is consistent with the September 10, 2018 directive memorandum, "State Fish and Wildlife Management Authority on Department of the Interior Lands and Waters," in which the Secretary of Interior "reaffirm[ed] the authority of the States to exercise their broad trustee and police powers as stewards of the Nation's fish and wildlife species on public lands and

waters under the jurisdiction of the Department.” Especially relevant to this proposed rule, the directive memorandum summarizes established federal law and states:

“The States’ fundamental responsibility for fish and wildlife management includes responsibility for appropriate regulation of public use and enjoyment of fish and wildlife species. The Department recognizes States as the first-line authorities for fish and wildlife management and hereby expresses its commitment to defer to the States in this regard except as otherwise required by Federal law.”

The directive memorandum also requests Interior bureaus and offices to review fish and wildlife related regulations, policies and guidance that are more restrictive than the otherwise applicable State provisions and provide recommendations for better alignment. Additionally, in his letter dated September 27, 2018, Deputy Secretary of the Interior David Bernhardt invited Alaska Governor Bill Walker to “provide any comments or feedback on how the Department can bring our policies into alignment with those at the State level.” We are encouraged by NPS’ 2018 proposed rule as an important effort to bring policies into alignment with Alaska’s statutes and regulations. While we will be submitting comments related to the directive memorandum separately to Deputy Secretary Bernhardt, the proposed 2018 regulation changes would, to a great extent, correct mistakes that were made in 2015. The 2015 NPS regulations are more restrictive than state regulations and we support this 2018 proposed rule as one step to bring NPS regulations and policies into alignment with those of the State.

While some have portrayed the Secretarial orders, directive memorandum, and the 2018 proposed rule as an abrupt change, in fact, they simply reflect national wildlife management law and a return to wildlife management as practiced in Alaska since statehood, and since the establishment of preserves in Alaska under the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. We appreciate the Secretary’s recognition that “State governments practice sound fish and wildlife conservation and management focused on sustainable practices that protect the Nation’s natural heritage, while providing for appropriate and highly regulated opportunities for citizens to enjoy fish and wildlife resources.”

### **The proposed rule is consistent with ANILCA Section 1313 closure authority**

The proposed rule’s rescission of paragraphs (f) and (g) from 36 CFR 13.42 is consistent with ANILCA, the 1916 Organic Act as amended, and with the NPS regulations and 2006 Management Policies (Policies). The proposed rule properly reflects that the discretionary authority Congress granted to NPS to implement closures under ANILCA Section 1313 does not grant NPS hunting, trapping, or fishing management authority. Congress clearly mandated hunting in Alaska’s national preserves under ANILCA Section 203,

*Provided, however, That hunting shall be permitted in areas designated as national preserves under the provisions of this Act*

and Section 1313,

*A National Preserve in Alaska shall be administered and managed as a unit of the National Park System in the same manner as a national park except as otherwise provided in this Act and except that the taking of fish and wildlife for sport purposes and*

*subsistence uses, and trapping shall be allowed in a national preserve under applicable State and Federal law and regulation.*

Congress clearly constrained the extent to which the NPS can restrict hunting, fishing, or trapping by the public in Section 1313:

*Consistent with the provisions of section 816, within national preserves the Secretary may designate **zones where and periods when no hunting, fishing, trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment.*** [Emphasis added]

This closure authority to designate “...zones where and periods when...” no hunting, fishing, or trapping may be permitted does not extend to allowing NPS to manage these activities or to establish methods and means for certain users. Such management authority remains with the State of Alaska. The authority of a fish and wildlife management agency to *manage* these activities involves allocative actions, such as, setting methods and means, seasons, bag limits, or horn/antler size restrictions. Despite the limited closure authority under ANILCA section 1313, this is exactly the action taken by the NPS in the 2015 rule. The proposed rulemaking corrects that error.

In other national park units’ enabling legislation, enacted both before and after ANILCA, Congress explicitly provided NPS with the authority to designate zones where and periods when no hunting may be permitted for reasons of “fish or wildlife **management**”<sup>1</sup> or “floral and faunal protection and **management**”<sup>2</sup> [emphasis added]. ANILCA’s legislative history demonstrates that Congress keenly debated fish and wildlife management, including authority to manage hunting. The Senate Energy and Natural Resources Committee bill version (H.R. 39, November 14, 1979) of Section 1313 listed “floral and faunal protection **and management**” [emphasis added] for Alaska park units, but ultimately Congress removed “management” from the federal closure criteria, and ANILCA only included “floral and faunal protection” in the Section 1313 closure criteria (August 18, 1980 Congressional Record—Senate, S21669).

Other major questions included how to address subsistence, including which high value hunting areas to include within the boundaries of national parks and monuments, and how to accommodate trapping and guided hunting in national parks and wilderness areas where commercial use is generally prohibited. However, throughout discussions of the language which became ANILCA, Congressmen and Senators were clear that they were not intervening in the traditional role of state fish and wildlife management, except in the case of ANILCA’s subsistence provisions<sup>3</sup>. In the Senate Report No. 96-413 to accompany H.R. 39 which included the language that largely became ANILCA Sections 203, 1313, and 1314, Congress stated its

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<sup>1</sup> Enabling legislation for at least 17 park units with mandated hunting provides closure authority for “fish or wildlife management,” with enabling legislation ranging from 1965 to 1996. Examples include Apostle Islands National Lakeshore (1970), Big Horn Canyon NRA (1996), Lake Chelan National Recreation Area (1968), Ross Lake National Recreation Area (1968).

<sup>2</sup> Enabling legislation for at least 3 park units with mandated hunting provides closure authority for “floral and faunal protection and management,” with enabling legislation ranging from 1974 to 1990. Examples include Big Cypress National Preserve (1974), Big Thicket National Preserve (TX), and City of Rocks National Reserve (1990).

<sup>3</sup> For an example of this type of discussion, see the Senate markup discussion on August 3, 1978.

intent to not affect the status quo of state wildlife management at the time, distinguishing between wildlife management and habitat management:

*Section 1314: Taking of Fish and Wildlife*

*This section, adopted as a Committee amendment, preserves the status quo with regard to the responsibility and authority of the State to manage fish and wildlife, and reconciles this authority with the Act, including the subsistence title. At the same time, the section confirms the status quo with regard to the authority of the Secretary to manage the wildlife habitat on Federal lands. (p. 308)*

The 1978 NPS Management Policies in place at the time ANILCA was enacted also clearly reflect the “zones where” and “periods when” closure authority concept<sup>4</sup> in terms of strict closures rather than management authority:

*HUNTING*

*Hunting, trapping, or other methods of harvest of native wildlife, is not permitted by the public in natural and historic zones, except where specifically permitted by law. Where specifically authorized by Congress, public hunting shall be in accordance with applicable State and Federal laws and regulations. However, the Service may designate zones where, and establish periods when, no hunting shall be permitted for reasons of public safety, administration, or other public use and enjoyment of the area. Under the above provision, the Service, in consultation with States, may ban hunting in part or all of a park for any or all legally huntable game or non-game species for reasons of their:*

- being officially designated as endangered, threatened, or locally of rare or unusual occurrence in the park;*
- occurring in numbers below the natural capacity of their range; or*
- being of greater overall value for wildlife viewing and interpretation.*

*Regulations prescribing such restrictions shall be issued after consultation with the States.*

By removing paragraphs (f) and (g) from 36 CFR 13.42, the proposed rule currently under consideration appropriately restores the State as the regulatory authority for management of hunting, fishing, and trapping on Alaska preserves without affecting NPS’ ability to restrict these uses for the limited reasons provided under Section 1313. Further, none of the closure criteria

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<sup>4</sup> An example of the “zones where and periods when” concept which *does* show an intent to address methods and means, unlike ANILCA Section 1313, is the 1976 Magnuson-Stevens Fishery Conservation and Management Act Section 303:(b) *Discretionary Provisions.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear”*

identified in Section 1313 currently apply to the activities restricted in the 2015 rule, nor were they substantiated by the NPS as justification for prohibiting the activities.

- Public safety: NPS has not identified specific or generalized locations within the existing state regulatory framework where harvests are allowed that pose public safety concerns. Regarding bear baiting, black bear bait stations have been a recognized use in Alaska since at least 1982 with negligible public safety issues because of the required safety restrictions included under state law related to proximity to homes, cabins, recreational areas, campgrounds, trails, and roads. If there are specific locations where public safety is a concern, the Alaska Board of Game can also prohibit baiting in those specific locations, as it has for several heavily used recreational areas around the state. It should be noted that current NPS park-specific regulations and Federal subsistence regulations both allow for the harvest of bears at bait stations, including the use of human-produced food items, under regulations that were adopted from State of Alaska regulations at 5 AAC 92.044<sup>5</sup>.
- Administration: NPS has not identified any conflicts with administrative activities.
- Floral and faunal protection: The NPS' statement that the 2015 rule was to protect fauna is not substantiated by wildlife or fisheries population and harvest data, and the NPS

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<sup>5</sup> NPS regulations 36 CFR 13—Special Regulations—Wrangell-St. Elias National Park and Preserve § 13.1902 Subsistence. (d) Use of bait for taking bears. (1) The superintendent may issue individual, annual permits allowing the use of human-produced food items as bait for taking bears upon a finding that:

- (i) Such use is compatible with the purposes and values for which the area was established (e.g. does not create a user conflict); and
- (ii) The permit applicant does not have reasonable access to natural bait that may be used under § 13.480(b)(1).

(2) Permits will identify specific locations within the park area where the bait station may be established and will not include areas where the use of such materials could create a user conflict. [71 FR 69333, Nov. 30, 2006, as amended at 82 FR 3633, Jan. 12, 2017]

and

Federal Subsistence Regulations 50 CFR 100.26 Subsistence taking of wildlife:

(b)prohibited methods and means , except...(14) Using bait for taking ungulates, bear, wolf, or wolverine; except you may use bait to take wolves and wolverine with a trapping license, and you may use bait to take black bears and brown bears with a hunting license as authorized in Unit-specific regulations at paragraphs (n)(1) through (26) of this section. Baiting of black bears and brown bears is subject to the following restrictions:

- (i) Before establishing a bear bait station, you must register the site with ADF&G;
- (ii) When using bait, you must clearly mark the site with a sign reading "black bear bait station" that also displays your hunting license number and ADF&G-assigned number;
- (iii) You may use only biodegradable materials for bait; you may use only the head, bones, viscera, or skin of legally harvested fish and wildlife for bait;
- (iv) You may not use bait within 1/4 mile of a publicly maintained road or trail; of a developed campground or developed recreational facility;
- (v) When using bait, you must remove litter and equipment from the bait station site when done hunting;
- (vii) You may not give or receive payment for the use of a bait station, including barter or exchange of goods; and
- (viii) You may not have more than two bait stations with bait present at any one time.

admitted “neither the temporary restrictions nor this [2015] rule are based on particular wildlife population levels, and do not require the preparation of such scientific data. The basis of the compendium provisions, as well as the rule, is the NPS legal and policy framework, which has been communicated verbally and in writing several times” (October 23, 2015 Final Rule Federal Register notice). Likewise, the 2018 EA does not identify floral or faunal protection as being needed.

- Public use and enjoyment: Hunting and trapping typically occur in the more remote areas of the preserves and/or outside the peak summer visitor season, and no concerns for specific locations where public use and enjoyment are threatened have been identified. While the 2015 rule stated the restrictions provided for public use and enjoyment, there was no explanation as to *how* or *why*. Because Congress mandated hunting, fishing, and trapping as uses in preserves it certainly considered other uses and possible conflicts, hence the discretionary closure authority *for public use and enjoyment*. Additionally, Congress did not limit public use and enjoyment to the exclusion of consumptive uses; public use and enjoyment includes mandated hunting, fishing and trapping.

### **The proposed rule is consistent with the NPS framework for managing uses mandated by Congress**

Most consumptive uses, including hunting and trapping, are generally prohibited in park units under the Organic Act<sup>6</sup>. However, throughout the National Park System, Congress has allowed uses in enabling legislation that would otherwise be prohibited under the 1916 Organic Act. In short, where Congress has mandated hunting or trapping, as was done in ANILCA, hunting and trapping are not a violation of the Organic Act. NPS explained the Organic Act’s relationship to uses mandated by enabling legislation in its response in *Fund for Animals v. Mainella*, 294 F. Supp. 2d 46 (D.C. 2003):

*As previously stated, the Organic Act grants the NPS broad statutory authority to manage and regulate activities in all areas of the National Park System including the DWNRA. The NPS Organic Act, [16 U.S.C. §§ 1-4](#), requires the NPS to:*

*regulate the use of the Federal areas known as national parks, monuments, and reservations... by such means and measures as conform to the fundamental purpose of the said parks... which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.*

*[16 U.S.C. § 1](#). This provision gives NPS broad discretion in weighing competing interests in the management of national parks. [Organized Fishermen of Florida v. Hodel](#),*

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<sup>6</sup> Congressional Research Service. 2013. National Park System: What do the different park titles signify? CRS Report for Congress R41816

[775 F.2d 1544, 1550 \(11th Cir. 1985\)](#). Moreover, in the General Authorities Act, 16 U.S.C. § 1a-1, which supplements and clarifies the above quoted provision of the Organic Act, Congress expressly recognized its power to modify this protection mandate as follows:

*The... protection, management, and administration of these areas shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.*

16 U.S.C. § 1a-1 (emphasis added).

*Particular areas within the national park system are governed in accordance with the specific provisions of their enabling legislation as required by 16 U.S.C. § 1c(b), “[e]ach area within the national park system shall be administered in accordance with the provisions of any statute made specifically applicable to that area.” The Enabling Act at issue here, promulgated more than fifty years after the 1916 Organic Act, applies specifically to the DWGNRA. As explained above, when Congress enacted this statute creating the DWGNRA, it required hunting be allowed. See [16 U.S.C.A. § 460o-5](#) (“The Secretary of the Interior shall permit hunting and fishing on lands and waters under his jurisdiction within the area in accordance with the applicable laws and regulations of the States concerned and of the United States.”).*

*Because the Enabling Act specifically mandates hunting at the DWGNRA, hunting cannot be considered a violation of the Organic Act. See also [National Rifle Assoc. v. Potter](#), [628 F.Supp. 903 \(D.D.C. 1986\)](#) (upholding [36 C.F.R. § 2.2](#), the NPS hunting regulation, which prohibits hunting in the entire national park system except where specifically contemplated by Congress); see also [Michigan United Conservation Clubs v. Lujan](#), [949 F.2d 202 \(6th Cir. 1991\)](#) (concluding that NPS “primary management function with respect to wildlife is preservation unless Congress has declared otherwise”).*

According to NPS policies and regulation, uses taking place on park units fall into one of two categories: mandated uses, which NPS must allow, and authorized uses, which NPS has the discretion to allow.

The 2015 final rule inappropriately treated hunting and trapping as authorized uses subject to NPS’ discretionary authority, whereas the 2018 proposed rule appropriately treats these activities in Alaska as mandated uses over which NPS’ closure authority is limited to the reasons provided in ANILCA Section 1313, which, as explained above, does not include the “management” of hunting or trapping (or fishing).

The NPS regulations at 36 CFR 2.2 differentiate between mandated and authorized hunting:

*2.2 Wildlife protection*

*(b) Hunting and trapping*

(1) *Hunting shall be allowed in park areas where such activity is specifically mandated by Federal statutory law.*

(2) *Hunting may be allowed in park areas where such activity is specifically authorized as a discretionary activity under Federal statutory law if the superintendent determines that such activity is consistent with public safety and enjoyment, and sound resource management principles. Such hunting shall be allowed pursuant to special regulations.*

In accordance with ANILCA Section 1313, which states that hunting “shall” be allowed, hunting in the Alaska preserves clearly falls under 36 CFR 2.2(b)(1) as a mandated use.

As the NPS argued in *Fund for Animals v. Mainella* (2003), “hunting pursuant to State law in the DWGNRA cannot be considered a violation of the Organic Act, or the NPS Management Policies that interpret the Organic Act, where as here, Congress expressly mandated the activity.”

According to the Policies, mandated uses are managed according to a different standard than authorized uses over which the NPS has discretionary authority. As a mandated use, hunting in Alaska must be considered according to Policies 1.4.3.1:

*In the administration of mandated uses, park managers must allow the use; however, they do have the authority to and must manage and regulate the use to ensure, **to the extent possible, that impacts on park resources from that use are acceptable.*** [Emphasis added]

This contrasts with the direction in Policies 1.4.3.1 for authorized uses, which does not apply to hunting in Alaska preserves:

*In the administration of authorized uses, park managers have the discretionary authority to allow and manage the use, provided that the use **will not cause impairment or unacceptable impacts.*** [Emphasis added]

The 2015 rule relied on policy direction that applied to discretionary “authorized” use instead of “mandated” use, and also ignored the specific language in ANILCA section 1313, which limits NPS authority. Other specific policies, which do not apply to hunting in Alaska preserves but are still relevant, are described below.

Mandated uses are an exception to the Policies’ guidance for determining whether a use is an “appropriate use” or causes impairment. According to Policies 8.1.1, the NPS “will allow only uses that are (1) appropriate to the purpose for which the park was established, and (2) can be sustained without causing unacceptable impacts. Recreational activities and other uses that would impair a park’s resources, values, or purposes cannot be allowed. The only exception is when an activity that would cause impairment is **directly and specifically mandated by Congress**” (emphasis added). In this case, hunting is a mandated use, and is therefore an exception to Policies 8.1.1’s nonimpairment standard and appropriate use and unacceptable impact requirements. Regardless, the state agrees with NPS that the 2015 Rule did not result from any conservation concerns. In other words, there were no impacts, no impairment, and no unacceptable impacts to support the 2015 Rule.

Policies 8.1 further explains that NPS is required to “conserve park resources ‘unimpaired’ for the enjoyment of future generations” under the 1916 Organic Act, and is prohibited “from allowing any activities that would cause derogation of the values and purposes for which the

parks have been established (**except as directly and specifically provided by Congress.**)” [Emphasis added].

Where Congress has mandated that hunting, fishing, and trapping be allowed, the NPS has limited authority to restrict it, and the specifics of that authority are provided in the unit’s enabling legislation--in this case ANILCA. Policies 8.2.2.6 mirrors 36 CFR 2.2(b)(1) and applies to hunting and trapping on Alaska preserves,

*Hunting, trapping, or any other methods of harvesting wildlife by the public will be allowed where it is specifically **mandated** by federal law.* [Emphasis added]

Where Congress has allowed NPS to authorize hunting on a discretionary basis, not applicable in Alaska, the NPS follows different guidance, also in Policies 8.2.2.6:

*Where hunting activity is **not mandated but is authorized** on a discretionary basis under federal law, it may take place only after the Service has determined that the activity is an appropriate use and can be managed consistent with sound resource management principles.* [Emphasis added]

Notably, Policies 8.2.2.6 exempts Alaska park units from the requirement to publish special hunting and trapping regulations, intended to prevent unacceptable impacts as defined in the Policies, which the NPS enacted regardless in the 2015 final rule:

*Hunting and trapping, whether taking place as a mandated or a discretionary activity, will be conducted in accordance with federal law and applicable laws of the state or states in which a park is located. However, **except for Alaska park units (which are subject to the Alaska National Interest Lands Conservation Act and regulations published at 36 CFR Part 13)**, the park in which hunting and trapping occur must also publish special regulations to govern the activity. Those regulations may be more restrictive than applicable state laws when necessary to prevent unacceptable impacts.* [Emphasis added]

This proposed rule corrects the 2015 final rule’s misapplication of NPS Policies. The 2015 rule sought to make hunting, fishing, and trapping in Alaska an appropriate use and to prevent unacceptable impacts as interpreted by the NPS and defined by the Policies, but as a mandated use, those standards do not apply. The State is not opposed to pursuing restrictions based on probable negative biological impacts, but the State cannot support restrictions based on NPS’ vague values-based assertions lacking factual data or a reasonable probability, such as in the 2015 rule, and particularly where – as stated by NPS – there is no conservation concern. Through ANILCA, Congress specifically allowed hunting and established the extent to which it could be restricted. ANILCA was enacted after both the 1970 General Authorities Act amendment to the Organic Act and the 1978 Redwood Amendment, yet ANILCA does not include impairment to park values in the limited criteria available to the NPS to restrict hunting, fishing, or trapping in ANILCA Section 1313. In addition to the 1916 Organic Act and the 1970 General Authorities Act, the 1978 Redwood Amendment also provides an exception from the non-impairment or non-derogation standard for mandated uses:

*“[T]he promotion and regulation of the various areas of the National Park System ... shall be consistent with and founded in the purpose established by [the Organic Act], to the common benefit of all the people of the United States. The authorization of activities*

*shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, **except as may have been or shall be directly and specifically provided by Congress.**” (emphasis added)*

The proposed rule also corrects the 2015 final rule’s misapplication of Policies 4.4.3, when the NPS declared:

*The Service does not engage in activities to reduce the numbers of native species for the purpose of increasing the numbers of harvested species (i.e., predator control), nor does the Service permit others to do so on lands managed by the National Park Service.*

Policies 4.4.3 is titled “Harvest of Plants and Animals by the Public” and speaks entirely to activities and actions under NPS discretionary authority. Policies 4.4.3 is cited by the NPS as the reason in the 2015 rule for prohibiting state regulated hunting that NPS arbitrarily decides is related to predator reduction. Policies 4.4.3 speaks to direct NPS activities (“the Service does not engage in activities”) and to activities permitted by the NPS (“nor does the Service permit others to do so”). The NPS’ 2015 interpretation of Policies 4.4.3 directly conflicted with the clear statements of Policies 8.2.26 *Hunting and Trapping* and 1.4.3.1 *Park Purposes and Legislatively Authorized Uses*. First, hunting and trapping under general state hunting or trapping regulations is not predator control and does not have the effect described in 4.4.3 of “increasing the numbers of harvested species.”

But more importantly, harvesting of predators under general state hunting or trapping regulations is neither an NPS activity nor an activity permitted by the NPS. Mandated hunting and trapping under general state regulations takes place on park units without requiring authorization, permits, decision making or actions by the NPS, unless restricted under the specific criteria identified in ANILCA Section 1313<sup>7</sup>. Moreover, in *Fund for Animals v. Mainella* (2003) NPS interpreted 2001 Management Policies 4.4.3 Harvest of Plants and Animals by the Public (which remained largely the same in the revised 2006 Management Policies 4.4.3 Harvest of Plants and Animals by the Public) as applying only to harvest under NPS control, not to mandated hunting and trapping (or fishing):

*Finally, the provision of the NPS Management Policies cited by Plaintiffs that applies to harvest of animals by the public, section 4.4.3, by its own terms only applies to harvest that is “subject to NPS control.” As discussed above, hunting at DWGNRA is not subject to NPS control-it is required by statute and NPS has not exercised its discretion under the same statute to impose controls. [16 U.S.C. § 460o-5](#). These provisions of the NPS Management Policies therefore do not apply.*

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<sup>7</sup> “Consistent with the provisions of section 816, within national preserves the Secretary may designate zones where and periods when no hunting, fishing, trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment.”

**The proposed 2018 rule is consistent with Lower 48 park units where hunting, fishing and trapping are recognized uses.**

Aligning hunting, fishing and trapping regulations in national preserves with state regulations is also consistent with management of other national park units in the Lower 48 states with mandated uses in their enabling legislation. National park units with mandated hunting, trapping, and fishing include preserves, lakeshores, recreation areas, riverways, seashores, and parkways. Comparing each national park unit's compendium vs. state hunting regulations, we found that the national park units with mandated hunting are, with limited exceptions, consistent with state hunting regulations. We also found that national park units with mandated hunting in other states also allow activities that the proposed NPS Alaska rule will allow. For example, at least twenty-five of these Lower 48 national park units have year-round coyote seasons and six allow the use of artificial light. Fourteen national park units allow the hunting of coyotes or mountain lions with dogs. Hunting black bear with dogs is allowed in seven national park units and baiting black bears is allowed in four.

Section 1313 of ANILCA clearly identifies the NPS limited authority to restrict the take of fish and wildlife, "Consistent with the provisions of section 816, within national preserve the Secretary may designate zones where and periods when no hunting, fishing, trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment."

However, a major reason provided by the NPS to prohibit state hunting or trapping regulations in the 2015 rule was that the practices allegedly "have intent or potential to alter or manipulate natural predator-prey dynamics, and associated natural ecological processes for the purpose of increasing harvest of ungulates by man." Wildlife manipulation or management is not one of the closure criteria identified in ANILCA, and there is no statutory authority for NPS to regulate methods or means of hunting; however, in contrast, wildlife or faunal management are identified among the reasons for closure in twenty other park units enabling legislation. These park units were created both before and after ANILCA, indicating that Congress could have included wildlife management or faunal management as a criterion for closure in Alaska park units, but instead deliberately chose the limited criteria identified in Section 1313 of ANILCA.

Further, even Lower 48 national park units *with* wildlife management or faunal management as a closure criterion in their enabling legislation currently allow activities that the 2015 rule prohibited for certain hunters in Alaska. For example, six units include wildlife management as a criterion for closure allow year-round coyote seasons, two allow the use of artificial light, two allow dogs for bear hunting, and five allow use of dogs for coyote/mountain lion hunting. Of the three park units with mandated hunting that allow closures for faunal protection and management, two of the three units allow year-round coyote seasons and one allows the use of artificial light for coyotes.

## The proposed rule is consistent with sport hunting as intended by Congress in ANILCA

The proposed rule also appropriately resolves the problem created by the 2015 rule’s misapplication of the term “sport hunting” as a reason to prohibit certain state hunting regulations<sup>8</sup>. Hunting was one of the major issues Congress sought to address in crafting ANILCA. As described in the January 19, 1981 Federal Register notice for proposed NPS interim regulations (46 FR 5642), “The desire to continue sport fishing and hunting on all public lands in Alaska has been a consistent and dominant theme of the public participation process during the development and final passage of the Alaska National Interest Lands Conservation Act.” Senator Stevens identified hunting as one of the five of seven consensus points met by the committee substitute to HR 39 which shortly passed the Senate and went on to become ANILCA, and Senator Tsongas then identified hunting as one of the six interests in the Alaska issue (August 18, 1980, Congressional Record—Senate, p. 21580-21581). What was termed as “Sport hunting” was an important enough issue to make Senator Tsongas’ list of eight important compromises in his opening statement on the committee substitute to HR 39:

*While no one interest has achieved all that it wanted in the substitute, the fact is that each side is receiving most of the important objectives it wished to achieve. That could only occur because in many cases the top priorities of each group did not directly conflict with each other.*

*Here are a few examples in terms of the State of Alaska:*

*Much of what it wanted in their State interest lands is conveyed to it.*

*In terms of sport hunting, 91.4 percent of Alaska is open to sport hunting... ”*

(Congressional Record—Senate, August 18, 1980, S 21649, alternatively numbered S11116 in some hardbound versions)

The legislative history reveals hours of discussion over where the national park versus national preserve boundaries should be drawn in relation to hunting,<sup>9</sup> as well as hours of discussion of how to treat guided hunting and trapping in terms of whether they were commercial or recreational activities. Surely if Congress’ intent in including the term “sport hunting” in ANILCA Section 1313 was to define fair chase and ethical hunting standards, the legislative

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<sup>8</sup> October 23, 2015 Federal Register notice for final rule. E.g., “These practices are not consistent with the NPS’s implementation of ANILCA’s authorization of sport hunting and trapping in national preserves” (p. 64327); “However, as is further explained below, this method is one of those that NPS has found is not consistent with ANILCA’s authorization for sport hunting in national preserves” (p. 64329); “On NPS lands, the take of swimming caribou for subsistence is allowed in accordance with federal subsistence regulations, but it is not appropriate as a “sport” hunting practice on waters within national preserves” (p. 64333); “The NPS also believes the use of unleashed dogs to hunt black bears is one of the practices that is inconsistent with the traditional “sport hunting” that is authorized by ANILCA, as discussed above” (p. 64336); “The NPS also agrees with the comment that the practice of taking caribou while swimming is not consistent with fair chase and thus believes it is not appropriate to allow as a sport hunting practice” (p. 64337).

<sup>9</sup> E.g., Senate Report 96-413: “The Committee also recommends some changes in classifications within units, compared with last year. Specifically Cape Krusenstern and Kobuk were changed from Preserves to a Monument and Park respectively.” (p. 138); “The Committee recommends that the boundary between the park and preserve be modified from the House Act. The effect is to provide for an increased level of sheep hunting in the unit through a wider application of the preserve classification.” (p. 161)

history would be packed with discussion over that contentious topic. While it is difficult to prove a negative, we have searched extensively in the legislative history and have found no evidence that Congress ever intended for hunting in Alaska preserves to be regulated according to NPS' judgment of moral or ethical principles of fair chase, or define ANILCA's use of the term sport hunting as meaning fair chase, or to use an agency described definition of sport hunting as a criteria for hunting closures. Instead, Congress retained the State's authority to regulate hunting, including methods and means as well as seasons and bag limits. One of the only mentions of fair chase leading up to ANILCA was in the 1975 Final EIS for the Proposed Wrangell-St. Elias National Park, in which Department of Interior recommended fair chase in terms of allowing "vehicle use for entry and departure only" (note, this proposal was not carried forward in ANILCA).

Instead, the legislative history reflects that the term "sport hunting" was simply meant to differentiate it from "subsistence hunting" on the national preserves. In ANILCA the difference between sport hunting and subsistence hunting is based on the geographic residency of the hunter, as well as the definition of subsistence use. Prior to ANILCA, the State of Alaska simply regulated "hunting" without differentiating between the various purposes of hunting with the single exception of providing a preference for subsistence established by the state legislature in 1978. This was openly known and recognized by Congress and the Department of Interior<sup>10</sup>. For example, during discussions leading up to ANILCA, the counsel for the Senate Committee on Energy & Natural Resources Steven P. Quarles was asked about the definition of sport hunting. He responded that the federal government had only defined "subsistence" but had not tried to define "sport hunting," with the implication that sport hunting is hunting which does not meet the subsistence definition (95<sup>th</sup> Cong., 1<sup>st</sup> Sess., Sept. 5, 1977).

Senate Report No. 96-413 to accompany H.R. 39, which became the language for Section 1313, clearly describes the intended hunting on preserves:

*Both versions establish several national preserves to be administered by the National Park Service. Like the House-passed bill, the Committee amendment directs that a preserve be managed as a national park except that **all forms of hunting** be permitted to continue. This includes sport, subsistence, and guided hunting. (emphasis added) (p. 307)*

In describing intent for ANILCA Section 203, the same report states:

*The consumptive use of wildlife resources for subsistence, recreational, and other purposes is a recognized and permitted use of such resources within National Park Preserves.*

ANILCA Section 203 does not differentiate between different types of hunting:

*Provided, however, That hunting shall be permitted in areas designated as national preserves under the provisions of this Act.*

Alternatively, ANILCA Section 1313 does differentiate between different types of hunting:

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<sup>10</sup> For example, see the 1975 Proposed Wrangell-St. Elias National Park, Final EIS p. 158.

*A National Preserve in Alaska shall be administered and managed as a unit of the National Park System in the same manner as a national park except as otherwise provided in this Act and except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve under applicable State and Federal law and regulation.*

Notably, the first Alaska-specific NPS regulations following ANILCA, published June 17, 1981, at 36 CFR 13.21(c) simply refer to “hunting” (similar to ANILCA Section 203), and do not parse out “sport hunting”:

*Hunting and Trapping. Hunting and trapping are permitted in all National Preserves in accordance with applicable State and Federal law, and such laws are hereby adopted and made a part of these regulations: Provided, however, That engaging in trapping activities, as the employee of another person is prohibited.*

The Alaska-specific regulations in effect today at 36 CFR 13.42 likewise do not differentiate “sport hunting”:

*“(a) Hunting and trapping are allowed in national preserves in accordance with applicable Federal and non-conflicting State law and regulation.*

The same simple reference to “hunting” is true for the first national NPS regulations following ANILCA, published June 30, 1983, at 36 CFR 2.2(b)(1) and still in effect today:

*Hunting shall be allowed in park areas where such activity is specifically mandated by Federal statutory law.*

Different purposes for hunting were recognized at the time of ANILCA, as were their differing social acceptability, as demonstrated in the 1980 U.S. Fish and Wildlife Service-funded study of hunting and public attitudes toward hunting<sup>11</sup>. In the study, hunting for meat was the most frequently stated purpose of hunters. The reasons for hunting varied in terms of general public approval: “hunting for meat,” 85%; “traditional hunting such as done by some Indians and Eskimos,” 82%; “hunting for recreation and meat,” 64%; “hunting waterfowl such as ducks for recreation and sport,” 40%; “hunting game animals such as deer for recreation and sport,” 37%; and “hunting for a trophy, such as horns or a mounted animal,” 18%. The proposed rule will return to Congress’ intent that hunting for a variety of stated purposes be continued, with a preference for subsistence.

The new rule will correct the action taken by NPS in 2015 to narrowly and negatively define “sport hunting,” or to equate “sport hunting” with granting NPS the authority to determine whether methods and means are fair chase. ANILCA, the enabling legislation, merely differentiates rural subsistence from other hunting i.e. “sport hunting,” and NPS regulations do not make and have never made the distinction of “sport hunting” and instead simply refer to “hunting.” No such determination of what is considered sporting is called for in law or regulation, especially coupled with the fact that many of the 2015 prohibited practices had been

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<sup>11</sup> Kellert, S.R. 1980. American attitudes, knowledge and behaviors toward wildlife and natural habitats, Phase II: Activities of the American public related to animals. Yale University School of Forestry and Environmental Studies, New Haven, Connecticut.

in state regulations for decades, continue to be allowed on Alaska preserves by certain hunters, and many of those practices are also in effect on lower 48 park units.

Congress has adopted no laws or policies defining sport hunting in terms of morals, ethics, or fair chase. Instead, authority to regulate hunting throughout Alaska resides with the Alaska Board of Game. NPS has publicly explained that state hunting regulations define fair chase and ethical hunting:

*“The seasons, harvest limits and other regulations regarding the hunt are established by the Alaska Department of Fish and Game and the Alaska Board of Game, a group appointed by the Governor and confirmed by the Alaska Legislature. These regulations define “ethical” in a regulatory sense, and it is those rules which we and the State of Alaska enforce.*

*Alaskans and others may talk to their elected and appointed officials about the hunting rules they want to see on public land. When Congress last spoke on the issue, it mandated that sport hunting was legal in Alaska’s national preserves and that absent extraordinary circumstances, hunting would be managed by the State of Alaska.”*

Marcia Blaszak, NPS Alaska Regional Director, letter published in the National Parks Traveler, October 11, 2007.

### **The proposed rule would restore proper management of hunting in Alaska.**

In Alaska, refuges and national preserves are open to hunting and trapping, and most national parks and monuments are open to subsistence hunting and trapping by federally qualified rural residents. Unlike the lower 48 refuges and park units open to discretionary hunting and trapping that have specific regulations set by the federal land manager, ANILCA’s hunting provisions provide that the State of Alaska is the primary wildlife manager on all lands, unless hunting regulations have been preempted by Congress or by the Federal Subsistence Board on federal lands to assure the subsistence priority for federally qualified rural residents.

Hunting in Alaska is managed for sustained yield of wildlife populations. The Alaska State Legislature enacts wildlife laws. The Governor of the State of Alaska appoints members to the Board of Game, and the Board enacts regulations to conserve Alaska’s wildlife resources and provide hunting opportunity. The Board of Game sets seasons, bag limits, and methods and means via a public process. The Alaska Department of Fish and Game monitors wildlife populations, conducts wildlife research, and does the day-to-day work of wildlife management in order to provide scientific information to the Board and to carry out the Board’s decisions.

Much of the state is extremely remote and not easily accessible to wildlife managers, or to hunters. By practical necessity, the extent to which populations are monitored depends on the extent to which detailed information is needed. If an area has abundant wildlife populations, has little hunting pressure, and has no observed problems, then less monitoring is needed. On the other hand, if an area is easily accessible and has greater hunting pressure, or has possible concerns, more monitoring is needed to provide the information needed to effectively manage wildlife. Basically, given finite resources, the state targets its monitoring intensity according to

need. At the light end of the monitoring range, wildlife densities are used to estimate populations. Research has determined wildlife densities for species by habitat type. Those densities are applied to areas of similar habitat to extrapolate estimated populations. At the heavy end of the monitoring range, aerial census taken by biologists in fixed wing aircraft or helicopter, or on the ground transects such as pellet counts, or DNA-based methods such as hair snares and dart biopsy are used to determine population sizes. Additionally, ADF&G Division of Wildlife Conservation has staff in area offices across the state to provide a local on the ground presence and to interface with area residents with local knowledge. And, as the wildlife manager for all lands throughout Alaska, the state works in cooperation with private and federal land management agencies, including the NPS, to monitor wildlife populations.

**The State’s hunting regulations are based on wildlife population data, hunting demand, traditional methods and means, and impacts on subsistence.**

We acknowledge that the vast majority of comments the NPS received on the 2015 rule and on the current rule to date have been highly critical of certain hunting practices allowed by the State of Alaska, most of which are also allowed in Alaska under Federal Subsistence Board regulations and by NPS regulations. Some of these activities, such as year-round coyote seasons and black bear baiting, are relatively common in the West. Some state regulations reflect Alaska’s unique and fortunate situation as the sole home in the United States of intact, abundant populations of brown bears and wolves, which provide for the allowance of regulated brown bear baiting and some area limited, year-round wolf seasons.<sup>12</sup> Other state regulations are unique to Alaska and are the modern continuation of an age-old practice by rural residents in certain remote regions of Alaska where the availability of store bought food is limited and expensive, and dependence on natural resources is a matter of culture and survival. Another example is allowing the take of bears at den sites, permitted under both state and federal regulation, which involves locating bear dens in the fall for potential late winter harvest during the lean times in certain parts of Alaska. These hunting activities are not meant as a “war” on wolves or bears by either the state or the federal government—they simply reflect the existence of an abundant population of wildlife and a small segment of the public’s desire to hunt them that fit within the sustained yield concept of scientific management Alaska follows.

The reality of some hunting methods in Alaska is that while some people have always practiced these methods, because they weren’t widely used or popular Western methods, they were not necessarily known or acknowledged in codified regulations. Historically, in remote Alaska, hunting regulations came as a foreign concept imposed from far away and were not easily enforceable due to the vast area of the state. Incidents like the arrests leading to the 1964 Barrow Duck-In<sup>13</sup> illustrate the clash between well-intended wildlife regulations and the public when

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<sup>12</sup> See Attachment E Board of Game transcripts generally

<sup>13</sup> In 1964 Federal Wildlife Enforcement staff cited several Barrow residents for illegally harvesting waterfowl during the springtime, a violation of national waterfowl regulations which did not recognize the traditional spring subsistence harvest. Many Barrow residents, in protest of what they believed was an unjustified action, subsequently harvested waterfowl and presented themselves to the enforcement officers to be cited for the violation. Faced with overwhelming opposition to their actions by local residents the federal agents backed down and left without

disconnects exist between managers and local people and culture. All of this has meant that people who continued to use hunting methods that were not recognized under the law have likely been reluctant to come forward and submit proposals to be adopted as regulations. So, while to the NPS and others outside the local area it may seem that the State is allowing a “new” method, such as take of black bears and cubs at den sites, in reality the method is far from new, and is a well-documented use<sup>14</sup>. The strident but uninformed uproar over certain hunting methods illustrates why people who may use traditional but unconventional methods may have been reluctant to seek official recognition of their uses to be placed into regulation. Today’s general state hunting regulations reflect scientific management according to sustained yield, and as long as there is an absence of biological concerns with providing hunters the opportunity or other more preferential public use of the wildlife, the regulations leave the moral decision of whether to participate in a certain hunt to the individual hunter.

Importantly, several of the hunting activities addressed in the proposed rule stem not from Western ideas of fair chase, but from the idea of food gathering efficiency which is part of subsistence culture and necessarily sprang from people’s survival depending on success in hunting—in other words, in hunting for food (a common understanding of subsistence), the goal is not solely the experience of hunting, but to catch food. The term “sport hunting” in ANILCA was meant to simply differentiate subsistence hunting by rural residents under Title VIII from other hunting. It was never meant to assign the purpose or ethics of hunting, whether that be meat, sport, recreation, trophy, fair chase or some combination. Indeed, the 1975 Final EIS for the Proposed Wrangell-St. Elias National Park described hunting as follows:

*In addition to the subsistence hunting and fishing activities carried out by local residents, considerable hunting and fishing efforts by Alaskans from Anchorage and Fairbanks and intermediate highway communities takes place in areas within and adjacent to the proposal area. Most non-Native Alaskan hunters and fishermen consider their yearly take of moose, caribou, and other fish and game resources as an integral and important part of their lifestyle, vital to their livelihood and the health and well-being of their families. Hunting is for meat, rather than trophies. This may be equally true for those hunters with substantial cash incomes and for those with incomes at or below the poverty level.*

As described above, some of the hunting activities in question are the continuation of very old methods adapted to modern technologies. Just as the acceptance of these methods and means is not universal across the country, as evidenced by the many comments in support of the 2015 rule, neither is the acceptance of these methods and means universal in Alaska. However, there is an acceptance of regional differences in the Alaska state hunting regulations—people in one region of the state may not personally agree with the practices in another part of the state, but this simply means that those particular practices are only allowed in that limited part of the state

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completing any enforcement actions. In 2018 the federal and state government officially apologized for this and other related incidents.

<sup>14</sup>Shadows on the Koyukuk by Sidney Huntington (1993, pages 118-121), \

Hunters of the Northern Forest by Richard Nelson (1973, pages 115-116).

Simon 2008, Customary and Traditional Use of Black Bears in Unit 25, Spec Publ BOG 2008-08

([http://www.adfg.alaska.gov/specialpubs/SP2\\_SP2008-008.pdf](http://www.adfg.alaska.gov/specialpubs/SP2_SP2008-008.pdf))

where they are traditionally practiced. Taking bears at den sites is a use almost exclusive to a limited area of Interior Alaska and not practiced in the rain forests of Southeast Alaska, a situation state and federal regulations recognize in regulation. The regulations pertaining to hunting methods and means are adopted by the Board of Game following opportunities for the public to provide written comments, public testimony at board meetings, input regarding the wildlife populations to be affected, and public deliberation by board members.

Unlike the lower 48 states, Alaska has the benefit of having its development occur alongside scientific wildlife management, and has not faced the agricultural, ranching, and development pressures that caused many large predators and vast herds and flocks of prey to be extirpated across most of the lower 48. Alaska does not seek to repeat the mistakes of the lower 48. We recognize that despite the continued sustainability of the coyote, bear, and wolf populations in Alaska, many people will continue to oppose these hunting activities for personal ethical reasons—just as many people will continue to oppose *all* hunting for ethical or other personal reasons. The ethics of hunting are emotional and will never be agreed upon by all. Nevertheless, hunting is a mandated use in Alaska’s national preserves, and additionally subsistence hunting is a mandated use in most of Alaska’s national parks and monuments.

Hunting is a mandated use, and within Alaska preserves it is conducted under state regulations (unless specifically preempted by Congress such as in the Migratory Bird Treaty Act), and the NPS has no statutory directive to disallow mandated law, regulation, or policy to allow or disallow mandated hunting on the basis of subjective ethics regarding subjective views on sportsmanlike hunting or fair chase. As the public dialogue surrounding the 2015 rule and its current revision have made abundantly clear, there is a wide range of opinion on what counts as “ethical” hunting. These questions are appropriately resolved at the state level through the Alaska Board of Game, and for federal subsistence at the Federal Subsistence Board. To our knowledge, the hunting restrictions imposed by the NPS in the 2015 regulations was the first time nationwide where ethics or fair chase was cited as a reason to restrict hunting.

The proposed rule will correct the 2015 actions that ran counter to NPS’ prior publicly stated position that ethical hunting is codified in state hunting regulations (see Marcia Blazac above). Several of the same state-authorized hunting activities prohibited by the 2015 regulations are allowed in some lower 48 park units, and in Alaska under NPS Park specific or Federal Subsistence Board regulations, raising serious questions about the NPS claim in 2015 that these activities are not allowed under the Organic Act or other “NPS legal or policy framework,” such as the take of bears over bait, harvest of swimming caribou and the harvest of bears at den sites. In the latter example, take of bears at den sites, NPS staff used the “...exact language in 5AAC...” the prohibited state regulation, as the basis for a proposal NPS drafted and had submitted to the FSB by a Subsistence Resource Commission member (see NPS0018071, attached) to authorize the practice for federally qualified subsistence hunters in NPS administered areas. The proposal was supported by the NPS for identical reasons as the Board of Game considered in its authorization. In his testimony before the FSB, NPS Alaska Region Director Bert Frost addressed the proposal:

*MR. FROST: I intend to vote in favor of the proposal as originally submitted by the Gates of the Arctic National Park Subsistence Resource Commission in the spirit of honoring the traditional Koyukon Athabascan practice of hunting black bears in their dens. In order to keep Federal subsistence regulations as simple as possible for subsistence users,*

*I support the original proposal which does not specify the type of light to be used. The language for the proposed regulation appears on of the Board book and parallels existing State regulations for using artificial light to hunt black bears in other Interior Alaska game management units. This will be the first Park specific allowance to authorize the use of artificial light when hunting and harvesting black bears, including sows and sows with cubs for subsistence uses on NPS managed land. It is the direct result of a collaborative effort between the Gates of the Arctic National Park Subsistence Resource Commission and the National Park Service to allow a traditional hunting practice that would be otherwise prohibited under NPS regulations.*

*I believe the analysis provides sufficient information for this Board to authorize the taking of black bears, including a sow accompanied by cubs at a den site using artificial light. This proposal recognizes the longstanding Koyukon Athabascan tradition of hunting black bears in their dens and provides an additional method and means for Federally-qualified subsistence users to harvest black bears in those portions of Units 24A, 24B, and 24C within Gates of the Arctic National Park and Preserve.*

*There is no conservation concern for black bears in this area and this proposal should not cause a significant impact on the resource.*

In another instance of the NPS prohibiting uses in Alaska allowed elsewhere in the NPS system, on September 3, 2014, one day before the public release of the NPS Proposed Wildlife regulations, NPS Alaska Regional Director Bert Frost and NPS Wildlife Biologist Rick Kahn determined that there was exposure to the NPS Alaska Wildlife regulations regarding the intended closure to year-round hunting seasons for coyotes. Kahn reported to Frost that, “I think you have some exposure on the coyote piece, I forwarded Elaine the information you requested and in most, if not all, western NPS units that allow hunting we have a year round coyote season. In essence, NPS has no restrictions and all western states have year round seasons, so the state regs are in effect on NPS units.” Frost responded, “That was what I was afraid of.” (see NPS0121651)

The 2018 proposed rule will properly leave the establishment of seasons for coyotes in Alaska to the state, which is consistent with other NPS units. The 2018 proposed rule will also correct other improper actions taken by the NPS in adopting the 2015 Rule. For example, the NPS Response to Comments in the October 23, 2015, Federal Register Notice (80 FR 64331) includes the following:

*The NPS acknowledges the State requested scientific data to support the temporary restrictions on taking black bears, including cubs and sows with cubs, with artificial light at den sites, taking brown bears over bait, and prohibiting the take of wolves and coyotes during the summer months. However, neither the temporary restrictions nor this rule are based on particular wildlife population levels, and do not require the preparation of such scientific data.*

The proposed 2018 Rule recognizes and addresses other problems with the 2015 Rule. When adopting the 2015 Rule, NPS took the position that certain methods and means were part of

undefined “sport” authorizations NPS did not consider appropriate for preserves, or the NPS sought to limit non-federally qualified users from participating, a form of allocation the NPS does not have the authority to regulate. For example:

*NPS0119630: Re: (NPS rule, swimming caribou). Cooper to Kahn--reason for fish eggs and swimming caribou is to exclude non rural users/ The State might say that we're prohibiting 'State subsistence' (i.e. all State residents that want to eat wild meat). NPS might say that the proposed rule would eliminate 600,000 or so Anchorage, Fairbanks & Juneau residents from taking food away from the 120,000 or so rural Alaskans that either can't go to the grocery store or can't afford a village grocery store.*

*NPS 0119667: Table of Responses\_17Sept2014/This rule would regulate sport harvest ... and limit opportunity for people from Anchorage or Fairbanks as well as their ability to compete for food with federally-qualified subsistence users. State subsistence is available to all State residents-730,000 in 2012 ... and growing. Title VIII Subsistence applies to 100,000- 150,000 rural residents.*

The current revised rule appropriately restores the management system which has functioned well since many of the park units were created in 1980. Under this system, the State of Alaska determines methods, means, seasons and bag limits. The Federal Subsistence Board determines methods, means, seasons, and bag limits for federal subsistence hunts on federal lands, which are limited to federally qualified rural residents. On preserves, federally qualified rural residents can choose to hunt either under the federal subsistence hunting regulations, which tend to be more liberal than the state regulations, or under the state regulations, which sometimes provide different opportunities than the federal regulations, such as youth hunts.

When new technology is developed, such as drones or electronic calls, it is the Board of Game's responsibility to regulate its use. The Alaska Board of Game uses a public process, and the representation on the Board is decided through the democratic will of the people via the Governor who appoints Board members, who are then confirmed by the legislature. The development of hunting regulations by the state reflect the appropriate activities for hunters in specific areas and for specific wildlife populations in Alaska. Traditions and norms also vary across the country, and that is reflected in the individual states' regulations.

**Hunting seasons, bag limits, and methods and means authorized by the state are not predator control.**

We would also like to take the opportunity to correct the misperception that general hunting regulations are a form of predator control. They are not, and do not function in that manner. Simply, predator control does aim to reduce predator populations and improve prey populations, while general hunting and trapping regulations are developed under sustained yield concepts for both predator and prey populations where there is a harvestable surplus. Harvest of predator populations using methods of take greater than the rate of harvestable surplus for specified areas and periods is only conducted by state employees or agents of the state under Intensive Management criteria or Commissioner authority under specific direction provided by the Alaska legislature, which requires a “management plan” to describe why the action is being taken

counter to sustained yield in the short term. The management plan is approved by the Board following opportunity for public comments. In contrast, wildlife harvest under hunting regulations reflects opportunities for hunters where a harvestable surplus is available. The State of Alaska does not conduct predator control on NPS administered lands unless it is conducted in cooperation with the NPS under specific conditions.

We would also like to point out that the longer season on wolves, one of the State authorized uses prohibited by the NPS in the 2015 rule, does not result in an unsustainable or excessive take of wolves as asserted by the NPS. As described by Mech,<sup>15</sup> harvesting wolves is difficult, and fair chase methods (as opposed to predator control programs designed to temporarily reduce populations of predators) to harvest wolves had not been used until 2009 in the lower 48. According to Mech,

*In most extensive forested areas with low road density fair-chase hunting deliberately for wolves will not be very productive given the low density of packs and the crepuscular and extensive travels of wolves. Chances are high that most wolves taken by fair chase will be shot incidental to big-game hunting, primarily because of many hunters afield during those seasons.*

....

*Deliberately seeking to shoot a wolf is even harder than going out to see one. Furthermore, after the novelty wears off in a few years there might be little incentive for hunters in most states to deliberately seek wolves. Wolf pelts, when prime (mid-Nov through Feb) and with no mange, may bring US\$100 to US\$300, and many hunters will consider 1 or 2 trophy wolf rugs for their wall as all they need. Given the low chance of success, hunting would not be lucrative for many even if each person were allowed to take several wolves. In Minnesota, when wolves could be killed year-round and were hunted, trapped, and snared for bounty, only about 200 wolves were taken annually (Leirfallom 1970). Alaska, with 7,000 to 11,000 wolves, harvests about 1,000 wolves/year (Titus 2009).*

We also seek to clarify that, in Alaska, bear bait station practices are not of the scale of supplemental feeding programs that have been shown to have ecological effects elsewhere. Bait stations are highly regulated with requirements for locations, seasonality, items that can be used as bait, the number of bait stations that can be established by one person, and requirements for thoroughly cleaning up the area at the end of the season. Failure to comply with these requirements can result in citations. These types of requirements limit the potential of bait stations to have anything more than transitory, seasonal effects.

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<sup>15</sup> Mech, L.D. 2010. Considerations for developing wolf harvesting regulations in the contiguous United States. The Journal of Wildlife Management 74(7):1421-1424.

## The proposed rule is consistent with the National Environmental Policy Act

We agree with NPS' conclusions in the EA that the specific activities analyzed will have little to no effect on wildlife populations. Nevertheless, we would like to point out that according to the 2015 NPS NEPA Handbook,<sup>16</sup> allowing hunting consistent with state law does not require NEPA analysis,

*If the law essentially removes all NPS decision-making discretion with regard to the action, NEPA likely does not apply. However, if the NPS maintains some level of discretion regarding how a required action is carried out, NEPA likely would apply. For instance, several national park system units have enabling legislation that requires them to allow hunting pursuant to state law, and authorizes them to enact certain types of restrictions (to protect park resources and values, or for other reasons). In such cases, a NEPA review is not required to allow hunting consistent with state law since hunting has been mandated by Congress. However, NEPA would be triggered if the unit were to implement restrictions on hunting beyond those included in state law, because setting restrictions on hunting is a discretionary activity that is authorized, but not mandated, in the enabling legislation. (page 15)*

This section of the Handbook also correctly reflects that Congress did not intend for NPS to manage hunting, i.e. Congress did not remove state wildlife management and hunting authority when hunting is mandated on preserves. Thus, the repeal of the 2015 Regulations does not necessitate consideration under NEPA. Additionally, as we have provided elsewhere in this document, NPS did not have the authority to supersede state hunting, fishing or trapping regulations in the manner they did and the NPS regulations promulgated in 2015 should be rescinded.

We note that the EA's conclusions regarding the lack of biological impacts are consistent with the 2015 final rule Federal Register notice:

The restrictions in this rule are not necessary to protect the viability of a population or to continue Title VIII subsistence uses, nor do they affect subsistence uses or priority" (p. 64333).

We agree with the EA's conclusion that "overall most opportunities to view wildlife, including predators, and opportunities for scientific studies would remain similar to those that currently exist in most areas of national preserves." It would be improper to overestimate the cumulative effects on public use and experience by implying that sport hunting will overlap other public uses in a way that will negatively affect those uses. As we describe below, visitation to most Alaska preserves is extremely low and spread across a vast landscape, relatively popular non-hunting visitor destinations are not usually utilized by hunters, hunter participation under the specific regulations to be reallocated is extremely low, and there is often geographic and temporal separation between most hunting activities and other public uses so there is little or no conflict between hunting and other activities.

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<sup>16</sup> [https://www.nps.gov/subjects/nepa/upload/NPS\\_NEPAHandbook\\_Final\\_508.pdf](https://www.nps.gov/subjects/nepa/upload/NPS_NEPAHandbook_Final_508.pdf)

## **The proposed rule appropriately maintains the state’s ability to regulate hunting in different ways throughout Alaska**

The 2018 proposed rule appropriately removes the 2015 rule concept by which NPS prohibited state-allowed hunting activities which are “exceptions to practices that are generally prohibited under State of Alaska law.”<sup>17</sup> Alaska encompasses 365 million acres and stretches 2,400 miles east to west and 1,400 miles north to south. Alaska’s hunting regulations need not be uniform statewide for every area and every species. It is inaccurate and unreasonable to view exceptions in State hunting regulations which apply to discrete areas or certain species as being less justified or unacceptable than the regulations applying to broader areas or more species.

## **The proposed rule appropriately removes erroneous “maintain historical prohibitions” concept**

The 2018 proposed rule also appropriately removes the related 2015 rule concept by which NPS prohibited activities at least partially on the basis that only hunting practices which are already allowed are justified and acceptable.<sup>18</sup> It is reasonable that the state’s hunting regulations change over time, whether to reflect changing social expectations or biological information and needs, and NPS had no basis for expecting state regulations to be static. Indeed, the concept of adaptive management is referenced in the NPS Policies.<sup>19</sup>

## **The proposed rule appropriately removes erroneous “nonconflicting” concept**

The 2018 proposed rule appropriately corrects the 2015 rule’s misuse of the concept of nonconflicting regulations. The NPS repeatedly noted in the EA and Federal Register notices for the 2015 rule that state regulations that conflict with NPS mandates to manage for natural ecosystems, processes, and populations (including behaviors) must be prohibited on NPS administered lands. In the 2015 rule, NPS subjectively decided which state regulations “conflicted” with a broad interpretation of NPS mandates. However, Policies 1.4.3.1 directs NPS to manage mandated uses, such as hunting, “to ensure to the extent possible, that impacts on park resources from that use are acceptable.” The Policies do not direct the NPS to additionally determine a mandated use is “non-conflicting” as implied in the 2015 rule. The direction in 36 CFR Part 13 regulations that state hunting is allowed under federal and nonconflicting state laws and regulations is meant to ensure that federal regulations have supremacy over state regulations when the two conflict; for example, Lower 48 park units with authorized hunting subject to NPS discretionary authority may have park unit-specific hunting regulations which are more restrictive than state hunting regulations. In the case of the 2015 rule, there were no federal regulations with which the state regulations directly conflicted; instead, NPS generically

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<sup>17</sup> See 2015 final rule Federal Register notice page 64327, for example.

<sup>18</sup> See 2015 final rule Federal Register notice page 64327, for example.

<sup>19</sup> NPS Management Policies 2006 2.3.4

referenced the Organic Act as the source of conflict. Hunting itself is prohibited in all parks without specific legislation that directs otherwise, which belies the inherent conflict between the Organic Act and hunting, along with other uses that are mandated by park-specific legislation but would otherwise be prohibited. For this reason, it is appropriate and practical that mandated uses, including hunting in this instance, be managed and regulated as described in Policies 1.4.3.1, and not according to a wholly discretionary “non-conflicting” standard.

### **The proposed rule appropriately corrects misapplication of ANILCA intent**

By removing 36 CFR 13.42 (f) and (g), the 2018 proposed rule corrects the 2015 rule’s misapplication of ANILCA legislative history regarding *subsistence* to justify restrictions on *sport hunting* under state hunting regulations. As we have previously explained, the legislative history is clear that Congress intended for sport hunting to be allowed on preserves, and for the status quo of state management of hunting to continue. In the absence of legitimate supporting legislative history, the 2015 rule<sup>20</sup> relied heavily on legislative history that addressed the implementation of the subsistence priority<sup>21</sup> to make a connection between Congress’ intent for the management of sport hunting on preserves and the Organic Act. However, that argument belies the plain language of ANILCA Section 1313, which provides NPS with a specific and limited discretionary authority to close hunting on preserves, and ANILCA Section 815, which sets a different standard for subsistence management on preserves than on parks and monuments. On parks and monuments, the level of subsistence use cannot be inconsistent with *natural and healthy* populations; on other conservation system units, including preserves, the level of subsistence use cannot be inconsistent with *healthy* populations. The 2018 rule is consistent with the legislative history regarding Congress’ expectations for sport hunting on preserves.

### **Additional and related regulatory changes the State would support in a final rule, to be consistent with federal laws and Secretarial orders**

As explained above, the proposed rule resolves the State’s significant concerns over the effects of the 2015 rule to state management of hunting, and we strongly support the proposed rule. However, we have additional remaining concerns regarding other changes made by the 2015 rule and the subsequent 2017 Subsistence Collections rule, and we encourage the NPS to consider these comments when adopting a final rule. In particular, revisions to Alaska’s long-standing public closure process significantly reduced public involvement, and so-called “updates” expanded NPS authority to regulate subsistence use and eliminated the legal authority for

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<sup>20</sup> E.g., 80 FR 64326, 80 FR 64334

<sup>21</sup> Senate Report 96-413, pages 171 and 232-233

federally qualified rural residents to participate as subsistence users in state authorized hunting, trapping, and fishing for subsistence purposes on national preserves. We would support additional changes to:

- Remove NPS self-granted subsistence closure authority that exceeds that granted in ANILCA and overlaps with Federal Subsistence Board authority.
- Reinstate all elements of the pre-2015 closure process designed to provide meaningful exchange of information and input by the affected public.
- Reinstate the opportunity for federally qualified rural residents to participate as subsistence users in state-regulated hunts on national preserves. This would also correct the inadvertent collateral damage the 2015 regulations caused to the ANILCA Section 811 guarantee for reasonable access to subsistence resources.
- Correct unclear language regarding the use of bait for fishing consistent with state fishing regulations, in order to prevent violations of state fishing regulations.
- Codify the annual public review of Alaska Compendiums.
- Commit to the use of the Advanced Notice of Proposed Rulemaking process for future NPS rulemaking efforts.
- Rescind the 2017 subsistence collections regulations regarding bear baiting and falconry, which are more restrictive than state regulations.

These additional revisions, which are described in further detail in Attachment A, are a logical outgrowth of the proposed rule and Secretarial Orders 3347 and 3356. Both the proposed rule and cited SOs and directives seek alignment with state hunting, trapping, and fishing regulations that apply on all lands in Alaska regardless of ownership, close coordination with state fish and wildlife managers and tribes, and increased access to hunting, trapping, and fishing opportunities. Neither the Orders, nor the Federal Register Notice announcing the NPS' intention to undergo regulatory review of the 2015 rule (82 FR 52868) limited the scope of this rulemaking to the proposed repeal of 36 CFR 13.42(f) and (g).

We also plan to request these revisions in response to the Secretary of Interior's September 10, 2018, directive memorandum and Deputy Secretary of Interior Bernhardt's September 27, 2018, letter to Governor Walker in a separate but related correspondence.

## **Conclusion**

The State of Alaska supports the NPS proposed rule, which repeals 36 CFR 13.42(f) and (g) and related definitions. We appreciate the work the NPS has done to date to seek alignment with applicable law.

# **ATTACHMENT A: STATE OF ALASKA REQUESTS FOR AMENDMENTS TO THE 2018 PROPOSED RULE, TO BE CONSISTENT WITH SECRETARIAL ORDERS AND FEDERAL LAWS**

The Federal Register Notice indicating the NPS would be undergoing regulatory review of the 2015 rulemaking to consider changes that would align with the directives in Secretarial Order 3347 did not limit potential amendment to only revoking 36 CFR 13.42(f) and (g). The following changes would further enhance alignment with applicable state and federal laws and regulations.

## **Reverse Changes to NPS Part 13 Subsistence Regulations that Exceed Authority Granted in ANILCA**

In 2015 the NPS modified the subsistence provisions in 36 CFR Part 13, Subpart F (i.e., 36 CFR 13.400, 13.470, 13.480, and 13.490) to remove the authorization for subsistence users to take fish and wildlife for subsistence purposes on national preserves under state regulations. The NPS stated the changes were updates “to reflect the federal government’s assumption of the management and regulation of subsistence take of fish and wildlife under ANILCA and the transfer of the subsistence management under Title VIII from the State to the Federal Subsistence Board.” At the same time, without any acknowledgement in the federal register, the EA, the final rule, or additional explanation in the regulation’s preamble, the NPS expanded its own agency-specific authority by adding “may temporarily restrict a subsistence activity” to the existing temporary closure authority in 36 CFR 13.490(a). ANILCA Section 816 only grants the NPS authority to *temporarily close a park area* for specific reasons and does not provide the broader authority to restrict subsistence activities:

“...the Secretary, after consultation with the State and adequate notice and public hearing may **temporarily close any public lands (including those within any conservation system unit)**, or any portion thereof, to subsistence uses of a particular fish or wildlife population **only if necessary for reasons of public safety, administration, or to assure the continued viability of such population.**” [Emphasis added]

Since the pre-2015 authority in 36 CFR 13.490 to impose “area” closures already applied to the NPS land management authority and the existing authority to regulate subsistence use currently rests with the Federal Subsistence Board (FSB), the additional authority the NPS granted itself in the 2015 rule to “temporarily restrict a subsistence activity” not only exceeds the authority granted in ANILCA Section 816 but also has the potential to overlap with the FSB’s authority to regulate hunting, fishing, or trapping for subsistence, including restricting seasons, bag limits, methods, or means.

As explained in the preamble to the 1981 NPS Part 13 regulations, certain regulatory provisions were incorporated to allow subsistence users immediate access to park areas for conducting subsistence activities, as mandated in ANILCA, while also allowing the State time to implement specific requirements within Title VIII (i.e., Sections 803, 804, and 805). While the State’s

efforts ultimately succumbed to legal challenges,<sup>22</sup> the assumption of that authority by the FSB also superseded the NPS's agency-specific authority in 36 CFR Part 13. The following excerpts from the preamble to the 1981 36 CFR Part 13 regulations clarify the temporary nature of the regulations and the expectation that the state subsistence program would eventually supersede most of the NPS's subsistence regulations in Subpart F of the Part 13 regulations.

*Preamble to the Final 1981 National Park System Units in Alaska; Public Uses*

The State of Alaska, the State Congressional Delegation, and certain sportsmen's groups opposed any federal regulation of subsistence, especially **in the one year period provided by section 805(d) of ANILCA for the State to establish an adequate subsistence program.** The National Park Service is sensitive to the State's concerns and looks forward to a State subsistence program implementing ANILCA's requirements. In the meantime, the Service has pared its program to the minimum required by ANILCA. For example, the Service has deleted the system of resident zones and subsistence permits for park preserves. Nevertheless, **the one-year "grace" period for the State does not relieve the Park Service of certain basic responsibilities under Titles II and VIII of ANILCA. Unlike the other conservation system units in Alaska, parks and monuments are closed to hunting except for subsistence hunting by "local rural resident" where specifically authorized by ANILCA. ANILCA sections 201-203, 816(a), 1313, 1314. Consequently, the Park Service must immediately implement a system for identifying "local rural residents" in order to allow them, but not others, to engage in subsistence hunting in national parks and monuments. In addition, section 808(c) of ANILCA specifically requires the Secretary to permit subsistence uses by local rural residents pending implementation of park and park monument subsistence resource commissions.** The Park Service has tried to adopt the type of identification system that Congress intended. See S. Rep. No. 96-413, 96<sup>th</sup> Cong. Rec. H 10540-41 (Daily ed. Nov. 12, 1980). **It bears repeating; however, that the Park Service is anxious to incorporate a State program which implements the various subsistence mandates.** By December 2, 1981, the Secretary of the Interior must review the State program to determine whether it meets ANILCA's requirements for the subsistence definition, priority, and participation (sections 803, 804, 805). The Secretary has not yet undertaken this review. **In the meantime, and until such time as a State program is determined to supersede the various aspects of the federal program, the Park Service regulations seek to carry out the subsistence duties which ANILCA imposes on the Secretary.** [Emphasis added, 46 FR 31839, June 17, 1981]

The Alaska Federation of Natives (AFN), NANA Regional Corporation (NANA), and Alaska Legal Services (ALS) on behalf of the residents on Anaktuvuk Pass, suggested a technical rewrite of §13.40(d) which the Park Service has in large part adopted in the final regulations. The rewrite **clarifies that the three criteria of the subsistence priority system apply only to persons already engaged in subsistence uses.** Consequently, **if consumptive uses of a fish or wildlife population must be restricted, § 13.40(c) assures that consumptive uses would first be limited to local rural**

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<sup>22</sup> *McDowell v. State*, 785 P.2d 1 (Alaska 1989).

**residents engaged in subsistence uses. Then if further restrictions become necessary, § 13.40(d) establishes the criteria for allocation among the local rural residents.** The Park Service received various recommendations **for acknowledgement in the regulations of the State of Alaska’s role in regulation of fish and wildlife for subsistence uses within park areas. See ANILCA, section 1314.** In response, the Park Service is promulgating § 13.40(e) which **recognizes State regulation of the taking of fish and wildlife in park areas consistent with applicable Federal law, including ANILCA. For example, the Park Service expects the State to continue to regulate seasons and bag limits in the park areas. Furthermore, as mentioned previously, the Park Service anticipates that a State subsistence program, implementing ANILCA’s various subsistence mandates will eventually supersede most federal regulation of subsistence.** [Emphasis added, 46 FR 31840, June 17, 1981]

Federal Subsistence Board regulations at 50 CFR 100 codify the Board’s authority and procedures for allocating subsistence use of fish and wildlife as needed to implement the subsistence priority in ANILCA Title VIII for federally-qualified rural residents. While 50 CFR 100.3(a) states the regulations do not supersede agency-specific regulations, that does not mean, nor would it be logical for, individual federal agencies to have authority that duplicates the FSB’s authority to restrict the use of fish and wildlife when implementing the subsistence priority in Title VIII. If it did, four separate federal land management agencies,<sup>23</sup> the heads of which also serve on the FSB, would also have the ability to supersede FSB regulations, including for allocative purposes, causing additional regulatory burden and confusion for subsistence users and others. That scenario would certainly not embody the congressional intent in ANILCA Section 802 to “cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands...”.

50 CFR 100.5(d) also specifies that “[T]he National Park Service may regulate further **eligibility** of those individuals qualified to engage in subsistence uses on National Park Service lands in accordance with specific authority in ANILCA, and National Park Service regulations at 36 CFR Part 13” [Emphasis added], which, as also explained in the above 1981 preamble excerpts, is appropriate given that only qualified rural residents are allowed to hunt and trap for subsistence purposes in national parks and monuments and provisions in the NPS Part 13 regulations (36 CFR 13.420, 13.430 and 13.440) determine who qualifies to hunt and trap as a rural resident. Similarly, other provisions in the NPS Part 13 regulations that address management of subsistence related uses and activities *not regulated by the FSB* should also be retained, such as allowed methods of access for subsistence use (13.460), the exemption for the use of aircraft for subsistence activities (13.450 and 13.495), subsistence collection and use of animal parts (13.482), and subsistence use of timber and plant material (13.485).

The NPS authority to manage subsistence use is limited to its responsibilities as a land management agency for the reasons provided in ANILCA Section 816;<sup>24</sup> therefore, we request the NPS reverse the changes made to 36 CFR 13.490 in the 2015 rule. Specifically, in addition to restoring the authorization for subsistence users to hunt, fish and trap in national preserves under

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<sup>23</sup> Title VIII of ANILCA applies to lands managed by the National Park Service, the U.S. Fish and Wildlife Service, the U.S. Forest Service and the Bureau of Land Management.

<sup>24</sup> Consistent with ANILCA Sections 816, 1313, and 1314.

state regulation and restoring the full notice and hearing requirements (as discussed below in closure process comments), we request the first two sentences in 36 CFR 13.490(a) be amended as follows consistent with the authority granted in ANILCA Section 816:

*The Superintendent may temporarily ~~restrict a subsistence activity or~~ close all or part of a park area to subsistence uses of a fish or wildlife population after consultation with the State and the Federal Subsistence Board in accordance with the provisions of this section. The Superintendent may make a temporary closure ~~or restriction~~ notwithstanding any other provision of this part, and only if the following conditions are met:*

## **Amend 2015 Closure Process**

The State requests that NPS address the various public outreach elements that were removed in 2015 from the long-standing NPS Alaska public closure process first established in the 1981 Part 13 regulations, which implemented the unique provisions in ANILCA affecting Alaska park units. The Federal Register Notice for the 2015 proposed rule indicated that the closure process revisions were intended largely to update and simplify the closure procedures, but the NPS improperly justified the changes in the final rule's response to comments as making the procedures consistent with NPS units *outside of Alaska* and with *Alaska State Parks*. This rationale for portions of the 2015 Rule disregards Congressional intent in ANILCA and the corresponding commitment to public outreach provided in the NPS 1981 Alaska-specific regulations.

Alaska State Parks were not designated by ANILCA; therefore, there is no reasonable explanation as to why procedures for administering ANILCA-designated park units should be consistent with the procedures for administering Alaska State Parks. Further, ANILCA balanced national conservation interests with the economic and social needs of Alaska and its citizens<sup>25</sup>. Alaskans at the time expressed serious concerns about Conservation System Unit (CSU) management objectives being applied to such vast areas of the state, potentially locking up access and use of natural resources of utmost value to their lives and livelihoods. Little has changed in terms of access to alternative sources of fish, wildlife, and other natural resources, and these concerns remain as valid today as they were in 1981.

Two longstanding closure processes were revised in the 2015 Rule. The closure process at 36 CFR 13.50,<sup>26</sup> which applied to closures or restrictions affecting the non-subsistence take of fish and wildlife (36 CFR 13.40), camping (36 CFR 13.25), and weapons, traps and nets (36 CFR

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<sup>25</sup>“This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people...” (ANILCA Section 101(d))

<sup>26</sup> In the 1981 36 CFR Part 13 regulations, the public closure process was codified as 36 CFR 13.30. This section was subsequently renumbered as 36 CFR 13.50.

13.30), and the closure process at 36 CFR 13.490,<sup>27</sup> which still applies to subsistence uses of fish and wildlife.

The closure process at 36 CFR 13.50 provided for three categories of closures or restrictions – emergency, temporary and permanent. Emergency and temporary closures were subject to time limitations (emergency was 30 days and temporary was 12 months, neither of which could be extended). Permanent closures or restrictions had to be implemented by rulemaking. All three categories include variations of notice and hearing requirements. The process stipulated under 36 CFR 13.490 also provided for temporary and emergency closures. Consultation with the State was required under both processes when closures or restrictions affected the take of fish and wildlife (for subsistence and non-subsistence use). Under the 36 CFR 13.50 process, the NPS was also required to consult with affected user groups.

The preamble to the 1981 36 CFR Part 13 final rule explained the Alaska-specific regulations had a three-fold purpose:

*First, it relieves otherwise applicable regulatory provisions of 36 CFR Parts 1-9 which are generally inappropriate in the unique Alaska setting (e.g., restrictions on firearms, camping, picnicking, access, use of natural features). Second, it establishes administrative procedures necessary to implement or clarify various provisions of ANILCA (e.g. access, use of cabins). Third, with the new management direction provided by ANILCA, this rulemaking seeks to remove public confusion on what public use activities are now authorized for National Park System units in Alaska. [Emphasis added, 46 FR 31836, 6/17/81]*

National NPS regulations at 36 CFR 1-7 and 12 were revised in 1983. In response to comments that questioned the applicability of the national regulations in Alaska, the NPS clarified the relationship between the national and Alaska-specific regulations:

*In general, the rules found in 36 CFR Part 13 apply to Alaska park areas and supersede the general regulations found in 36 CFR Parts 1-6 in those specific instances where the provisions of the general regulations are in conflict. For example, Alaskan park areas have specific regulatory provisions concerning snowmobiles, motorboats, aircraft, weapons, traps and nets, hunting, trapping, off-road vehicles, nonmotorized surface transportation (including dogsleds), unattended or abandoned property, camping, picnicking, permits, access, and cabins.*

*A number of general regulations or portions thereof continue to apply in Alaska. These include, but are not limited to, audio disturbances, fires, sanitation and refuge, misappropriation of property and services, trespassing, tampering and vandalism, interfering with agency functions, disorderly conduct, and regulations governing First Amendment activities (sale or distribution of printed matter, public assemblies).*

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<sup>27</sup> In the 1981 36 CFR Part 13 regulations, the subsistence closure process was codified as 36 CFR 13.50. This section was subsequently renumbered as 36 CFR 13.490.

*Closures in park areas in Alaska will be established in accordance with the requirements of the Alaska National Interest Lands Conservation Act 16 U.S.C. 3101 et. seq., and its implementing regulations at 36 CFR 13.30.* [Emphasis added, 46 FR 30254 June 30, 1983]

The following excerpts from the preamble to the final 1981 regulations (36 CFR Part 13) demonstrate the NPS intention to be responsive to the public's concerns by establishing clear sideboards for the NPS when restricting use and access and to provide those who would be most affected by proposed management decisions with meaningful opportunities for dialogue and comment. This commitment was also carried forward in 1986 when the Department of Interior promulgated regulations to implement Title XI of ANILCA, including the access provisions in Section 1110(a), which to this day contain the same public outreach elements that in 2015 were removed by the NPS in its agency-specific rules at 36 CFR 13.

*Section 13.30 authorizes the Superintendent to close an area or restrict an activity on an emergency, temporary or permanent basis. A determination to close an area or restrict an activity will be based on factors such as public health and safety, resource protection, and subsistence uses. No closures are provided for by this regulation. It provides for notice and hearing for temporary and permanent closures, and also includes a provision for notice and hearing prior to all closures for snowmobile, aircraft or motorboat use, consistent with section 1110(a) of the Act. This rulemaking establishes time limits for emergency closures (30 days) and temporary closures (12 months) which cannot be extended.*

*A final provision of this regulation requires the Superintendent to provide public notice prior to determining whether to open an area to a public use or activity. Upon request, a hearing in the affected vicinity will also be held. Section 13.30(e) adopts commenter suggestions for a hearing in the area affected by a permanent closure. This may include hearings in urban areas in situations in which closures (such as closures to sport hunting) may affect urban residents.* [Emphasis added, 46 FR 31846, 6/17/81]

*Thus closures [to subsistence use of fish and wildlife pursuant to 13.50] may be seasonal in nature, for example, if warranted by the situation. In the Normal case a closure must be preceded by consultation with the State and adequate notice and informal public hearing in the vicinity of the closure and other locations as appropriate.*

*Finally, § 13.50(c) provides thorough notice procedures designed to inform as many local rural residents as possible about any closures which may affect them.* [Emphasis added, 46 FR 31853, 6/17/81]

*Several commenters recommended that hearings be held in the area affected by a permanent closure. The Service has adopted this recommendation. In response to comments the NPS has also limited emergency closures to a maximum of 30 days.*

*The NPS has not adopted two suggestions. The first is that temporary closures be restricted to a maximum of 6-9 months. The Service believes that it needs the flexibility to temporarily close for periods **up to 12 months (i.e., fire hazard). This does not mean that all temporary closures will be for this length of time: They could be shorter.** The other suggestion was a recommendation that the public comment period be 90 days for permanent closure. This is already included in the regulation as written. **The public comment period on permanent closures must be a minimum of 60 days; it could be longer.** [Emphasis added, 46 FR 31836, 6/17/81]*

*Comments on the closure criteria of § 13.46(b) suggested both tightening and expansion of the criteria. The Park Service has retained the proposed closure criteria with only minor, technical changes. In the Service's judgment, **the closure and restriction provisions represent the proper balance between protection of park values and allowance of subsistence activities.** The Park Service has incorporated minor changes in § 13.46 that underscore the Park Service's intent to provide effective and meaningful notice and hearing in the affected vicinity "and other locations as appropriate." [Emphasis added, FR 46 FR 31836, 6/17/81]*

*One group objected to the definition of "temporarily" contained in § 13.49(c)(1). This definition, which also appears in § 13.50(a), is derived directly from the legislative history on closure to subsistence uses of fish and wildlife. See, [S. Rep. No. 96-413](#), *supra*, 277-78; *H. Rep. No. 96-97*, *supra*, 269. **The purpose of the definition is to restrict the length of closures by prohibiting closures of arbitrary duration.** [Emphasis added, 46 FR 31836, 6/17/81]*

*Closure. In response to comments asking for increased notice, local consultation, and hearings elsewhere, the National Park Service has made minor changes in § 13.50 that **underscore the Park Service's intent to provide effective and meaningful notice and hearing in the affected vicinity "and other locations as appropriate."** [Emphasis added, 46 FR 31836, 6/17/81]*

*The closure provisions of § § 13.46, 13.49, and 13.50 have **many procedural and substantive protections intended to insure that the closure is sufficiently justified and well discussed.** Local input into these decisions will be **further facilitated** with the creation and operation of the **local committees, regional councils, and park and monument commissions.** [Emphasis added, 46 FR 31836, 6/17/81]*

We request the NPS re-establish the pre-2015 Alaska closure process by incorporating the following revisions into 36 CFR Part 13 to ensure both the intent in ANILCA and the NPS long-term commitment to Alaskans is carried forward into the future. Restoring these essential elements of the Alaska closure process is paramount and while we understand the need for some updates (e.g., adding the internet as an additional method of notice), the number of changes made in the 2015 Rule went well beyond what could be reasonably considered mere updates but were instead substantive changes.

- Re-establish the temporary category of closures with limited duration and the requirement for public outreach to the non-subsistence take of fish and wildlife (36 CFR 13.42), camping (36 CFR 13.25), and weapons traps and nets (36 CFR 13.30), which gives the NPS flexibility to work with the affected public to address management issues without having to go through an extensive rulemaking process, unless further warranted. The timing constraints associated with the current Alaska compendium process, which is not required in regulation (see below), has limited effectiveness in addressing individual management issues with the affected public. We support extending the duration of a temporary closure or restriction from the previous limit of 12 months to up to 2 years under the following conditions; 1) when an immediate need is mutually-identified, 2) resources are at immediate risk, 3) the specific solution may not be sufficiently fine-tuned or well enough understood, and 4) the NPS is actively working with the State and other stakeholders to find an acceptable permanent solution that will be proposed through permanent rulemaking and 5) that continued justification and public outreach requirements are complied with annually. (36 CFR 13.50). We have also learned, along with the NPS, that moving too hastily to permanent rulemaking can lead to unintended consequences that may take years and additional rulemaking to fix. However, the State will not support reoccurring temporary rules if resources are not at immediate risk and if the NPS intends from the beginning for the proposed restriction to be permanent.
- To ensure permanent closures or restrictions affecting the non-subsistence take of fish and wildlife (36 CFR 13.40 and 13.42), camping (36 CFR 13.25), and weapons, traps and nets (36 CFR 13.30) are fully justified and provide the public with a meaningful opportunity to comment on proposed management actions, restore the requirement for rulemaking and public outreach (i.e., notice and hearing, and minimum 60-day comment period). The closure process, as amended in the 2015 rule, applies what is essentially the national compendium process to all uses, which only requires the public be notified of closures and restrictions, and triggers rulemaking only under extremely limited circumstances, the threshold for which is determined solely by the NPS without public input. Further, the 2015 rule amended the national rulemaking criteria just for Alaska park units by removing “...or is of a highly controversial nature,” ensuring that similar or other closures that negatively impact Alaskans could be imposed in the future without a thorough and meaningful public process.

In addition, we question how the current criteria for rulemaking relate to the take of fish and wildlife and, as a result, the likelihood that the public process associated with rulemaking would be triggered (i.e., when the closure causes a significant alternation in public use pattern of the area, adversely affect the area’s natural aesthetic, scenic or cultural values, or require a long-term modification in the resource management objectives) and request the rule include separate criteria consistent with ANILCA Section 1313 for the non-subsistence take of fish and wildlife, i.e., designate zones where and periods when no hunting, fishing, or

trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment. (36 CFR 13.50)

- Clarify that the opportunity for public comment provided for in the 2015 regulations for closures and restrictions affecting the take of fish and wildlife *is in addition to* public hearings/meetings; both conducted in advance to inform management decisions. The current wording allowing for public comment “...provide *an* opportunity for public comment, *including* one or more public meetings near the affected NPS unit,” could be interpreted to provide the opportunity for comment at public meetings only, which would preclude comments from individuals or interest groups that do not or are unable attend the meetings. (36 CFR 13.50(e))
- For all other uses subject to the compendium process, restore the full set of rulemaking criteria and procedural elements established under national regulations at 36 CFR 1.5, i.e., restore issues of a highly controversial nature as a criterion for rulemaking and the requirement to explain why less restrictive measures do not suffice in addressing the management concern in the written justification. There is no reasonable justification for applying a lower standard to the Alaska compendium process, and doing so contradicts the NPS’ stated purpose to be consistent systemwide. (36 CFR 13.50(c) and (d))
- Restore the allowances for qualified rural residents to hunt, fish and trap on national preserves for subsistence purposes under state regulations, which was removed by the NPS in 2015<sup>28</sup> even though Federal Subsistence Board regulations at 50 CFR 100.14 and 100.25(i) allow rural residents to hunt, trap and fish under state regulations (except where inconsistent with or superseded by 50 CFR 100). ANILCA Title VIII grants rural residents a subsistence priority; however, nothing in ANILCA prohibits the take of fish and wildlife for subsistence purposes on preserves under state regulation.

During discussions with the State, the NPS verbally indicated that it does not intend for this change to preclude rural residents from hunting, fishing, and trapping under 36 CFR 13.40 and 36 CFR 13.42; however, because those

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<sup>28</sup> 36 CFR 13.400 was revised in 2015 removing subsection (e), which stated “The **State** of Alaska is authorized to **regulate** the taking of fish and wildlife for subsistence uses within park areas to the extent such regulation is **consistent with applicable Federal law**, including but not limited to ANILCA.”

36 CFR 13.470 was revised in 2015 removing “State” from the first sentence, which stated “Fish may be taken by local rural residents for subsistence uses in park areas where subsistence uses are allowed in compliance with applicable **State** and Federal law...”

36 CFR 13.480 was revised in 2015 replacing “Local rural residents may hunt and trap wildlife for subsistence uses in park areas where subsistence uses are allowed in compliance with applicable **State and** Federal law. To the extent consistent with the provisions of this chapter, applicable State laws and regulations governing the taking of wildlife which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations” with “Local rural residents may hunt and trap wildlife for subsistence uses in park areas where subsistence uses are allowed in compliance with this chapter and 50 CFR part 100.”

regulatory provisions apply to “sport hunting” in preserves, we remain concerned that Alaskans themselves may not recognize this as an allowance to participate in a state hunting, trapping, or fishing on preserves for subsistence purposes, or that individuals could be cited in the field by a park ranger for not being in compliance with 36 CFR 13.470 and/or 13.480. Further, rural residents could also be cited in the field if they are otherwise legally operating an off-road vehicle pursuant to ANILCA Section 811 and 36 CFR 13.460 but are conducting subsistence activities under state regulations. (36 CFR 13.400, 13.470, 13.480, and 13.490)

- State regulations afford all Alaska residents the opportunity to take fish and wildlife for subsistence purposes. This allows non-rural Alaska residents, including family of rural residents who have moved away from the local community, the opportunity to continue their subsistence way of life by harvesting fish and wildlife in preserves as a culturally significant activity, rather than under the pretense of “sport hunting” as the current regulatory scheme requires. If the FSB determines it is necessary to implement the priority in ANILCA, rural residents will still have priority over non-rural Alaska residents taking fish and wildlife under state regulation.
- Restore the requirement to provide adequate notice and hold public hearings before implementing temporary closures or restrictions to subsistence use of fish and wildlife and replace the requirement to hold hearings “near the affected NPS unit” with the previous requirement to hold hearings “in the vicinity and other locations as appropriate.” Consistent with ANILCA Section 816(b), this will clarify the purpose of the hearings is to provide the public with an opportunity to provide the NPS with feedback (two-way communication) on *proposed* management actions and not merely be informed of management *decisions*. It will also ensure that hearings are held in areas where the affected public are likely able to attend and not just in areas of greatest convenience or least costly to the NPS. (36 CFR 13.490)
- Restore the requirement for the NPS to consult with representatives of affected users<sup>29</sup> before implementing closures or restrictions to the non-subsistence take of fish and wildlife. This procedural element ensures the NPS takes the viewpoints of potentially affected user groups into consideration before proposing a management action. (36 CFR 13.50(e))
- Restore the requirement to hold public hearings (including meetings, as appropriate) near the affected vicinity and other locations as appropriate to ensure the NPS conducts public outreach and utilizes two-way communication in areas where the affected public live and are likely able to attend. This requirement was

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<sup>29</sup> In 2015, the requirement to consult with the State of Alaska “*and representatives of affected user groups*” prior to restricting or closing non-subsistence take of fish and wildlife was removed from 36 CFR 13.40(e).

applicable to both the subsistence and non-subsistence closure process affecting the take of fish and wildlife. (36 CFR 13.50 and 13.490)

- Reinstatement of the non-discretionary requirement for the NPS to provide notice of closures on the NPS website and *all* the additional notice methods pre-determined reasonably likely to inform residents in the affected vicinity, *except where unavailable*. Routine transfer of Superintendents and other staff in and out of Alaska results in park staff who may be unfamiliar with the challenges associated with public outreach in Alaska. Requiring proven effective methods of outreach, except where they are unavailable, will help to ensure the affected public are aware of proposed closures. (36 CFR 13.50(f))
- Restore national closure criteria in 36 CFR 1.5(a), i.e., maintenance of public health and safety, protection of environmental or scenic values, protection of natural or cultural resources, aid to scientific research, implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities, for non-emergency closures (except for the take of fish and wildlife). The current closure criteria in 36 CFR 13.50, i.e., public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, conservation of endangered or threatened species, and other management considerations, were the closure criteria in the pre-2015 rule *for emergency closures only*. No explanation was provided in the 2015 rulemaking for this change. (36 CFR 13.50(b))

### **Improve Cooperation, Consultation and Communication by using Advanced Notice of Proposed Rulemaking process for future rulemaking efforts**

To comply with the intent of the proposed rule and with the multiple directives and scenarios that exemplify cooperation, consultation, and communication referenced above, we request the revised regulations include a requirement to utilize the Advance Notice of Proposed Rule Making Process (ANPR) when considering the promulgation of future regulations affecting fish and wildlife. In particular, this would require the NPS to engage the public, state, and local and tribal agencies from the earliest stages of the process, including two-way communication that will inform possible NPS actions and policies. Such engagement would be applied throughout the process to ensure that a “no surprises” ethic is followed and that at the conclusion no new controversies or surprises ensue.

The proposed rule states that part of its intent is to comply with Secretarial Orders 3347 and 3356, which direct Department of Interior agencies to “...to advance conservation stewardship and increase outdoor recreation opportunities,” and to “identify ways to improve recreational hunting and fishing cooperation, consultation and communication with State of Alaska wildlife managers.”

In addition to the above referenced Secretarial Orders, NPS is obligated through other federal law, Executive Orders, and policy to conduct meaningful State and tribal consultation.

For example, coordination and cooperation between the individual states and federal land management agencies is supported by federal policy at 43 CFR Part 24, State-Federal Relations:

43 CFR Part 24.2 Purpose (a) The purpose of the Department of the Interior Fish and Wildlife Policy is to clarify and support the broad authorities and responsibilities of Federal and State agencies responsible for the management of the nation's fish and wildlife and to identify and **promote cooperative agency management relationships which advance scientifically-based resource management programs.** This policy is intended to reaffirm the basic role of the States in fish and resident wildlife management, especially where States have primary authority and responsibility, and to foster improved conservation of fish and wildlife.

(b) **In developing and implementing this policy, this Department will be furthering the manifest Congressional policy of Federal-State cooperation that pervades statutory enactments in the area of fish and wildlife conservation.** Moreover, in recognition of the scope of its activities in managing hundreds of millions of acres of land within the several States, **the Department of the Interior will continue to seek new opportunities to foster a “good neighbor” policy with the States.** [Emphasis added]

ANILCA requires consultation and coordination at Sections 810(a)(1), 816(a) and 1313. ANILCA's consultation requirements show that Congress intended a level of coordination beyond the federal Administrative Procedure Act's (5 U.S.C. Chapter 5) requirements for public review through notice and comment.

Executive Order 12866 directs the NPS to seek views of state officials before imposing regulatory requirements that might significantly or uniquely affect the state, and to harmonize regulatory actions with state regulatory functions:

(a) Agency Responsibilities. (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. **In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials).** [Emphasis added]

NPS Directors Order 75, Civic Engagement and Public Involvement, is replete with multiple directives for the NPS to coordinate with the States and others:

**Public involvement (also called public participation) is the active involvement of the public in NPS planning and decision-making processes.** Public involvement is a process that occurs on a continuum that ranges from providing information and building awareness, to partnering in decision-making. The NPS role is to provide opportunities for the public to be involved in meaningful ways, to listen to their concerns, values, and preferences, and to consider these in shaping our decisions and policies. NPS public involvement activities can include:

•**Systematically planning a variety of opportunities for the public to learn about and express their opinions on possible NPS actions and policies**, and to know that their diverse views are considered in shaping decisions and become part of the record of the decision-making process;

•**Responding to suggestions and comments from the public in a timely, truthful, and straightforward manner**; and/or [Emphasis added]

The NPS purpose in seeking public involvement will be more than simply meeting the minimum requirements of law; we will aspire to deliver excellent resource stewardship, **be a good neighbor and host, hear what the public has to say, and foster two-way communication to achieve those goals**. Public involvement is a sustained partnership with communities that requires the NPS to involve communities in NPS decision-making and is enhanced when the NPS is involved in dialogs regarding community issues and planning. [Emphasis added]

On potentially controversial issues, **we will be particularly mindful to plan and design public involvement opportunities at the earliest opportunity**, and to use specialized techniques when dealing with controversial issues in order to minimize potential for conflict and achieve a solution smoothly.

**Follow a "no surprises" ethic. As a public involvement process moves toward conclusion, we seek to ensure that no one is surprised by new information or controversy. We keep the channels of communication open among all participants.** (emphasis added)

Additionally, the concept of consultation and coordination was incorporated in the Master Memorandum of Understanding between the department and the NPS, stating that the department and the NPS agree **"...to consult with each other when developing policy, legislation, and regulations which affect the attainment of wildlife resource management goals and objectives of the other agency."** [Emphasis added]

A Guide to the Rulemaking Process, Prepared by the Office of the Federal Register, describes the ANPR process:

An agency may take some preliminary steps before issuing a proposed rule. They gather information through unstructured processes and informal conversations with people and organizations interested in the issues. If an agency receives a "Petition for Rulemaking" from a member of the public, it may decide to announce the petition in the Federal Register and accept public comments on the issue.

An agency that is in the preliminary stages of rulemaking may publish an "Advance Notice of Proposed Rulemaking" in the Federal Register to get more information. The Advance Notice is a formal invitation to participate in shaping the proposed rule and starts the notice and comment process in motion.

Anyone interested (individuals and groups) may respond to the Advance Notice by submitting comments aimed at developing and improving the draft proposal or by recommending against issuing a rule. Some agencies develop proposed rules through a negotiated rulemaking. In this process, an agency invites members of interested groups to meetings where they attempt to reach a consensus on the terms of the proposed rule. If the participants reach agreement, the agency may endorse their ideas and use them as the basis for the proposed rule.

The NPS, State of Alaska, Native Tribes and the public in general would have benefitted greatly from use of an ANPR process. While the NPS did raise interest in some state authorizations it was considering prohibiting during previous years' compendium processes (take of bears at den sites, extended seasons for wolves and coyotes) not all prohibitions and regulatory changes in the 2015 rule were revealed to the public or the State until the proposed rule was released in the Federal Register. As Alaska NPS Regional Director Bert Frost noted in a September 4, 2014 letter to ADF&G Commissioner Cora Campbell:

The National Park Service (NPS) would like to consult regarding the proposal of permanent regulations related to certain takings of wildlife in national preserves. The proposal was published today in the Federal Register.

The proposed rule covers some areas that members of your staff and the National Park Service have discussed at length, **and others that may be new to your Department.** [Emphasis added]

These "new" proposed regulatory changes included not only prohibitions to specific methods and means of harvest, but instituted a new blanket authority for NPS to prohibit future state hunting regulations which the NPS deemed to be predator reduction efforts, eliminated state authorized subsistence uses from preserves, completely revised longstanding regulatory closure processes, and provided Park Superintendents with discretionary authorities to prohibit state authorized uses with no public process by simply including them on an annual list. While the NPS did subsequently hold a number of public hearings across the state to take testimony from the public and others, at no time was the public afforded opportunities for "two-way communication" with NPS staff regarding the actions the NPS was taking. This gave many the appearance that the NPS had already predetermined the outcome of the process.

Had the NPS engaged in "two-way communication" during the multi-year internal process it used to develop the 2015 regulations, it would have benefited from the knowledge of local users such as the subsistence advisory councils and commissions established by Title VIII of ANILCA, state fish and wildlife managers and others familiar with the uses NPS held concerns about. Those commenters would also have been afforded informed responses from NPS staff, with opportunities for "two-way communication" and the possible resolution of issues through the exchange of ideas. Additional comments intended to re-establish and re-enforce NPS' commitment to meaningful public outreach and consultation with state fish and wildlife managers as required in the above directives are provided in the closure process comments that request the NPS restore the pre-2015 rule's public closure process.

## Clarify Use of Bait for Fishing

In addition to the regulations currently under consideration for revision or repeal (36 CFR 13.42 (f) and (g)) under this process, we are requesting that the NPS rescind 36 CFR 13.40(d) (Taking of Fish) Use of native species as bait, which was promulgated under the same regulatory process currently under consideration. While we supported the intent of this part of the proposed rule in 2014, which was to eliminate the unintended effects of the NPS national prohibition against the use of native species as bait in Alaska under 36 CFR 2.3, we continue to be opposed to this allowance by the NPS for the same reasons submitted at that time, which were concerns for conservation, definitions of and use of natural and synthetic bait, and confusion with existing state regulations (see the 2014 comment below).

We also request, as we did in 2014, that the NPS consult with ADF&G to identify the specific issues the NPS is seeking to resolve and to cooperatively consider ways in which this regulation could be implemented in a manner that does not conflict with state management intent for conservation or provide conflicting regulations for the public to follow.

While it was noted in the 2015 Final Rule Response to Comments (#46) that where State regulations prohibit the use of bait the State regulation would prevail, that level of information will not be available to the general public fishing under either State Sport Fishing Regulations or Federal Subsistence Regulations and who may be unaware of NPS specific regulations. A review of the current 2017-2019 Federal Subsistence Management Regulations for the Harvest of Fish and specifically note that “You may not use fish taken for subsistence use or under subsistence regulations as bait for commercial or sport fishing purposes.” (see page 17, General Restrictions, Bait). This absence of information could lead to unintentional violations of State prohibitions.

Additionally, the regulatory process that this allowance was taken under primarily sought to supersede (prohibit) many state authorizations for conflicting with NPS regulations. It is very logical that members of the public may mistakenly believe that an NPS allowance for the use of bait would supersede a state prohibition since the NPS CFR allowance indicates that is the case in this instance:

36 CFR 13.40 (d) Use of native species as bait. Use of species native to Alaska as bait for fishing is allowed in accordance with non-conflicting State law and regulations.

There is nothing to indicate in the regulations, as was done in the Response to Comments to the 2015 Rule, that state regulations would prevail in this instance, particularly when so many other state regulations were determined, at the discretion of the NPS, to be conflicting with NPS regulations.

We further note that when this specific regulation was promulgated under the 2014 Proposed Rule it was not analyzed in the associated EA, which was the first and only time this issue was brought to our attention by the NPS. There were no meaningful discussions between NPS and the Department prior to its promulgation and none have been held on this subject with the public at large, SRCs or RACs, which significantly limits successful resolution.

The most practical and least confusing resolution to this concern is for the NPS to repeal the regulation and to exempt Alaska Region Park Units from application of NPS national regulations at 36 CFR 2.3, which prohibits use of bait in freshwaters.

## ATTACHMENT B: ADDITIONAL ENVIRONMENTAL ASSESSMENT COMMENTS

The State of Alaska supports the proposed action in Alternative 1 of the EA for Sport Hunting and Trapping in National Preserves in Alaska, dated August 2018, and we offer the following information to reinforce the evidence and analysis for determining a finding of no significant impact (40 CFR 1508.9).

The existing Need for Action statement, as well as the one in the preceding 2014 EA, appears to be a values-based decision rather than a biological one, with the difference between the two stemming from varying interpretations of NPS guidance and the guidance provided by two new Secretarial Orders issued by the Secretary of the Interior. We understand the purpose of the EA in both instances is to determine whether this is a significant impact on the environment. As the 2018 rule would simply allow state hunting regulations to be in place on preserves, it is our belief that the NEPA process and subsequent EA is not necessary because State-regulated hunting is not a federal action subject to either NEPA or the minimum requirements analysis under the Wilderness Act. Nevertheless, our information strongly indicates that the proposed action will have no significant impact.

1. Director Order 12 (Section 4.5 Technical and Scientific Analysis) and the NPS NEPA Handbook Supplemental Guidance “Preparing Focused and Concise EAs, 2015” stress the importance of using scientific data to support the conclusions reached when preparing an EA.

*“Keep in mind that when preparing an EA, the NPS must comply with the requirement to take a “hard look” at the impacts of the proposed action and any alternatives under consideration. In order to demonstrate that the NPS has satisfied the “hard look” requirement, there must be evidence that the NPS considered all foreseeable direct, indirect, and cumulative impacts, **used sound science** (emphasis added) and best available information, and made a logical, rational connection between the facts presented and the conclusions drawn.”*  
(Preparing Focused and Concise EAs, pg. 1)

The 2014 EA lacked a “hard look” into the resources in question. In contrast, this EA does a much better job of providing actual data on resource effects by incorporating information the Alaska Department of Fish and Game (ADF&G) provided at the request of the NPS on population status, hunting permits issued, and harvest data in the preserve areas. The state agrees that there were no biological or conservation reasons in support of the 2015 Rule, and the scientific data supports repeal of the regulations.

**Action Requested:** Rescind 36 CFR 13.42(f) and (g) as proposed.

2. Thank you for acknowledging the excellent management of wildlife by the State of Alaska. We appreciate that the 2018 EA included harvest data provided by the ADF&G at the request of the NPS. This data documents that because of the low level of take these hunting practices entail, no population level impacts will be felt. The NPS' deviation from the strong and negative language it used in the conclusions of the 2014 EA in comparison to the 2018 EA are supported by the population and harvest information for the relevant species and populations considered. The additional two to three years of information available now from the time since 2014 (see Attachment C) shows that the populations in the areas surrounding preserves, where the state hunting regulations have remained in place, are stable and that no drastic increase in hunting pressure or harvest level has occurred in response to the opportunities provided by the state hunting regulations prohibited by the NPS in adjoining preserves. The 2018 EA properly recognizes the minimal impact of sustained yield harvest on populations. Additionally, we note that any type of hunting will impact the family and pack members of the animal taken, and because of that, it is unreasonable to measure environmental impacts in terms of effects to individual animal families and packs. We support the scale of analysis used in the 2018 EA as being the most biologically appropriate.

The table below outlines the different conclusions between the two EAs.

**Comparison Table NPS Wildlife Rule EAs -- Significant Issues**

Identified Significant Issue:	2014 EA	2018 EA
Wildlife and Habitat (became just Wildlife in 2018)	Anticipated to result in changes in wildlife populations and habitat. <b>Localized effects expected to be substantial.</b>	<b>Could result in localized impacts, but in general, the NPS expects healthy populations of wildlife would continue</b> to exist in a manner consistent with the range of natural variability with regard to abundance, diversity and distribution. (p. 9)
Subsistence (became federal subsistence in 2018)	Sport hunting could be restricted or eliminated by the Board of Game or the Federal Subsistence Board to <b>protect the populations from being decimated.</b> (p. 19)	Overall, the <b>opportunities for subsistence harvest of wildlife are expected to remain similar to the opportunities currently available.</b> (p.12)
Public Use and Enjoyment (became Public Use and Experience in 2018)	<b>Could result in alterations or elimination of observations and study opportunities</b> of naturally functioning wildlife populations...and altered behaviors of wildlife, bears in particular, have the potential to <b>increase public safety risk.</b> (p. 23)	Could result in: Reduced opportunities to view predator species, with a corresponding increase in opportunities to view prey species.  Reduced recreational public use near bear baiting stations.  Increase in safety issues from food conditioned bears.  However, <b>due to the low level of additional take expected...</b> Overall <b>most opportunities</b> to view wildlife and conduct scientific studies <b>would remain similar to those that currently exist</b> in most areas of national preserves. (p. 15-16)
Wilderness (became Wilderness Character in 2018)	<b>Expected to result in long-term negative impacts to Wilderness Character and could degrade the following other qualities: Natural, Untrammeled, Opportunities for Solitude and Undeveloped.</b> (p. 27)	<b>Overall, due to the low level of additional take expected under the proposed action and the large area of wilderness and eligible wilderness in national preserves in Alaska, wilderness character would continue to exist in a manner similar to current conditions.</b> (p. 18)

**Action Requested:** We support the 2018 EA’s conclusion and request the population and harvest information attached be included as reinforcing evidence for concluding the level of effect is not significant for each potentially affected environmental resource.

3. We support the NPS’ conclusions in the EA and note that there is no evidence supporting cause and effect relationships with the action being taken and some of the issues raised, such as public safety and bear bait stations, or effects to wilderness character.

**Action Requested:** We request that the decision document note that effects for the issues raised in the EA do not meet measurable threshold for impacts and include the attached scientific information supporting conclusions of no significant impacts.

4. We request that the reasons for the changed issue characterizations, noted in the Comparison Table above, between the 2014 EA and the 2018 EA be clarified within the document, e.g., why are the effects titles different and how did it alter the analysis for Effects on Wildlife and Habitat in 2014 became Wildlife in 2018, Effects on Public Use and Enjoyment in 2014 became Effects on Public Use and Experience in 2018, and Effects on Wilderness in 2014 became Effects on Wilderness Character in 2018.

**Action Requested:** We request that the information be included on the Errata Sheet.

5. We agree that there will be no significant impacts. The actual impacts analyzed are likely to be more negligible than the EA concludes once harvest data and other data is considered. We encourage the NPS to work in cooperation with ADF&G, to resolve remaining public concerns and to gain an understanding of actual baseline levels of use and any documented impacts.

**Action Requested:** We propose the NPS work, in cooperation with ADF&G, to understand baseline conditions as well as any future impacts to resources based on uses. We agree with relying on science and facts, as opposed to fear tactics and misinformation.

6. Section 3.2.2 Effects on Wildlife of Alternative 1 includes a discussion on the take of black bears over bait, recognizing that during the decades in which NPS allowed the practice on preserves, less than two bears were taken annually. The EA acknowledges that “little to no population-level effects” resulted. However, there is no data in Alaska to support the conclusory statement that “The proposed action would also result in conditioning of bears in areas where bear baiting occurs to human foods, which could lead to altered behaviors at a local scale that have the potential to increase the likelihood that more bears are taken in defense of life and property.” We request NPS correct any misleading statements and we ask that the Errata Sheet specify the following information and reconsider that the conclusion is over stated for the following reasons:
  - a. The discussion includes NPS published information documenting that take of black bears in NPS preserves in Alaska was low between 1992-2010, and that harvest was not a conservation concern on NPS lands in Alaska (Hildebrand et al. 2013);

- b. That despite registering thousands of black bear bait stations every year the State has not detected problems directly attributed to bear baiting practices (pg. 7);
- c. That the State has few nuisance bear issues in Fairbanks or the Mat-Su Valley (areas with high levels of bear baiting) when compared with Anchorage and Juneau (low bear baiting but high nuisance bear problems) (SOA 2014). ADF&G manages approximately 2,700 bait stations per year (based on a 10-year average, 2008 to 2017), as compared to the handful of bait stations on all Alaska preserves per year.
- d. The EA references Herrero (1970, 1976, and 2002) to support the argument that "...conditioning bears to unnatural food items can increase the likelihood that the bears will become nuisance bears..." and that "...food conditioned bears are more likely to become a public safety risk...". However, Herrero's articles discuss bears becoming habituated to food at stable developed sites, such as campgrounds and dumps/landfills. Herrero never analyzes bear baiting situations in his studies, which the EA conclusion should consider.

Our biologists' analysis is that the EA's conclusion on bear baiting activities is arbitrary and not supported by the facts, and that it overstates the likelihood of bears becoming conditioned to human foods or taken in defense of life and property. We further note that subsequent to the prohibition by the NPS of use of bait for bears in the 2015 Rule, the NPS, in the subsistence collection rule, expressly allowed bear baiting in Wrangell-St. Elias Park and Preserve, including the opportunity to allow the use of human foods as bait. At the February 2017 Board of Game meeting, Deb Cooper, Associate Regional Director for the NPS, said that NPS consulted with the local users about types of bait used for bear baiting, and then determined that bear baiting would be allowed using native sources of bait for FQ users. When the Board Chair asked if the decision was based on any scientific reasons, Ms. Cooper said she preferred not to discuss it (see Attachment E).

**Action Requested:** In the Errata Sheet, please note that Alternative 1 will have little effect on the bear populations, that there is no evidence that bear baiting will result in nuisance bears, and there is no evidence that bear baiting under state regulations will increase public safety concerns. NPS could rely upon actual observed effects of black bear baiting practices, and reference the NPS' justification for expressly recognizing bear baiting as an accepted and allowed practice in Wrangell-St. Elias, including use of human food as bait.

- 7. We agree that adoption of the proposed rule, to repeal 36 CFR 13.42(f) and (g), would have no significant impact because "levels of additional take (of wolves and bears) are expected to be low" as stated on page 14. We question the summary discussed on page 14 regarding the Borg et al 2016 study on Denali wolves from 1997 to 2013, because:

- a. The study was observational and simply found a negative correlation between “buffer years” and “sightings.” Because the data were observational, causation cannot be established; furthermore, the main variable interpreted was the presence of a buffer, not the number of wolves harvested. The cited paper did have a wolf harvest variable, but there is little assurance whether the correlation is negative or positive (even within the paper; see table 4 therein). Taken at face value, the harvest data in Borg et al. showed, counterintuitively, that the harvest rate of wolves was actually higher during the buffer years than during the years when no additional protections were in place. Updated analyses have only supported the buffer having a weak effect and no effect of the number of wolves harvested.
- b. The study references actual sightings by Park visitors; however, the sighting data used included sightings by NPS staff and contractors (i.e., bus drivers), not just members of the visiting public. Because of this, the findings cannot be used to interpret the probability that any given visitor will observe a wolf.
- c. At the Board of Game meeting in Fairbanks in February 2017, Deb Cooper, NPS Associate Regional Director stated that NPS strongly supports all hunting. She had no recent data on wolves. Denali Park and Preserve staff David Schirokauer, Don Striker and Bridget Bart discussed wolves in and near the northeast area of Denali Park and Preserve. Ms. Bart participated in the study of wolf viewability along the road and acknowledged there are several factors affecting viewability along the park road. The presence or absence of a buffer zone outside park boundaries is not the biggest factor. She has seen record numbers of wildlife sightings on every bus trip on the road through the park since 2010. Mr. Schirokauer applauded the Board of Game’s democratic process and recognized the heavy work load carried by Board members and ADF&G staff. Three collared wolf packs are showing an increase in numbers. He also said that the state’s intensive management is not inconsistent with Denali National Park and Preserve if it happens outside the park. Visitor numbers also continue to increase. When deliberating on proposals, the Board of Game also considered additional information that was part of the record: Under FSB rules, there is no bag limit on wolves in preserves. The decline in wolves, prior to the increase beginning in 2014, was due to lack of prey, not human harvest. The primary reason less wolves are seen by tourists is because wolves stopped denning near the road. (See Attachment E)

**Action Requested:** Since the Borg, et al study was released there have been collaborative efforts between NPS staff (Denali and Fairbanks) and ADF&G staff to interpret the

Denali Park and Preserve wolf sighting data. These staff have largely reached mutual agreement that the Denali data does support some evidence of a weak correlation between the buffer years and lower wolf sightings in the park, but other factors play a greater role.

We request that the Errata Sheet include a new discussion on the Borg study, including concerns over establishment of causation and the agreement that NPS and ADF&G staff have mutually reached.

8. We agree with the conclusion that “due to the low level of additional take expected under the proposed action compared to current conditions, overall most opportunities to view wildlife, including predators, and opportunities for scientific studies would remain similar to those that currently exist in most areas of national preserves” reached in the EA’s Section 3.4.2 “Effects on Public Use and Experience.” However, we believe the information available is inclusive to support the other conclusory statements. Please consider the following:
  - a. we are unaware of any studies, in interior Alaska, that have attempted to link harvest of bears to viewing of bears;
  - b. the harvest areas in the preserves are many miles from existing buffer areas and the associated road systems where the viewing studies were conducted; and,
  - c. we do not anticipate an increase in harvest levels in the preserve areas based on our current and historical harvest information.

**Action Requested:** We request that the NPS reconsider any conclusions regarding the potential reduction of opportunities for wildlife viewing and the study of predators in preserve areas based upon the above information and include revised findings in the Errata Sheet. Agencies and Persons Consulted. We appreciate the consultation the NPS conducted with our office on this reiteration of the Sport Hunting and Trapping in National Preserves in Alaska EA. We were assured that affected Alaska Native Tribes had been consulted with and the Federal Register Notice for the Proposed Rule (83 FR 23623) indicates that Alaska native tribes and corporations were invited to consult on the proposed rule, but we see no documentation in the EA that such consultation was conducted.

**Action Requested:** Please provide documentation on the Errata Sheet that Alaska Native Tribes and corporations were consulted.

9. The 2018 EA correctly refers to the hunting and trapping practices as “harvest practices.” We appreciate this correction from the 2014 EA, which incorrectly described some of the hunting and trapping practices covered by these regulations as predator control practices

(they were also referred to interchangeably as intensive management, liberalized predator harvest, etc. in the 2014 EA).

**Action Requested:** To additionally clarify for the public that these are general harvest practices, in the Errata Sheet, please add a new paragraph 4, stating: “All hunting practices referenced in this EA reference general hunting and trapping practices as regulated by the State of Alaska. The state develops general hunting and trapping regulations for sustainability and if, at any point, a population’s sustainability is at risk, adjustments or closures to hunting and trapping seasons, altering bag limits, etc. will be put into place.”

10. The information supports a finding of no significant impact. Some individual conclusions regarding negative impacts within the EA are not supported by information suggesting that the negative impacts have a reasonable likelihood of occurring. The reasonably likely outcome of the regulations as demonstrated by several years to decades of occurrence on preserve lands and/or adjacent lands is that any localized effects would be negligible to minimal, and what would typically be observed in a population where harvest (hunting, trapping, subsistence use) is a mandated use.

**Action Requested:** A review of the EA should identify and delete unsupported statements, which should then be noted on the Errata Sheet. Additionally, a more appropriate approach would be to remove all the regulation changes finalized in 2015 and not just those in (f) and (g). The implementation of monitoring programs as part of each preserve’s general management program to understand wildlife populations and their use would assist future management decisions.

11. We appreciate the 2018 EA’s inclusion of scientific information provided by the state. However, the EA often uses the phrase’s such as “The State maintains...”, or “the State assures” which we are concerned could confuse the public as to whether the information from the state is based on opinion or fact. As with other professional natural resource management agencies, ADF&G maintains an extensive professional staff that conducts biological scientific monitoring and research throughout its area of responsibility. Extensive efforts and funds have been devoted to obtaining the necessary population and harvest information for management purposes. Staff have statewide coverage in area offices and conduct field visits and research and management programs throughout the state, ensuring an on-the-ground connection to the wildlife resources and those who depend on them for a variety of uses, consumptive and non-consumptive. Management reports are provided on a regular basis for public distribution as well as at Board of Game meetings. ADF&G has a constitutional requirement that the fish and wildlife belonging to the state “... shall be utilized, developed and maintained on the sustained yield principle,

subject to preferences among beneficial uses.” Management decisions made by staff are based on information gathered and guidance from existing policies and statutes and go beyond mere assurances. We request that the NPS recognize this information in the Errata Sheet.

**Action Requested:** Please reference the management reports and harvest information found in Attachments C and D by report numbers and citations in the Errata Sheet.

12. We support the 2018 EA Appendix F – ANILCA Section 810 Subsistence Evaluation and Finding which concludes that while there will be competition between Federally qualified subsistence users and sport hunters as a result of the proposed rule, there will not be a significant impact on subsistence uses. This conclusion is additionally supported by the low level of additional take expected as a result of the proposed rule. As noted elsewhere in our comments, the specific activities that would take place following rescission of the 2015 rule are not widely conducted by users from outside the local area, or without connections to the local area.

**Action Requested:** Please note the information indicating a likely low level of take in the Errata Sheet as relating to this section.

### **EA Page Specific Comments**

We request these points be documented on an Errata Sheet in the final finding for the EA.

Page 2, footnote 1. UCUs are part of the geographic foundation for data collection, but wildlife management decisions are typically not made at the UCU level. The data generated at the UCU level are intended for the development of management actions at the subunit and GMU scale.

Page 3, Alternatives, first full paragraph. We disagree with the perspective of the NPS that they need only attempt to address management actions with the State Board of Game if “...appropriate and practicable.” This describes a discretionary basis for NPS to work cooperatively with the State and others on resolving issues that was not intended in either ANILCA or other federal legislation, policy or Executive Orders, as has been described in detail elsewhere in our comments. Unless determined to be an emergency, the NPS is obligated to consult with the State when considering regulatory action prior to its implementation.

Page 3, 2.3 Alternatives Considered by Eliminated from Detailed Study. There is no explanation as to why this alternative “...would likely be more restrictive with regard to hunting methods than the proposed action.” However, we do agree with the NPS that such an approach (prohibiting state harvest methods unless specifically authorized in NPS areas) would not be consistent with ANILCA’s approach in Section 1313 to the management or regulation of

mandating hunting, fishing or trapping within preserves, where State actions may only be superseded for those causes provided in 1313, or as otherwise provided specifically by Congress.

Page 4, 3.2 Wildlife, third paragraph. We request that the Errata Sheet for this EA include the clarifying information that the take of bears over bait is allowed under 36 CFR Subpart V—Special Regulations—Wrangell-St. Elias National Park and Preserve § 13.1902 Subsistence, including the use of “...human-produced food items as bait...”

Page 4, 3.2.1., second paragraph: The EA states that wildlife and habitat in national preserves are managed “for the conservation of natural healthy populations of wildlife, natural ecosystems and processes, and natural behaviors of wildlife.” While only generally cited as “pursuant to ANILCA and NPS policies” the reference to conservation of “natural and healthy populations” comes from ANILCA Section 815(1) and applies to national parks and monuments, whereas the directive in Section 815(1) for preserve management is conservation of “healthy” populations (Note the EA accurately references “healthy” populations on page 9). The source of “natural ecosystems and processes” and “natural behaviors of wildlife” appear to come from the NPS 2006 Management Policies, Section 4.4.1 General Principles for Managing Biological Resources. In addition, this discussion indicates sport and federal subsistence harvest are “allowed” uses; however, ANILCA authorized (i.e., shall be allowed) hunting, both subsistence and non-subsistence (i.e. sport), as non-discretionary uses. Therefore, consistent with NPS policy, which also distinguishes between allowed and mandated uses, these activities should be described as “mandated” uses. We therefore request the following edits be documented on an Errata Sheet in the final finding for the EA:

Relative to wildlife and habitat, pursuant to ANILCA and NPS national policies, national preserves in Alaska are to be managed for the conservation of ~~natural and~~ healthy populations of wildlife (Section 815(1)), natural ecosystems and processes, and natural behaviors of wildlife (2006, Section 4.4.1 General Principles for Managing Biological Resources). These mandates have largely been satisfied. Sport and federal subsistence harvest of wildlife are ~~allowed non-discretionary uses~~ legislatively mandated by ANILCA in national preserves in Alaska and are governed by a combination of State and federal laws and regulations (see Hilderbrand et al. 2013a for a review of wildlife stewardship on NPS land in Alaska).

Page 4 to 9, 3.2.2, Effects on Wildlife of Alternative 1, use of bait for the harvest of bears. While we support the eventual conclusion of the NPS to again allow use of bait for the harvest of bears under state regulations we would like to provide the following information in support of the NPS conclusion.

Food conditioning bears due to bear baiting is a recurring theme throughout the EA, being found in section 3.2.2 on pages 5 and 9, with an additional statement on page 9 that says the proposed action could result in increased Defense of Life and Property (DLP) kills due to food conditioning. This statement is found again in section 3.3.2 on page 11 in the context of bears being attracted to federal hunting and fishing camps and posing public safety concerns due to sport hunters baiting bears, and that statement is again repeated in the conclusion of section 3.3.2 on page 12. ADF&G has repeatedly informed the NPS, BOG and general public that we have no evidence to support the claim that use of bait leads to food conditioned bears. Instead all

information indicates just the opposite, which is that in areas where bear baiting is allowed there are fewer Defense of Life and Property (DLP) and agency kills.

Baiting is a regulated use with multiple requirements on the establishment of bait stations including when, where, and how many bait stations may be placed in the field by a hunter, as well as what may be used as bait, all with the intention of avoiding habituation or public safety concerns. And, while the EA refers to types of bait being used as “junk food”, the predominately used baits are dry dogfood and popcorn, primarily due to weight considerations, availability and cost. “Junk food” which we presume NPS intended to cover such human derived items as donuts or other sweetened foods, are not as readily available in the necessary quantities or reasonable cost in Alaska, though they are used.

Justification by the NPS for prohibiting the harvesting bears using bait was explained in the 2014 EA:

Response to Comments, 31

The NPS proposed prohibiting the harvest of brown bears over bait to avoid public safety issues, to avoid food conditioning bears and other species, and to maintain natural bear behavior as required by the NPS legal and policy framework.

Response to Comments, 32.

However, this provision is not based on how many bears are harvested or whether that harvest would impact bear population levels. **It is based on the legal and policy framework that governs national preserves and calls for maintaining natural ecosystems and processes and minimizing safety concerns presented by food-conditioned bears. (Emphasis added)**

However, NPS has subsequently reconciled its concerns for use of bait under NPS legal and policy framework governing national preserves for the harvest of bears in at least Wrangell-St. Elias Preserve, where use of bait is allowed under the following NPS Special Regulation, approved in 2017:

Subpart V—Special Regulations—Wrangell-St. Elias National Park and Preserve

§ 13.1902 Subsistence.

(d) Use of bait for taking bears. (1) The superintendent may issue individual, annual permits allowing the use of human-produced food items as bait for taking bears upon a finding that:

(i) Such use is compatible with the purposes and values for which the area was established (e.g. does not create a user conflict); and

(ii) The permit applicant does not have reasonable access to natural bait that may be used under § 13.480(b)(1).

(2) Permits will identify specific locations within the park area where the bait station may be established and will not include areas where the use of such materials could create a user conflict.

While the above was promulgated under subsistence regulations, the use (baiting bears) is functionally the same for non-subsistence users and it is evident that the NPS has successfully reconciled its concerns for use of human foods as bait, public safety concerns and maintaining natural bear behavior to allow the use within preserves, which is regardless of whether the use is for subsistence or non-subsistence uses.

The Alaska Region is not alone in providing for the use of bait stations for hunting bears, with four Lower 48 park units permitting the use. We do note however, that the likelihood of bear baiting on preserves becoming a widespread use and significantly increasing harvest is unlikely. Establishing, maintaining and cleaning up bear bait stations involves significant labor and materials and is typically conducted off of road or trail systems. All but one preserve in Alaska is many miles from the road system and hunters are not likely to use those areas for this use due to the extra cost and effort involved when easier to access locations are available.

The conclusion in the EA regarding the effects of bear baiting is not entirely clear and we would like to clarify our position, using previous work by the NPS to assist. Specifically, on the subject of bear baiting in 2013, Hilderbrand noted:

However, an analysis of black bear baiting on Alaska national preserves from 1992-2010 concluded that, "Little to no population-level effects arose from the practice of bear baiting on NPS lands. Rather, the complexity surrounding the practice of bear baiting is centered on the management goals of minimizing food-conditioning of bears, fostering public safety, preventing defense of life and property killing of individual bears, and maintaining natural processes and behaviors" (Hilderbrand et al. 2013b).

In addition to the recognition that little to no population level effects arose from bear baiting on NPS lands, we also believe the other complexities noted above can and have been resolved by the NPS. Legally regulated bear baiting is not food conditioning or habituating, and it does not lead to bears to become public safety concerns, increase DLPs, as shown by the NPS accommodation for the use in Wrangell-St Elias. While it may intercept with natural processes and behaviors, as do other human uses such as wildlife viewing, hiking or photography, the effect is minor and transitory with no long term negative consequences. Use is not expected to increase in a significant manner with the removal of the NPS prohibition of the state allowance due to the remote nature of preserves and the logistical complexities of maintaining bait stations and expected low levels of use. We request the preceding information be placed in an Errata Sheet as supporting information for the NPS conclusion that it "...expects healthy populations of wildlife would continue to exist in a manner consistent with the range of natural variability with regards to abundance, diversity and distribution."

Page 5, 3.2.2, Effects on Wildlife of Alternative 1, last paragraph. The analysis should also consider that 54 wolves out of 1750 taken in summer months equals only 3.1% of the take. Since preserves only make up 10.4% of the GMUs under consideration it can be implied that 5 or fewer wolves come from preserve lands during summer months. It is also distinctly be possible that all wolves were taken in GMU areas that are outside of preserve lands considering the remoteness of preserves from year round communities and the low level of hunting activity in or near preserves during those months.

Page 7. The description of harvest of brown bears over bait on the Kenai Peninsula should clarify that “the percentage of brown bears taken over bait” refers to the percentage of the total bears *harvested*, not of the total bear population.

Page 8. Given the remoteness and lack of development in the vast majority of lands surrounding Alaska preserves, it is unlikely that harvest levels for most species differ significantly on either side of most preserve boundaries. The border effects cited here are most relevant to areas with significant hunting pressure or development outside of the borders. Also, Congress extensively debated the concept of wildlife sanctuaries and which specific areas would be closed to hunting, with many proposed boundary changes during the legislative process leading to passage of ANILCA. Congress solidified its decisions in the final version of ANILCA in Section 101(d), with the statement that:

This Act provides sufficient protection for the national interest in the scenic, natural, cultural and environmental values on the public lands in Alaska, and at the same time provides adequate opportunity for satisfaction of the economic and social needs of the State of Alaska and its people; accordingly, the designation and disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between the reservation of national conservation system units and those public lands necessary and appropriate for more intensive use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units, new national conservation areas, or new national recreation areas, has been obviated thereby.

Page 9, Conclusion. The NPS has authority under ANILCA Section 1313 to close preserves for four specific reasons: public safety, administration, floral and faunal protection, or public use and enjoyment. Congress mandated hunting in Alaska preserves, and the NPS does not have authority to restrict hunting for “NPS resources and values” that do not fall under Section 1313’s four categories. We request this statement be corrected in the Errata Sheet.

Page 11. Section 3.3.2 One of the key missing points is that under Alternative 1 state managed subsistence activities would resume. This would be in addition to general hunting.

Page 11, 3.3.2 Effects on Subsistence of Alternative 1, third paragraph. The third sentence contains a typographical error. The 2017 Subsistence Collections rule limited the types of bait federal subsistence users could use for bears. If finalized, this proposed rule would allow *sport* hunters to use a broader range of baits than those hunting under federal subsistence regulations. We note that changes to the 2017 rule are needed for logical consistency and to reduce confusion for the benefit of the public.

Page 13, 3.4.1 Current Public Use and Experience. A more accurate portrayal of the current public use would include the following information:

- The only national preserve located on the road system is Wrangell-St. Elias National Preserve, and such road access is extremely limited.
- The visitor numbers provided in the EA are for NPS accounting purposes and do not reflect the number of visitors who set foot within a park or preserves. Nor do they reflect the number of visitors to preserves where sport hunting is allowed. NPS park units typically do not distinguish between visitation to the preserve portion versus the park

portion of park units, i.e., Denali National Park and Preserve visitation is for all of the Park and Preserve, although the vast majority of visitors stay along the Park Road within the Park, or visit the Ranger Station in Talkeetna, far from the Park and Preserve. A more detailed analysis of the visitor numbers reveals:

- Out of the 2,786,065 visitors total, there were 1,350,602 visitors to national preserves where sport hunting is allowed. There were 1,435,463 visitors to national parks and monuments where sport hunting is prohibited.
- There are several road accessible park units (Denali, Kenai Fjords, Klondike Gold Rush, and Wrangell-St. Elias), but only one preserve (Wrangell-St. Elias) is road accessible. The vast number of visitors for the “Park and Preserve” combined park units are actually visitors to the road-accessible portion of the park, not the preserve, or are not visitors to the park at all, but rather visitors to community-based visitor centers far from the parks (Talkeetna, Kotzebue, Copper Center, Eagle, etc.). These visitor centers attract tourists visiting the communities and motorists driving along the highway, but most people going to the visitor centers never actually set foot in the park for which their visit is counted. For example:
  - Gates of the Arctic: Out of the 11,177 visitors for NPS accounting purposes, 756 visitors actually set foot within the park or preserve.
  - Katmai: Out of the 37,818 visitors for NPS accounting purposes, we estimate that only around 5,500 visitors set foot within the preserve. According to the 2014 Katmai NPP visitor survey<sup>30</sup>, less than 14% of visitors reported visiting a preserve location. Extrapolated to the 2017 visitation, this would be approximately 5,300 visitors. This is consistent with 2005-2009 data which shows an average of 5,400 annual visitors to Katmai Preserve<sup>31</sup>. The vast majority of the visitors within the 2005-2009 time frame came for the purpose of sport fishing, and approximately half of the total preserve visitation was to Moraine-Funnel Creek area in the month of August.
  - Yukon Charley: Out of the 952 visitors for NPS accounting purposes, only 285 visitors actually set foot within the preserve.

Page 14, second paragraph. The description of effects to opportunities to view wildlife does not accurately reflect the geography of the preserves in relation to areas used by visitors for wildlife viewing, particularly access corridors.

- The only road accessible preserve is Wrangell-St. Elias National Preserve, which is also the only preserve where bear baiting regularly occurred in the past (34 total black bears taken over bait between 1992 and 2010. See Hilderbrand, 2013). The NPS website for the Park and Preserve openly acknowledges that wildlife viewing is difficult from the roads

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<sup>30</sup> NPS. 2014. Katmai National Park & Preserve visitor study summer 2014. SESRC Technical Report 15-023.

<sup>31</sup> NPS. 2012. Hunting guide concessions in Katmai National Preserve Environmental Assessment June 2012.

through Wrangell-St. Elias because of the “six to eight foot high screen of willow and alder along the roadside”:

*Why is it so hard to see wildlife from Nabesna Road or the McCarthy Road? It's due in part to the natural movements of animals and birds but it's also because of the thick brush that grows along much of the roadsides during the summer<sup>32</sup>.*

Given this information, it is unlikely that taking fewer than two bears over bait per year along dozens of miles of road is likely to affect wildlife viewing whatsoever.

- The two Denali National Preserve areas are far from where the vast majority of wildlife viewing occurs in Denali National Park. We are unaware of any significant wildlife viewing use in the areas of the Park near the Preserves, or within the Preserves itself. The former restricted area outside of the Park as discussed in the EA is on the opposite side of the Park from the preserve portions. The preserve is almost 100 miles from the former restricted area and on the other side of the Alaska Range. There is little to no relevance of the EA's information on the formerly restricted area outside of the Park, or Denali Park Road wildlife sightings, to hunting on the preserves. The Park Road terminates 30 and 60 miles from the two preserve areas. The southern preserve area is separated from the Park Road by the Alaska Range.
- Additionally, the EA should note that further reviews and analysis of the study (NPS2013c) referenced on page 14 regarding opportunities for observations of wolves along the Denali Park Road show that the study was observational and simply found a negative correlation between “buffer years” and “sightings.” If NPS believes that wolf populations in the northeast corner of the Park are relevant to activities 60 miles away in the preserve areas, the EA should include more recent data showing the wolf population is increasing since 2014. Because the data were observational, causation cannot be established and furthermore the main variable interpreted was the presence of a buffer not number of wolves harvested. The cited paper did have a wolf harvest variable, but there is little assurance whether the correlation is negative or positive and updated analyses only supported a weak effect of the buffer and no effect of harvest. Decline in viewing opportunities were more closely correlated to lack of prey during certain years and wolves no longer denning along the road. Further, when referencing actual sightings by Denali National Park visitors it needs to be noted that sighting data used included sightings by NPS staff and not just members of the visiting public, thus skewing conclusions that could be made. Since the referenced study was released in 2014 there have been collaboration efforts between NPS staff at Denali and in Fairbanks and ADF&G to interpret the Denali wolf sighting data. These staff have reached mutual agreement that the data do support some evidence of a weak correlation between the restricted years and lower wolf sightings in the Park. Thus, the EAs conclusion that reductions in opportunities to view either wolves or bears under the proposed action is

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<sup>32</sup> <https://www.nps.gov/wrst/planyourvisit/viewing-wildlife.htm>

inconclusive at best, particularly considering that harvest is not likely to increase in the preserve areas, which are many miles away from the formerly restricted area outside of the Park and associated road system where the viewing studies were conducted.

- There should be some acknowledgement that Congress extensively considered the impacts to wildlife viewing from hunting during ANILCA's passage. The boundaries for Alaska's monuments, parks, and preserves were frequently drawn as they are because of that consideration. We understand the need to describe any impacts to wildlife viewing from hunting, but in the decision making process NPS needs to weigh Congress' mandate that the preserves be open to sport hunting, while monuments and parks be open only for subsistence hunting and for other purposes, including wildlife viewing and scientific research.

Page 15, Cumulative Effects, second paragraph. It should be noted that the bulk of off-road vehicle (ORV) trail improvements and use are limited to use by federally qualified subsistence users conducted under Section 811 of ANILCA.

Page 16-19, Section 3.5 Wilderness Character: While we agree with the conclusion that the proposed action would not negatively impact wilderness character overall, the discussion of impacts lacks recognition that Congress authorized hunting as a mandated use in most designated wilderness areas in Alaska, including designated wilderness within national preserves. As a result, the opportunities for solitude or primitive and unconfined recreation in wilderness includes hunting. Hunting should therefore be accurately described as a mandated use that is occurring in a wilderness setting.

The Wilderness Act preserved the status quo of state management of fish and wildlife in wilderness<sup>33</sup>. Wilderness purposes are supplemental to the purposes of the underlying system<sup>34</sup>, and therefore whether hunting is allowed in a wilderness area is determined by the unit's enabling legislation—where the underlying unit allows hunting, hunting continues in wilderness. In Alaska preserves, ANILCA specifically allows hunting. State managed hunting in wilderness is not an activity to be allowed or prohibited based on a minimum requirements analysis, which is what the EA's wilderness section resembles. We understand that NPS is attempting to describe effects to wilderness character in this section, but without essential context that explains the legal status of hunting in preserve wilderness, including the Wilderness Act Section 4, the EA gives the impression that state-regulated hunting can be prohibited or restricted on the basis of effects to wilderness character. That the NPS prohibited specific activities in 2015 does not now make it appropriate to use wilderness as a criterion for whether to allow the previously prohibited

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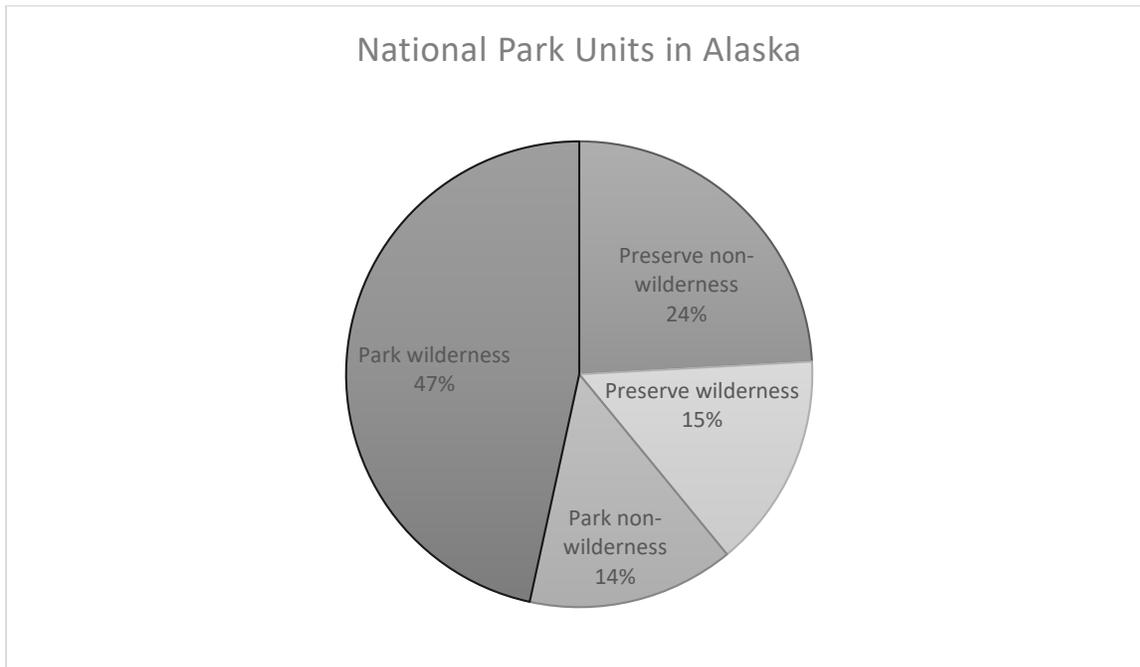
<sup>33</sup> Wilderness Act of 1964 Section 4(d)(8) "Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to fish and wildlife in the national forests." Note: The Wilderness Act only designated national forest wilderness, but as the National Wilderness Preservation System (NWPS) expanded beyond national forests this concept applied to all lands in the NWPS.

<sup>34</sup> Wilderness Act of 1964 Section 4(a) "The purposes of this Act are hereby declared to be within and supplemental to the purposes for which national forests and units of the national park and wildlife refuge systems are established and administered..."

hunting activities in wilderness. State-regulated hunting is not a federal action subject to either NEPA or the minimum requirements analysis under the Wilderness Act.

Furthermore, this section overstates the impacts of the specific hunting activities on wilderness character, “The proposed action would adversely impact the natural and untrammelled qualities of wilderness by affecting numbers of predator and prey in localized areas and intentionally altering wildlife behavior” (page 18). Vast areas of preserve wilderness are unlikely to have any additional take under these specific activities and only four of the fourteen Alaska preserves include wilderness: Katmai (approx. 60,018 acres), Lake Clark (approx. 347,566 acres), Noatak (approx. 5,820,726 acres), and Wrangell-St. Elias (approx. 1,940,896 acres)<sup>35</sup>.

Similarly, the analysis of impacts to the undeveloped quality of wilderness (page 18) does not recognize that ANILCA Section 1316 allows for temporary facilities on all lands where the take of fish and wildlife is authorized, including designated wilderness. Evaluating the impacts of uses authorized in the wilderness areas’ enabling legislation without this recognition skews the analysis and misleads the public.



ANILCA Section 1316 also authorized the “continuation of existing uses, and the future establishment, and use, of temporary campsites, tent platforms, shelters, and other temporary facilities and equipment” on all public lands where the taking of fish and wildlife is authorized by ANILCA or other state and Federal law. Therefore, in addition to state regulatory requirements that ensure bait station are temporary, the discussion should recognize the exception established in the designated wilderness’ enabling legislation for temporary facilities

<sup>35</sup> GIS file nps\_boundary available at <https://irma.nps.gov/DataStore/>

associated with the take of fish and wildlife. Additionally, there are no off-highway vehicle trails open to sport hunters in preserve wilderness, which results in limited access for bear baiting particularly.

Page 29, Appendix C, third bullet “Taking wildlife from an aircraft, off-road vehicle, motorboat, motor vehicle or snowmachine (36 CFR 24(g)(3))”:” No reason is provided for dismissing this action from analysis.

Page 30, Appendix C, first full bullet. The EA should include the fact that the state has not attempted to implement any predator control program for any species on any NPS unit and has no plans to do so. Predator control programs on NPS administered lands could only be implemented in cooperation with the NPS.

## **ATTACHMENT C: BEAR, WOLF, AND COYOTE POPULATION AND HARVEST INFORMATION**

During the summer of 2018 NPS and ADF&G staff cooperated on information needs for the NPS EA. As part of that process ADF&G reviewed and updated comments that had been submitted to the NPS regarding the 2013 Compendium process where the issues regarding harvest of bears, wolves and coyotes had been considered under that process. The information provided here includes population and harvest information for bears (black and brown), wolves and coyotes occurring in Game Management Units that are within or border preserves areas that are also under consideration in this separate rule making process. While the information was not subsequently used or analyzed by the NPS in the 2018 EA, it is useful to show actual population and harvest levels of species under consideration. The information provided supports the state's position, also supported by conclusions in the 2018 EA, that harvest of these species is low and would not cause impairment at any level.

(NOTE: The Page # references in this part of the document are referencing the location of the text in the original 2013 State of Alaska comments submitted in response to the NPS Compendium for that year. These sections were clipped from that document and the information/data was updated by ADF&G Area Management Biologists with responsibility for those areas.)

Bears

Page 8

GMU 12, 19C, 19D, 20C, 20E, 21C, 21D, 24C, 24D

COMMENTS REGARDING SPECIFIC PROPOSALS AT 13.40(e)

Regulated take of brown bears over black bear baiting stations

The Alaska Board of Game (state Board) adopted general harvest regulations at the March 2012 meeting, and subsequent meetings, that relate to bear baiting and brown bears. These regulations were not promulgated for the purposes of predator control, nor are they likely to have that effect. Rather, they were in response to surplus yield and public requests to utilize this yield. What the regulations provide for is the sustained taking of brown bears at black bear baiting stations in Game Management Units (GMU) 12, 19D, 20C, 20E, 21C, 21D, 24C & 24D during open black bear baiting season and with a bear baiting permit. In adopting these regulations the state Board fully explored and considered the impact that adoption of this take would have on sustained yield and determined it would not affect the conservation of brown bears in these areas. The same restrictions that apply to black bear baiting apply to brown bears, except that salvage of brown bear meat is only required if a brown bear is taken in a Brown Bear Subsistence Area, and hunters must comply with seasons and bag limits for brown bears. Currently the regulations state that in GMU 20C, 21C, 21D, 24C, and 24D one brown bear may be taken per regulatory year; and in GMU 19D two brown bears may be taken per regulatory year (note, GMU 19 C and 19D each contain only a few square miles of Denali Preserve).

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GMU 20C

Denali National Preserve

The Department has no biological concerns regarding the harvest of brown bears over black bear bait stations in GMU 20C. No black bear bait stations have been documented within Denali Preserve during the 2012-2016 period, though some may have been placed near the preserve according to permit information. Accordingly, this regulation will likely have no biological effect on the brown bear population in the preserve. This trend should continue since black bear habitat is more easily accessed by area hunters near the Tanana River (where most black bear bait stations are placed). Additionally, brown bear harvest in and near the preserve is extremely low. On average, sixteen brown bears were harvested annually in all of GMU 20C during the 2012-2016 period, with an average of eight taken over bait stations, however none were confirmed to have been harvested from hunting taking place in Denali Park or Preserve.

Higher harvest levels would be sustainable and consistent with the conservation of brown bears and sustained yield management principles. The Department monitors brown bear harvest; in the unlikely event harvest increased beyond sustainable levels, the Department would close the season by emergency order if immediate action was necessary, and/or by recommending more conservative seasons, bag limits, and/or methods to the state Board for future hunting seasons.

Based on the above and without scientific data or analysis to the contrary, the assertion that the state regulation allowing harvest of brown bears over black bear bait stations in GMU 20C has the potential to affect “natural” (undefined) populations or impair park resources is unsubstantiated.

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GMU 12

Wrangell-St. Elias National Preserve

The Department has no biological concerns regarding the harvest of brown bears over black bear bait stations in GMU 12 and this regulation will likely have no biological effect on the brown bear population in the preserve. The estimated brown bear population in GMU 12 is 350–425 bears. On average, 23 brown bears were harvested annually during regulatory years 2012-2013 through 2016-2017 in GMU 12. Of these, an average of five brown bears were harvested at bear bait stations and an average of 12 were harvested within UCUs that include a portion of preserve land. This harvest is within sustainable levels and consistent with the conservation of brown bears and sustained yield management principles. The Department monitors brown bear harvest; in the unlikely event harvest increased beyond sustainable levels, the Department would close the season by emergency order if immediate action was necessary, and/or by recommending more conservative seasons, bag limits, and/or methods to the state Board for future hunting seasons.

Based on the above and without scientific data or analysis to the contrary, the assertion that the state regulation allowing harvest of brown bears over black bear bait stations in GMU 12 has the potential to affect “natural” (undefined) populations or impair park resources is unsubstantiated.

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GMU 20E

Yukon-Charley Rivers National Preserve

Department has no biological concerns regarding the harvest of brown bears over black bear bait stations in GMU 20E, including Yukon-Charley Rivers Preserve. This regulation will likely have no biological effect on the brown bear population in the preserve. The estimated brown bear population in GMU 20E is 320–394 brown bears and average annual harvest was 18, of which an average of three were taken at bear bait stations during regulatory years 2012-2013 through 2016-2017. This harvest likely had no biological effect on the unit wide population trend as the harvest was distributed throughout GMU 20E and was approximately 5% of the total estimated population. On average, two bears per year during regulatory years 2012-2013 through 2016-2017 were harvested within UCUs that include a portion of preserve land. Higher harvest levels would be sustainable and consistent with the conservation of brown bears and sustained yield management principles.

The Department monitors brown bear harvest; in the unlikely event harvest increased beyond sustainable levels, the Department would close the season by emergency order if immediate action was necessary, and/or by recommending more conservative seasons, bag limits, and/or methods to the state Board for future hunting seasons.

Based on the above and without scientific data or analysis to the contrary, the assertion that the state regulation allowing harvest of brown bears over black bear bait stations in GMU 20E has the potential to affect “natural” (undefined) populations or impair park resources is unsubstantiated.

Wolves and Coyotes

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GMU 9E

Aniakchak National Preserve

Wolves are common and stable in GMU 9E (13-18 wolves/1000 miles<sup>2</sup> in GMU 9). The current hunting seasons have not increased harvest significantly. Wolf hunting season dates in GMU 9 are August 10 through June 30. Average annual take in GMUs 9B, 9C, and 9E are sustainable (average of 74 wolves per year since 2000). Seven wolves, on average, have been taken annually in May after the hunting season was extended to May 25 in regulatory year 2005-2006. No wolves have been taken in June since the hunting season was extended to June 30 in regulatory year 2010-2011. Only two wolves have been taken during the month of May within the portions of GMU 9E which contain UCUs that include preserve land since regulatory year 2005-2006 and zero wolves were taken during the months of June or July within the portions of GMU 9E which contain UCUs that include preserve land, and no wolves have been harvested during June or July in Aniakchak Preserve during the period 2011-2016

Coyotes recently colonized the area but are uncommon and seldom harvested. The Department has no indication that take of coyotes during hunting season dates (August 10 – May 25; October 1 – April 30 trapping) has had any biological effect on coyote populations in these areas.

Therefore, current hunting seasons are not likely to increase harvest beyond sustainable levels and will not disrupt behaviors, or affect wolf, coyote, or prey densities. The Department monitors harvest; in the unlikely event harvest increased beyond sustainable levels, the Department would close the season by emergency order if immediate action was necessary, and/or by recommending more conservative seasons, bag limits, and/or methods to the state Board for future hunting seasons.

Based on the above and without scientific data or analysis to the contrary, the assertion that the state regulation that expands wolf and coyote hunting seasons in GMU 9E has the potential to affect “natural” (undefined) populations or impair park resources is unsubstantiated.

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GMU 19C, 19D and 20C

Denali National Preserve

Wolf hunting season dates are August 10 through May 31 in GMU 19C and 19D, and August 10 through May 31 in GMU 20C, with that portion of 20C near the Stampede Corridor being August 10-April 15. Harvest in these GMUs has been low, with an average of three wolves harvested per year during regulatory years 2007–2008 through 2011–2012 within UCUs that include a portion of preserve land.

Wolf densities in Units 19C and 19D, and 20C are within the range reported in the literature for wolves in Interior Alaska where ungulate densities are low (7-25 wolves/1000mi<sup>2</sup>). In GMU 19D, the pre-wolf control density was estimated at 17 wolves/1000 mi<sup>2</sup> in 2001. After six years of wolf control (2004-2009), the population density within the control focus area was 7.2–7.8 wolves/1000 mi<sup>2</sup> in 2009 and has remained stable. In the control area, the Department manages the control program to ensure that a wolf population persists in GMU 19D East. The wolf population outside the wolf control focus area was not affected by wolf control, and the GMU 19D East density (which includes a small portion – 260 sq mi, or about 2% of Denali Preserve) was 14 wolves/1000 mi<sup>2</sup>. Harvest, including wolf control take, averaged 25 wolves per year in GMU 19D. There is no wolf control in 19C, which only includes about 84 sq mi, or ~ 1% of Denali Preserve.

NPS researchers documented a sharp decline in the wolf population in southern GMU 20C during 1991–1994 (from 137 to 72 wolves), likely due to the decline of the Denali caribou herd. The wolf population then fluctuated at that comparatively lower level of between 75 and 112 wolves (15–20 wolves/1,000 mi<sup>2</sup>) during 1995–2006. Results of the northeastern GMU 20C wolf census in 2012 also reflect comparably low wolf numbers (10.7 wolves/1,000 mi<sup>2</sup>). GMU 20C harvest averaged 20 wolves per year from 2012-2016, a 22% harvest rate, which is considered sustainable.

Coyotes are common in 19D and present in 19C, but few trappers target them and harvest is low. The Department has no indication that take of coyotes during May through September has had any biological effect on coyote populations in these areas. These seasons provide hunters with the legal ability to take coyotes and wolves should the need or opportunity arise.

Therefore, current hunting seasons are not likely to increase harvest beyond sustainable levels and will not disrupt behaviors, or affect wolf, coyote, or prey densities. The Department

monitors harvest; in the unlikely event harvest increased beyond sustainable levels, the Department would close the season by emergency order if immediate action was necessary, and/or by recommending more conservative seasons, bag limits, and/or methods to the state Board for future hunting seasons.

Based on the above and without scientific data or analysis to the contrary, the assertion that the state regulation that expands wolf and coyote hunting seasons in GMU 19C and 19D, and 20C has the potential to affect “natural” (undefined) populations or impair park resources is unsubstantiated.

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GMU 24 and 26B

Gates of the Arctic National Preserve

Wolves are common, stable, and lightly harvested in GMUs 24 and 26B. Wolf hunting season dates in GMU 24 are August 10 through May 31. GMU 24 harvest has been low, with an average of four wolves harvested per year during regulatory years 2007–2008 through 2011–2012, and four wolves harvested per year from 2012–2013 through 2017–2018 within UCUs that include park and preserve lands. No wolves were reported harvested from 2007–2008 through 2017–2018 in the GMU 24 preserve lands portion of Gates of the Arctic National Park and Preserve.

The estimated fall population for the entire GMU 24 was 375–557 (14–21 wolves/1,000 mi<sup>2</sup>) in 56–68 packs during regulatory years 2010–2011 through 2014–2015, with probably little change since regulatory years 1996–1997 through 1997–1998. Wolf numbers were highest (25–38 wolves/1,000 mi<sup>2</sup>) and probably stable in southern GMU 24 (GMU 24D). Wolf populations were moderate in northern Unit 24 (Brooks Range portion of Units 24A and 24B; 13–19 wolves/1,000 mi<sup>2</sup>). Wolf populations were lowest in central Unit 24 (GMU remainder; 10–15 wolves/1,000 mi<sup>2</sup>).

Wolf control programs were conducted in GMU 24B in spring 2013 through spring 2016, which resulted in the removal of 59 wolves. However, wolf control did not occur on park lands. The predator control area is 1,360 mi<sup>2</sup>, was approximately 10% of the area of GMU 24B. The removal of 59 wolves during predator control activities over the course of 4 years, constituted approximately less than 6% of the annual GMU 24 wolf population estimate, and the Unit 24B population was projected to return to pre-control abundance by 2019.

Trapper questionnaire reports and biologists’ sightings indicate that coyotes are uncommon and seldom harvested. The occasional sightings of coyotes and rare coyote harvest in GMU 24 likely represent dispersing individuals from the south, rather than a resident coyote population. The Department has no indication that take of coyotes during May through September has had any biological effect on coyote populations in these areas. These seasons provide hunters with the legal ability to take coyotes and wolves should the need or opportunity arise.

Therefore, current hunting seasons are not likely to increase harvest beyond sustainable levels and will not disrupt behaviors, or affect wolf, coyote, or prey densities. The Department monitors harvest; in the unlikely event harvest increased beyond sustainable levels, the Department would close the season by emergency order if immediate action was necessary,

and/or by recommending more conservative seasons, bag limits, and/or methods to the state Board for future hunting seasons.

Based on the above and without scientific data or analysis to the contrary, the assertion that the state regulation that expands wolf and coyote hunting seasons in GMU 24 and 26B has the potential to affect “natural” (undefined) populations or impair park resources is unsubstantiated.

Gates of the Arctic National Preserve encompasses a very small portion of GMU 26B. A total of six wolves or fewer were harvested in the Preserve portion of GMU 26B during the period 2014-2018. Wolves harvested were reported as being taken in the “Itkillik River” drainage, therefore some of the wolves harvested may have been in that portion of the drainage that is outside of the Preserve

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GMU 9C

Katmai National Preserve including Alagnak Wild River

Wolves are common and stable in GMUs 9C (13-18 wolves/1000 miles<sup>2</sup> in GMU 9). The current hunting seasons have not increased harvest significantly. Wolf hunting season dates in GMU 9 are August 10 through June 30. Average annual take in GMUs 9B, 9C, and 9E are sustainable (average of 74 wolves per year since 2000). Seven wolves, on average, have been taken annually in GMU 9 in May after the hunting season was extended to May 25 in regulatory year 2005-2006, and a total of only two have been taken in UCUs that are within or partially within Katmai Preserve. No wolves have been taken in June since the hunting season was extended to June 30 in regulatory year 2010-2011.

Coyotes recently colonized the area but are uncommon and seldom harvested. The Department has no indication that take of coyotes during hunting season dates (August 10 – May 25; October 1 – April 30 trapping) has had any biological effect on coyote populations in these areas. These seasons provide hunters with the legal ability to take coyotes and wolves should the need or opportunity arise.

Therefore, current hunting seasons are not likely to increase harvest beyond sustainable levels and will not disrupt behaviors, or affect wolf, coyote, or prey densities. The Department monitors harvest; in the unlikely event harvest increased beyond sustainable levels, the Department would close the season by emergency order if immediate action was necessary, and/or by recommending more conservative seasons, bag limits, and/or methods to the state Board for future hunting seasons.

Based on the above and without scientific data or analysis to the contrary, the assertion that the state regulation that expands wolf and coyote hunting seasons in GMU 9C has the potential to affect “natural” (undefined) populations or impair park resources is unsubstantiated.

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GMU 9B and 19B

Lake Clark National Preserve

Wolves are common and stable in GMUs 9B (13-18 wolves/1000 miles<sup>2</sup> in GMU 9). The current hunting seasons have not increased harvest significantly. Wolf hunting season dates in GMU 9 are August 10 through June 30. Average annual take in GMUs 9B, 9C, and 9E are sustainable (average of 74 wolves per year since 2000). Seven wolves, on average, have been taken annually in May after the hunting season was extended to May 25 in regulatory year 2005-2006. No wolves have been taken in June since the hunting season was extended to June 30 in regulatory year 2010-2011. Zero wolves were taken during the month of May within the portions of GMU 9B which contain UCUs that include preserve land since regulatory year 2005-2006, and zero wolves were taken during the month of June within the portions of GMU 9 which contain UCUs that include preserve land. During 2011-2016 no wolves were taken during June in Lake Clark Preserve.

Coyotes recently colonized the area but are uncommon and seldom harvested. The Department has no indication that take of coyotes during hunting season dates (August 10 – May 25; October 1 – April 30 trapping) has had any biological effect on coyote populations in these areas. These seasons provide hunters with the legal ability to take coyotes and wolves should the need or opportunity arise.

Wolves are common and stable in GMU 19B (14 – 21 wolves/1000 mi<sup>2</sup>). Wolf hunting season dates in GMU 19B are August 1 through May 31. Average annual take has been low, with one wolf harvested per regulatory year during 2007–2008 through 2011–2012 within the portions of GMU 19B which contain UCUs that include preserve land. Throughout all of GMU 19B one wolf per year, on average, was harvested during May or August.

Coyotes recently colonized the area and trapper questionnaire reports and biologists' sightings indicate they are uncommon and seldom harvested. The Department has no indication that take of coyotes during May through September has had any biological effect on coyote populations in these areas. These seasons provide hunters with the legal ability to take coyotes and wolves should the need or opportunity arise.

Therefore, current hunting seasons are not likely to increase harvest beyond sustainable levels and will not disrupt behaviors, or affect wolf, coyote, or prey densities. The Department monitors harvest; in the unlikely event harvest increased beyond sustainable levels, the Department would close the season by emergency order if immediate action was necessary, and/or by recommending more conservative seasons, bag limits, and/or methods to the state Board for future hunting seasons.

Based on the above and without scientific data or analysis to the contrary, the assertion that the state regulation that expands wolf and coyote hunting seasons in GMU 9B and 19B has the potential to affect "natural" (undefined) populations or impair park resources is unsubstantiated.

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GMU 12

Wrangell-St. Elias National Preserve

Wolves are common (179–192 wolves) and lightly harvested in GMU 12. Wolf hunting seasons in GMU 12 are August 10 through May 31. An average annual take of 8 wolves per year remained stable during regulatory years 2012–2013 through 2016–2017 within UCUs that

included preserve land. Throughout GMU 12, two wolves per year, on average, were taken during May or August.

Trapper questionnaire reports and biologists' sightings indicate that coyotes are less common than wolves and lightly harvested. The Department has no indication that take of coyotes during May through September has had any discernible biological effect on coyote populations in these areas. These seasons provide hunters with the legal ability to take coyotes and wolves should the need or opportunity arise.

Therefore, current hunting seasons are not likely to increase harvest beyond sustainable levels and will not disrupt behaviors, or affect wolf, coyote, or prey densities. The Department monitors harvest; in the unlikely event harvest increased beyond sustainable levels, the Department would close the season by emergency order if immediate action was necessary, and/or by recommending more conservative seasons, bag limits, and/or methods to the state Board for future hunting seasons.

Based on the above and without scientific data or analysis to the contrary, the assertion that the state regulation that expands wolf and coyote hunting seasons in GMU 12 has the potential to affect "natural" (undefined) populations or impair park resources is unsubstantiated.

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GMU , 20B, 20D, 20E, 25B and 25C

Yukon-Charley Rivers National Preserve

Wolf control was conducted under separate regulations in GMUs 20B, 20D, 20E and 25C surrounding the Preserve, but not within it. Wolf control was suspended at the end of regulatory year 2017-2018. In the control area, the Department managed the control program to ensure that wolves persisted in the control area.

For all of GMUs 20B, 20D, 20E, and 25B, 25C in regulatory years 2012-2013 through 2016-2017 the five-year average hunter-trapper harvest for UCUs that contain a portion of preserve lands was 13 wolves and the five-year average hunter-trapper harvest for UCUs that do not contain a portion of Yukon Charley Preserve land was 136. The 5-year average hunter-trapper harvest for these GMUs was 149 over 39,680 miles<sup>2</sup>. Only two wolves were reported hunter-trapper harvested during the month of May in regulatory years 2012-2016 in all of Units 20B, 20D, 20E, 25B, and 25C surrounding the Yukon Charley Preserve. Of these two wolves, only one was taken in a UCU that had any overlap with the preserve.

Current wolf hunting seasons (August 10 through May 31) are not likely to increase harvest and hunter and trapper harvest remains low in these GMUs. Throughout GMU 20E, which contains the majority of Preserve lands, an average of one wolf per year was taken during May or August. NPS analysis of wolf harvest indicated that on average three wolves per year were harvested inside the Preserve during regulatory years 2007–2008 through 2009–2011.

The Department has no indication that take of coyotes during May through September has had any biological effect on coyote populations in these areas. Longer hunting seasons provide hunters with the legal ability to take wolves and coyotes should the need or opportunity arise.

Therefore, current hunting seasons (August 10 through May 31, and in the absence of predator control programs) are not likely to increase harvest beyond sustainable levels and will not disrupt behaviors, or affect wolf, coyote, or prey densities. The Department monitors harvest; in the unlikely event harvest increased beyond sustainable levels, the Department would close the season by emergency order if immediate action was necessary, and/or by recommending more conservative seasons, bag limits, and/or methods to the state Board for future hunting seasons.

Based on the above and without scientific data or analysis to the contrary, the assertion that the state regulation that expands wolf and coyote hunting seasons in GMU 20E has the potential to affect “natural” (undefined) populations or impair park resources is unsubstantiated.

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#### Take of Bears at Den Sites

Denali National Preserve, Gates of the Arctic

GMU 19A, 19D, 21B, 21C, 21D, 24

#### Customary and traditional take of black bears at den sites

The state Board heard public testimony during its March 2008 meeting from users requesting recognition of customary and traditional means to harvest black bears. While the NPS refers to these practices as “historically illegal,” in this instance, in November 2008, the state Board legally recognized long-standing cultural practices by resident hunters to harvest black bears in dens (including cubs and females with cubs) and, for safety reasons, to use artificial light as part of this practice. These methods are part of a pattern of customary and traditional use by local residents in GMUs 19A and 19D, upstream of the Selatna and Black River drainages, and GMUs 21B, 21C, 21D, and 24, and are documented in the customary and traditional use worksheet found in the Alaska Department of Fish and Game, Division of Subsistence Special Publication No. BOG 2008-07. Additionally, the Federal Western Interior Regional Advisory Council (RAC) endorsed the traditional and customary taking of sows with cubs and cubs in dens, including the use of artificial light, for Federal lands in all of GMUs 19, 21, and 24. The Eastern Interior RAC also endorsed these customary and traditional practices for Federal lands in GMUs 21 and 24, emphasizing the need for artificial light as a safety measure.

The NPS provides no detailed analysis regarding a specific cause and effect relationship between this state regulation and the possible impairment to any park resource and/or value but nonetheless asserts the following unacceptable impacts may occur:

The State provisions create efficient methods of take for black bears, including sows with vulnerable cubs, which have the potential to create harvest pressures on local populations and denning behavior of this species.

The practical effect of these allowances, open to all Alaska residents, is increased opportunity and efficiency for taking predator species – in particular, vulnerable denning family groups.

At its November 2008 meeting, the state Board clarified it was recognizing “denning,” including the take of cubs and females with cubs, as a customary and traditional practice (i.e., not implementing predator control type activities) as follows:

Just because predator control is going on out there doesn't mean [denning] isn't practiced, that the Native people who live out there practiced this for thousands of years. And feel like wherever we can we ought to recognize those practices...

There are customary and traditional practices of denning bears in the area historically. And again it's an opportunity for local people to take meat and to practice these customary and traditional methods.

...this is an attempt to move towards this goal of recognizing some of the customary and traditional practices that go on out in the Bush. A way people get food. of things I want to make very clear, at least as I see it in my mind, this is in no way part of any predator management program this isn't linked to one of them or one of the tools we are going to use. Again it's an opportunity for local residents to practice their customary and traditional heritage.

The state Board was clear this regulation was enacted to specifically legalize a long-standing customary and traditional means to obtain black bear meat during winter by residents of these GMUs; therefore, harvest is not expected to change. Because historical harvest levels did not cause a population sustainability concern, it is reasonable to assume the same level of harvest under the new regulations legally recognizing this historic use will not cause a sustainability issue in the future now that this method is legally recognized. This practice does not have the same practical effect as predator control activities designed to manipulate wildlife prey populations for increased human consumption. The fact that black bears are common regionally indicates this customary and traditional practice does not have a significant impact on black bear populations.

Black bears are common and lightly harvested in GMU 19D (Denali National Preserve). The Department estimates 3,000–6,000 black bears in Unit 19D (24–48 black bears/100 mi<sup>2</sup>) and stable harvest of about 10 black bears per regulatory year. Since the denning regulations went into effect in 2008, the annual harvest remains stable at pre-2008 levels (<10/year) and is consistent with the conservation of black bears and sustained yield management principles. These remote, difficult to access lands are far from more readily accessible black bear habitat, particularly the preserve portion of the GMU. Therefore, the likelihood is negligible that this customary and traditional method of take would result in any appreciable increase in harvest or have a biological impact. Moreover, a Department mark–recapture study survey in May 2010 indicated that the black bear population in the Bear Control Area surrounding McGrath now exceeds the pre-control population level in 2003. While habitat differs, this nonetheless indicates black bear populations are resilient.

Black bears are common and are lightly harvested in GMU 24 (Gates of the Arctic National Preserve). Similarities in habitat and black bear sightings indicate that the population is likely similar to GMU 19D (24–48 black bears/100 mi<sup>2</sup>) and the Eastern Yukon Flats in GMU 25D (>40 black bears/100 mi<sup>2</sup>). Since the denning regulations went into effect in 2008, annual harvest remains stable at pre-2008 levels and is consistent with the conservation of black bears and sustained yield management principles. Eighty-seven square miles of the preserve would be open to the taking of black bears under this authorization. These remote, difficult to access lands are far from more accessible black bear habitat in the GMU. Therefore, the likelihood is negligible that this customary and traditional method of take would result in significant additional harvest or have a biological impact.

The Department monitors harvest; in the unlikely event harvest increased beyond sustainable levels, the Department would close the season by emergency order if immediate action was necessary, and/or by recommending more conservative seasons, bag limits, and/or methods to the state Board for future hunting seasons.

Based on the above and without scientific data or analysis to the contrary, the assertion that the state regulation that allows customary and traditional harvest of black bears at den sites with the aid of artificial light has the potential to affect “natural” (undefined) populations or impair park resources is unsubstantiated.

Additionally, the Federal Subsistence Board (FSB) subsequently followed the action of the Alaska Board of Game and approved an allowance for the take of black bears (including sows with cubs) at den sites using artificial light within Gates of the Arctic National Park and Preserve that are within GMU’s 24A, 24B and 24C, mirroring the state allowance. The FSB has also provided for the use of bait to hunt black and brown bears over bait in GMUs 11-12. (see comments above regarding the testimony of NPS Regional Director Bert Frost to the FSB in which he advocates support for the the take of bears at den sites in order to recognize a customary use and to align

## **ATTACHMENT D: WILDLIFE MANAGEMENT REPORTS**

The following Alaska Department of Fish and Game Species Management Reports are included on the thumb drive delivered to the NPS Alaska Regional Office.

Harper, P., and L. A. McCarthy, editors. 2014. Black bear management report of survey-inventory activities 1 July 2010–30 June 2013. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2014-5, Juneau.

Sell, S. 2015. Unit 5 brown bear. management report. Chapter 4, pages 4–1 through 4–9 [In] P. Harper, editor. Brown bear management report of survey and inventory activities 1 July 2012–30 June 2014. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2015-1. Juneau.

Stantorf, C. J. 2015. Unit 11 brown bear. Chapter 10, Pages 10-1 through 10–7 [In] P. Harper and L. A. McCarthy, editors. Brown bear management report of survey and inventory activities 1 July 2012–30 June 2014. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2015-1, Juneau.

Wells, J. J. 2015. Unit 12 brown bear. Chapter 11, pages 11-1 through 11-12 [In] P. Harper and L. A. McCarthy, editors. Brown bear management report of survey and inventory activities 1 July 2012–30 June 2014. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2015-1, Juneau.

Peltier, T. C. 2015. Unit 16 brown bear. Chapter 15, Pages 15-1 through 15-12 [In] P. Harper and L. A. McCarthy, editors. Brown bear management report of survey and inventory activities 1 July 2012–30 June 2014. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2015-1, Juneau.

Seavoy, R. J. 2015. Units 19, 21A, and 21E brown bear. Chapter 18, pages 18-1 through 18-17 [In] P. Harper and L. A. McCarthy, editors. Brown bear management report of survey and inventory activities 1 July 2012–30 June 2014. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2015-1, Juneau.

Young Jr., D. D. 2015. Units 20A, 20B, 20C, 20F, and 25C brown bear. Chapter 19, pages 19-1 through 19-19 [In] P. Harper and L. A. McCarthy, editors. Brown bear management report of survey and inventory activities 1 July 2012–30 June 2014. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2015-1, Juneau.

Wells, J. J. 2015. Unit 20E brown bear. Chapter 21, pages 21-1 through 21-12 [In] P. Harper and L. A. McCarthy, editors. Brown bear management report of survey and inventory activities 1 July 2012–30 June 2014. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2015-1, Juneau.

Stout, G. W. 2015. Units 21B, 21C, 21D and 24 brown bear. Chapter 22, pages 22-1 through 22- 11 [In] P. Harper and L. A. McCarthy, editors. Brown bear management report of survey

and inventory activities 1 July 2012–30 June 2014. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2015-1, Juneau.

Hughes, L. J. 2015. Unit 22 brown bear. Chapter 23, Pages 23-1 through 23-13 [In] P. Harper and L. A. McCarthy, editors. Brown bear management report of survey and inventory activities 1 July 2012–30 June 2014. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2015-1, Juneau.

Lenart, E. A. 2015. Units 25A, 25B, 25D, 26B, and 26C brown bear. Chapter 25, pages 25-1 through 25-23 [In] P. Harper and L. A. McCarthy, editors. Brown bear management report of survey and inventory activities 1 July 2012–30 June 2014. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2015-1, Juneau.

Carroll, G. M. 2015. Unit 26A brown bear. Chapter 26, Pages 26-1 through 26-12 [In] P. Harper and L. A. McCarthy, editors. Brown bear management report of survey and inventory activities 1 July 2012–30 June 2014. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2015-1, Juneau.

Harper, P., and L. A. McCarthy, editors. 2013. Brown bear management report of survey-inventory activities 1 July 2010–30 June 2012. Alaska Department of Fish and Game, Species Management Report ADF&G/DWC/SMR-2013-4, Juneau.

Parr, B. L. 2017. 2016 Alaska trapper report: 1 July 2016–30 June 2017. Alaska Department of Fish and Game, Division of Wildlife Conservation, Wildlife Management Report ADF&G/DWC/WMR-2017-3, Juneau.

Sell, S. 2018. Wolf management report and plan, Game Management Unit 5: Report period 1 July 2010–30 June 2015, and plan period 1 July 2015–30 June 2020. Alaska Department of Fish and Game, Species Management Report and Plan ADF&G/DWC/SMR&P-2018-38, Juneau.

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## **ATTACHMENT E: BOARD OF GAME TRANSCRIPTS**

The following Alaska Board of Game transcripts are included on the thumb drive delivered to the NPS Alaska Regional Office.

Board of Game Transcripts (1/27/2006 to 11/14/2017):

- 2006-01-27 Testimony - Carrington Middle Yukon AC.pdf 74.0 KB
- 2006-01-27 Testimony - Delo, Mat Valley AC.pdf 78.5 KB
- 2006-01-28 Testimony - Arno, AK Outdoor Council.pdf 30.0 KB
- 2006-01-28 Testimony - Huffman.pdf 28.0 KB
- 2006-01-28 Testimony - Roczicka, ONC.pdf 94.0 KB
- 2006-01-28 Testimony - Tinker, Fairbanks AC.pdf 70.5 KB
- 2006-01-29 Proposal 32 - Bears and Wolves.pdf 56.6 KB
- 2006-01-30 Proposal 21 - Black Bear.pdf 67.4 KB
- 2006-01-30 Proposal 31 - Wolves.pdf 37.2 KB
- 2006-03-10 Testimony - Huffman.pdf 27.5 KB
- 2006-03-10 Testimony - Umphenour, Eastern Interior RAC.pdf 70.0 KB
- 2006-03-10 Testimony of Toppenberg, AK Wildlife Alliance.pdf 51.5 KB
- 2006-03-11 Testimony - Brown, Defenders of Wildlife.pdf 50.5 KB
- 2006-03-12 Testimony - Esmailka.pdf 57.5 KB
- 2006-03-12 Testimony - Tyrrell, Central AC.pdf 53.0 KB
- 2006-03-16 Proposal 127 - Wolves.pdf 31.0 KB
- 2006-03-16 Testimony - Edwards & Probasco, FWS.pdf 185.0 KB
- 2006-03-18 Proposal 128 - Wolves.pdf 23.4 KB
- 2006-05-14 Proposal 14 - Black Bear.pdf 64.4 KB
- 2006-05-14 Proposal 163A - Predator Control.pdf 36.5 KB
- 2006-05-14 Proposals 14 & 23 - Bear.pdf 51.5 KB
- 2007-03-02 Testimony - Romig, Cooper Landing.pdf 35.2 KB
- 2007-03-02 Testimony - Carpenter, Copper River AC.pdf 35.5 KB
- 2007-03-02 Testimony - Federal Program Update.pdf 50.6 KB
- 2007-03-02 Testimony - Martin & Vanek, Central Peninsula AC.pdf 45.9 KB
- 2007-03-02 Testimony - McMahan, Copper Basin AC.pdf 37.3 KB
- 2007-03-03 Testimony - Campbell, Seward AC.pdf 43.5 KB
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- 2007-03-03 Testimony - Hession, Sierra Club.pdf 50.0 KB
- 2007-03-03 Testimony - Russ, Mat Valley AC.pdf 35.0 KB
- 2007-03-03 Testimony - Shane, Audubon Alaska.pdf 9.0 KB
- 2007-03-03 Testimony - Toppenberg, AK Wildlife Alliance.pdf 78.0 KB
- 2007-03-03 Testimony - Westphal, Eagle AC.pdf 71.0 KB
- 2007-03-04 Testimony - Chervenak, Kodiak AC.pdf 94.0 KB

- 2007-03-04 Testimony - Dawkins, Soldotna Kenai AC.pdf 95.0 KB
- 2007-03-04 Testimony - Guthrie.pdf 49.0 KB
- 2007-03-04 Testimony - McHoes, Mt. Yenlo.pdf 100.5 KB
- 2007-03-04 Testimony - Schandelmeier, Paxson AC.pdf 99.0 KB
- 2007-03-05 Testimony - Flory, Sheep foundation.pdf 43.0 KB
- 2007-03-06 Proposal 176 - Coyote.pdf 26.1 KB
- 2007-03-10 Testimony - Banks, Defenders of Wildlife.pdf 43.5 KB
- 2007-03-11 Proposal 66 - Brown Bear.pdf 21.1 KB
- 2007-03-11 Proposal 68 - Brown Bear.pdf 19.7 KB
- 2007-03-11 Proposal 69 - Brown Bear.pdf 22.2 KB
- 2007-11-10 Testimony - Polty, Lower Yukon AC.pdf 43.0 KB
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- 2007-11-10 Testimony - Cheemuk, South Norton Sound AC.pdf 29.1 KB
- 2007-11-10 Testimony - David.pdf 41.7 KB
- 2007-11-10 Testimony - Mills, Noatak Kivalina AC.pdf 37.5 KB
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- 2007-11-11 Proposal 33 - Wolves.pdf 25.4 KB
- 2008-02-29 Testimony - Ardizzone, Federal Program Update.pdf 30.5 KB
- 2008-03-01 Testimony - Jones, Middle Yukon AC.pdf 44.5 KB
- 2008-03-01 Testimony - Multiple Parties.pdf 262.5 KB
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- 2008-03-02 Testimony - Aloysius, Central Kuskokim AC.pdf 57.5 KB
- 2008-03-02 Testimony - Carney, Stony Holitna.pdf 93.5 KB
- 2008-03-02 Testimony - Smith, Tanana Chiefs Conf..pdf 83.5 KB
- 2008-03-03 Testimony - Banks, Defenders of Wildlife.pdf 112.0 KB
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- 2008-03-05 Proposal 75 - Black Bear.pdf 25.0 KB
- 2008-03-05 Proposals 78 & 79 - Black Bear.pdf 23.1 KB
- 2008-11-10 Proposal 50 - Wolves.pdf 23.0 KB
- 2008-11-10 Proposal 51 - Black Bear.pdf 34.6 KB
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- 2009-03-07 Proposal 174 - Brown Bear.pdf 21.9 KB

- 2009-03-07 Proposal 185 - Wolf and Coyote.pdf 23.4 KB
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- 2009-11-15 Proposal 33 - Wolves part 2.pdf 25.7 KB
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- 2010-02-27 Testimony - Cooper & Dudgeon, NPS.pdf 41.6 KB
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- 2010-02-27 Testimony - Roczicka, YK RAC.pdf 27.2 KB
- 2010-02-28 Testimony - Bloomquist, Anchorage AC.pdf 93.0 KB
- 2010-02-28 Testimony - Carney, Stony Holitna AC.pdf 33.8 KB
- 2010-02-28 Testimony - Duncan.pdf 36.0 KB
- 2010-02-28 Testimony - Grove, Mat-Su AC.pdf 70.0 KB
- 2010-02-28 Testimony - Olsen, Fairbanks AC.pdf 25.6 KB
- 2010-02-28 Testimony - Tinker, Fairbanks AC.pdf 58.7 KB
- 2010-03-01 Proposal 4 - Coyote.pdf 26.2 KB
- 2010-03-01 Proposal 5 - Black Bear.pdf 48.4 KB
- 2010-03-01 Proposal 7 - Black Bear.pdf 61.3 KB
- 2010-03-04 Testimony - Grangaard, Upper Tanana AC.pdf 54.5 KB
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- 2010-03-05 Proposal 28 - Brown Bear.pdf 25.8 KB
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- 2011-03-09 Testimony - Bell, FWS.pdf 150.5 KB
- 2011-03-09 Testimony - Forsling, Togiak & Nushagak ACs.pdf 34.5 KB
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- 2012-01-14 Testimony - Klotz, Anchorage AC.pdf 38.0 KB
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- 2012-01-14 Testimony - Shafer, Tok Nabesna AC.pdf 30.5 KB
- 2012-01-15 Testimony - Barrette, FBX AC.pdf 110.0 KB
- 2012-01-15 Testimony - Carney, Stony Holitna.pdf 66.5 KB
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- 2012-01-17 Proposal 94 - Wolf, Fox, Wolverine, Coyote.pdf 23.8 KB
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- 2012-01-18 Proposal 127 - Black and Brown Bears.pdf 34.0 KB
- 2012-03-02 Testimony - Connor, ACE & AWA.pdf 55.5 KB
- 2012-03-02 Testimony - Cooper, NPS.pdf 41.5 KB
- 2012-03-02 Testimony - Marquette, Dalrymple, Fairbanks AC.pdf 76.0 KB
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- 2013-03-17 Testimony - Neumann, Anchorage AC.pdf 77.5 KB
- 2013-03-19 Proposal 159 - Wolf, Coyote & Lynx.pdf 23.2 KB
- 2013-03-19 Proposal 175 - Coyote.pdf 10.9 KB
- 2014-01-10 Testimony - Downey, Upper Kobuk.pdf 7.6 KB
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- 2014-01-10 Testimony - Charles, Lower Kusko AC.pdf 14.4 KB
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- 2014-01-10 Testimony - Hadley, N. Seward Pen.pdf 16.7 KB
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- 2014-01-10 Testimony - Lean, N.pdf 20.4 KB
- 2014-01-10 Testimony - Miller, Lower Kobuk AC.pdf 24.7 KB
- 2014-01-10 Testimony - Peters, Lower Yukon AC.pdf 21.5 KB
- 2014-01-11 Testimony - Harris, Kotzebue Sound.pdf 8.7 KB
- 2014-01-11 Testimony - Mitchell, Noatak & Kivalina.pdf 19.2 KB
- 2014-01-11 Testimony - Rearden, FWS.pdf 16.1 KB
- 2014-01-12 Proposal 18 - Wolves.pdf 17.0 KB
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- 2014-02-15 Testimony - Baxter & Olson, Fairbanks AC.pdf 25.0 KB
- 2014-02-15 Testimony - Grangaard.pdf 26.7 KB
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- 2014-02-16 Proposals 56, 57, 58 - Brown Bear.pdf 19.7 KB
- 2014-02-16 Proposals 63 & 64.pdf 20.8 KB
- 2014-02-16 Testimony - Carney, Stony Holitna AC.pdf 21.6 KB
- 2014-02-16 Testimony - Feyereisen,Central Kusko AC.pdf 39.3 KB
- 2014-02-16 Testimony - Mortenson, Middle Nenana AC.pdf 14.7 KB
- 2014-02-16 Testimony - Titus, Minto Nenana AC.pdf 13.1 KB
- 2014-02-18 Proposal 72 - Brown Bear.pdf 23.5 KB
- 2014-03-14 Testimony - Bell & Ellis, FWS.pdf 34.4 KB
- 2014-03-14 Testimony - Cooper, NPS.pdf 44.1 KB
- 2014-03-14 Testimony - Fox, Kodiak AC.pdf 34.9 KB
- 2014-03-14 Testimony - Hawley.pdf 10.7 KB
- 2014-03-14 Testimony - Hopson, North Slope AC.pdf 9.9 KB

- 2014-03-14 Testimony - Kirk.pdf 10.4 KB
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- 2014-03-14 Testimony - Pederson, North Slope AC.pdf 9.1 KB
- 2014-03-14 Testimony - Sampson.pdf 10.6 KB
- 2014-03-14 Testimony - Van Daele, DFG.pdf 90.8 KB
- 2014-03-15 Testimony - Andrew, AVCP.pdf 14.3 KB
- 2014-03-15 Testimony - Crawford, Kenai Soldotna AC.pdf 24.1 KB
- 2014-03-15 Testimony - George.pdf 10.5 KB
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- 2014-03-15 Testimony - Harris, Kotzebue Sound AC.pdf 21.5 KB
- 2014-03-15 Testimony - Joule.pdf 13.8 KB
- 2014-03-15 Testimony - Montgomery, Mat Valley AC.pdf 43.0 KB
- 2014-03-15 Testimony - Moto, Northern Seward Peninsula AC.pdf 13.6 KB
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- 2014-03-16 Testimony - Charles, Central Kuskokwim AC.pdf 13.2 KB
- 2014-03-16 Testimony - Clark, Alaska Falconers Assoc.pdf 36.9 KB
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- 2014-03-16 Testimony - Sell.pdf 20.7 KB
- 2014-03-16 Testimony - Watson, Bethel AC.pdf 7.6 KB
- 2014-03-17 Proposal 162 - Brown Bear.pdf 10.2 KB
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- 2015-02-14 Testimony - Snyder, Upper Tanana Fortymile AC.pdf 24.2 KB
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- 2015-02-15 Testimony - Neumann, Anchorage AC.pdf 27.7 KB
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- 2015-02-18 Proposal 92 - Goat.pdf 16.6 KB

- 2015-02-18 Proposals 102 - Black and Brown Bear.pdf 22.4 KB
- 2015-02-20 Proposal 127 - Brown Bear.pdf 16.1 KB
- 2016-03-18 Testimony - Bale, Denali Citizens Council.pdf 22.2 KB
- 2016-03-18 Testimony - Nassuk, South Norton Sound.pdf 12.0 KB
- 2016-03-18 Testimony - Brandel, AK Wildlife Alliance.pdf 12.7 KB
- 2016-03-18 Testimony - Frost, NPS.pdf 35.7 KB
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- 2016-03-19 Testimony - Chervenak, Kodiak AC.pdf 22.8 KB
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- 2016-03-20 Testimony - Downey, Upper Kobuk AC.pdf 14.5 KB
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- 2016-03-21 Testimony - Tilly, Lake Iliamna.pdf 13.5 KB
- 2016-03-21 Testimony - Wallace, Middle Nenana AC.pdf 32.2 KB
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- 2016-03-24 Proposal 71 - Airborne Hunting.pdf 23.7 KB
- 2016-03-26 Proposal 141 - Wolves.pdf 60.0 KB
- 2017-01-09 Proposal 30 - Brown Bear.pdf 24.1 KB
- 2017-01-09 Proposal 35 - Wolves.pdf 13.5 KB
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- 2017-02-18 Testimony - Jones, Koyukuk Middle Yukon AC.pdf 18.0 KB
- 2017-02-18 Testimony - Peter & Firmin, Yukon Flats AC.pdf 37.7 KB
- 2017-02-18 Testimony - Peter, Gwichyaa Gwich'in.pdf 10.1 KB
- 2017-02-18 Testimony - Schirokauer, Striker, NPS.pdf 50.6 KB
- 2017-02-18 Testimony - Vent, Koyukuk AC.pdf 25.8 KB
- 2017-02-19 Testimony - Chase, GASH AC.pdf 24.4 KB
- 2017-02-19 Testimony - Entsminger, Upper Tanana Fortymile.pdf 32.6 KB
- 2017-02-19 Testimony - Firmin, Eastern Interior AC.pdf 28.7 KB
- 2017-02-19 Testimony - Lorrington, AK Falcons Assoc.pdf 22.2 KB
- 2017-02-19 Testimony - Mattila, Middle Nenana AC.pdf 16.1 KB
- 2017-02-19 Testimony - McManus, Minto Nenana AC.pdf 9.8 KB
- 2017-02-19 Testimony - Roczicka, Bethel AC.pdf 27.0 KB
- 2017-02-20 Proposal 67 - Black and Brown Bear.pdf 17.9 KB
- 2017-02-23 Proposal 107 - Brown Bear.pdf 21.1 KB
- 2017-02-23 Proposal 109- Brown Bear.pdf 23.3 KB
- 2017-03-10 Proposal 172 - Wolves.pdf 11.0 KB
- 2017-11-10 Testimony – Frost.pdf 205.0 KB
- 2017-11-11 Testimony – Feyereisen et al.pdf 257.0 KB
- 2017-11-12 Testimony – Wallace.pdf 112.0 KB
- 2017-11-14 Testimony – Brown et al.pdf 98.0 KB

**ATTACHMENT F: SELECTED ITEMS FROM THE NPS 2015  
RULE RECORD**

Message

**From:** Greg Dudgeon [redacted] PII  
**Sent:** 3/6/2015 5:24:49 PM  
**To:** William Rice <bud\_rice@nps.gov>  
**CC:** Marcy Okada <marcy\_okada@nps.gov>; Jeffrey Rasic <jeff\_rasic@nps.gov>  
**Subject:** Re: Bear Denning Reg Proposal

Great! We also have the green light from the Directorate to pen the Dalls Sheep Proposals that Jack and the GAAR SRC have requested. Marcy? Can you draft those while Bud takes care of the bear denning proposal?

Go Team!

Sent from my iPhone

> On Mar 6, 2015, at 4:59 PM, William Rice <bud\_rice@nps.gov> wrote:

>  
> Thanks Greg, got this one iPhone as my computer is down now. I too  
> talked over this with Jack Thurs PM. His flight could not go thru, so  
> he returned to EIRAC meeting. I showed him language and maps in state.  
> & federal handy-dandies. Will look up exact language in 5 AAC for our  
> draft. Hope to get this to you Mon PM if I have a functional computer.  
> Also sitting in on NWRAC by phone for caribou 202 proposal. Faxed  
> Koyukuk AC to Ken Adkisson and called him to let him know WIRAC  
> endorsed AC comments on 202.

> Sent from my iPhone

>> On Mar 4, 2015, at 2:52 PM, Greg Dudgeon [redacted] PII wrote:

>>  
>> To recap, Jack and I discussed the NPS submitting a proposed reg to the FSB that would allow people living in GAAR's resident zone communities along the Koyukuk to 'den' black bears. The WRAC and GAAR SRC will back the proposal. Jack said we should use GMU subunits 24a, b, and c in the proposed reg language. (We want to capture Wiseman, Bettles, Evansville, alakaket, Alatna, and Hughes.) we would use the States own language in the sport hunting reg for our own. A thought, perhaps we should have PJ Simon and the Alakaket Tribe submit this in their name after we draft the proposal for them - as we have offered the past.

>>  
>> Sent from my iPhone

Message

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**From:** Frost, Herbert [bert\_frost@nps.gov]  
**Sent:** 9/3/2014 12:49:57 PM  
**To:** Kahn, Rick <rick\_kahn@nps.gov>  
**Subject:** Re: NPS-Alaska Proposes Hunting Regulations for National Preserves

That was what I was afraid of. Let's make sure to talk about this on Fri.

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Herbert C. Frost, Ph.D.  
Alaska Regional Director  
National Park Service

202-208-3326 - office - temporary  
907-231-4725 - cell

On Wed, Sep 3, 2014 at 4:30 PM, Kahn, Rick <rick\_kahn@nps.gov> wrote:  
Thanks Bert,

I think you have some exposure on the coyote piece, I forwarded Elaine the information you requested and in most, if not all, western NPS units that allow hunting we have a year round coyote season. In essence, NPS has no restrictions and all western states have year round seasons, so the state regs are in effect on NPS units.

rk

On Wed, Sep 3, 2014 at 2:23 PM, Frost, Herbert <bert\_frost@nps.gov> wrote:

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Herbert C. Frost, Ph.D.  
Alaska Regional Director  
National Park Service

202-208-3326 - office - temporary  
907-231-4725 - cell

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

**From:** **Quinley, John** <john\_quinley@nps.gov>  
**Date:** Wed, Sep 3, 2014 at 3:28 PM  
**Subject:** NPS-Alaska Proposes Hunting Regulations for National Preserves  
**To:**

**September 3, 2014**

**For Immediate Release**

**Contact: John Quinley, (907) 644-3512**

## **NPS-Alaska Proposes Hunting Regulations for National Preserves**

The National Park Service is proposing a permanent federal prohibition on three historically illegal predator hunting practices in Alaska's national preserves.

The proposals would prohibit sport hunters from hunting wolf and coyote pups and adults in early summer when they den and their pelts have little commercial value; prohibit the taking of brown bears over bait; prohibit the use of artificial light to take black bear cubs and sows with cubs at dens; and other changes.

The proposals will be published in the Federal Register tomorrow, September 4, and will be open for public comment through December 3, 2014. The Service will hold public hearings in communities in or close to the affected national preserves. The extended comment period recognizes that publication of the proposal comes during the traditional fall hunting season.

"These proposals, if finalized, codify long-standing prohibitions for wildlife harvest seasons and methods that were traditionally illegal under state law, but in recent years have been authorized by the State of Alaska in an effort to drive down predator populations and boost game species," said NPS Alaska Regional Director Bert Frost.

This manipulation of natural population dynamics conflicts with National Park Service law and policy. National park areas are managed to maintain natural ecosystems and processes, including wildlife populations and their behaviors. While sport hunting is allowed by the Alaska National Interest Lands Conservation Act in national preserves in Alaska, NPS policies prohibit reducing native predators for the purpose of increasing numbers of harvested species.

"This rule does nothing to restrict or limit federal subsistence hunting on NPS managed lands. It would make permanent the small number of temporary restrictions we have put in place annually for the past four years, and largely maintain the status quo," Frost said.

The proposed regulations would replace temporary restrictions in the following national preserves: Denali, Wrangell-St. Elias, Glacier Bay, Yukon-Charley Rivers, Gates of the Arctic, Noatak, Bering Land Bridge, Lake Clark, Katmai and Aniakchak.

The National Park Service has repeatedly requested the State of Alaska and the Alaska Board of Game to exempt national preserves from state regulations that liberalized methods, seasons and bag limits for predator

hunting. The requests have been denied. State officials have also objected to the use of repeated temporary federal closures, and advised the NPS to seek permanent regulations.

Sport hunting occurs on about 38 percent, or more than 20 million acres, of the land managed by the National Park Service in Alaska. In these national preserves, sport hunting generally occurs under state regulations. The vast majority of state sport hunting regulations would remain unchanged by the proposed regulations. National Park System areas, including preserves, already prohibit predator control actions, such as aerial shooting of wolves, which the State of Alaska conducts as part of its statewide wildlife management program.

The proposed regulations would also update procedures for implementing closures or restrictions in park areas, including taking fish and wildlife for sport purposes, to more effectively engage the public, as well as update NPS regulations to reflect federal assumption of the management of subsistence hunting and fishing under Title VIII of ANILCA from the State of Alaska in the 1990s. Additionally, the regulations propose the allowance of the use of native species or their parts to be used as bait, commonly salmon eggs, for fishing in accordance with non-conflicting state law. This would supersede, for park areas in Alaska, the national prohibition on using certain types of bait at 36 CFR 2.3(d)(2).

The National Park Service will soon begin the required consultation with the State of Alaska, tribes and Alaska Native corporations regarding the proposed rule. Public hearings will be held during October in communities near the affected national preserves, as well as Anchorage, Palmer, and Soldotna. The dates and locations will be advertised in advance of the meetings. In addition, the NPS will hold a Facebook Chat in October to provide additional information and an opportunity for dialogue with the public. Official comments on the proposed rule, however, will not be accepted through social media.

Links to the proposed regulations and an environmental assessment will be available from the National Park Service's web site, ([nps.gov/akso/management/regulations](https://nps.gov/akso/management/regulations)) on September 4. Instructions on how to comment on the proposed regulation and the environmental assessment are also at that location. A printed copy of the proposal is available by mail by writing to: NPS Regulations, 240 W. 5<sup>th</sup> Avenue, Anchorage, AK 99501

The National Park Service manages about 54 million acres in Alaska and annually hosts about 2.5 million visitors.

##

~  
John Quinley  
Assistant Regional Director, Communications

Office: 907-644-3512  
Mobile: 907-444-1336

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Rick Kahn  
Wildlife Biologist  
National Park Service  
NRSS Biological Resource Management Division  
1201 Oakridge Drive, Suite 200  
Fort Collins, Colorado 80525  
970-267-7294(O)  
970-420-6802(C)  
[Rick\\_Kahn@nps.gov](mailto:Rick_Kahn@nps.gov)

Message

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**From:** Cooper, Debora [debora\_cooper@nps.gov]  
**Sent:** 9/17/2014 3:04:43 PM  
**To:** Kahn, Rick <rick\_kahn@nps.gov>  
**Subject:** Re:

It's not part of the predator control issue, nor is the allowance of the use of native species (salmon eggs) as fish bait found in 13.470 of the proposed rule. These are two methods that needed to be clarified and were included primarily for that reason.

You probably already know this rationale, but...

- So if you're a subsistence user that qualifies under Title VIII of ANILCA (i.e. it's going to be a tough winter without meat in the freezer) you **can** use salmon eggs to catch fish and you **can** take swimming caribou (in certain locations, etc.).
- If you're under State reg's, the NPS recognizes authorized take as sport hunting (because that's what ANILCA, Section 1313, authorizes on preserves). As a sport hunter, the proposed rule would say that you **don't** get to fish using salmon eggs and you **don't** get to take swimming caribou for 'sport purposes' (i.e. to hang a trophy on the wall).
- The State might say that we're prohibiting 'State subsistence' (ie. all State residents that want to eat wild meat). NPS might say that the proposed rule would eliminate 600,000 or so Anchorage, Fairbanks & Juneau residents from taking food away from the 120,000 or so rural Alaskans that either can't go to the grocery store or can't afford a village grocery store.

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Debora Cooper  
Associate Regional Director for Resources  
Alaska Regional Office  
National Park Service  
(907) 644-3505

On Mon, Sep 15, 2014 at 10:04 AM, Kahn, Rick <rick\_kahn@nps.gov> wrote:  
got it, it will be helpful. Deb, one nagging question; why the swimming caribou (big game) reg? What is the rationale, it does not appear, at least to me, to be part of the predator control stuff??

Thanks

rk

On Mon, Sep 15, 2014 at 10:58 AM, Cooper, Debora <debora\_cooper@nps.gov> wrote:  
Fax'ing now...

---

Debora Cooper  
Associate Regional Director for Resources  
Alaska Regional Office

National Park Service  
(907) 644-3505

On Mon, Sep 15, 2014 at 6:45 AM, Kahn, Rick <[rick\\_kahn@nps.gov](mailto:rick_kahn@nps.gov)> wrote:  
I am around today, at least this am

rick

On Fri, Sep 12, 2014 at 4:55 PM, Cooper, Debora <[debora\\_cooper@nps.gov](mailto:debora_cooper@nps.gov)> wrote:  
Let's talk Monday if you're in. ...or let me know you're in so I can fax.  
Got behind on email today.  
Deb

---

Debora Cooper  
Associate Regional Director for Resources  
Alaska Regional Office  
National Park Service  
(907) 644-3505

On Fri, Sep 12, 2014 at 6:38 AM, Kahn, Rick <[rick\\_kahn@nps.gov](mailto:rick_kahn@nps.gov)> wrote:  
Deb

got your message and yes it would be very helpful. When you get in give me a call or you can fax

970-225-3585

thanks

Rick

---

Rick Kahn  
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## A GUIDE FOR NPS STAFF

Proposed Rule: Alaska; Hunting and Trapping in National Preserves  
September 9, 2014

Constructive Criticism	Potential Response
<p>What does this proposed rule cover?</p>	<p>On national preserves, the NPS would not adopt state laws or regulations intended to reduce predator populations or manipulate natural predator-prey dynamics.</p> <p>The proposed rule also would update the procedures in 36 CFR 13.50 for closing an area or restricting an activity in National Park areas in Alaska.</p> <p>The proposed rule would also prohibit the obstruction of persons engaged in lawful hunting or trapping; and authorize the use of native species as bait for fishing.</p>
<p>The proposed rule limits subsistence</p>	<p>This proposed rule would not restrict the taking of fish or wildlife for subsistence as provided for by Title VIII of ANILCA.</p> <p>This rule would regulate sport harvest... and limit opportunity for people from Anchorage or Fairbanks as well as their ability to compete for food with federally-qualified subsistence users.</p> <p>State subsistence is available to all State residents—730,000 in 2012 ... and growing. Title VIII Subsistence applies to 100,000-150,000 rural residents.</p> <p>Under the proposed rule, federally qualified subsistence users would be authorized (under certain circumstances) to use salmon eggs to catch fish and take swimming caribou under the federal reg book but not under the State reg book.</p> <p>The State might say that the NPS is</p>

	<p>prohibiting 'State subsistence.' NPS might say that the proposed rule would eliminate 600,000 or so Anchorage, Fairbanks &amp; Juneau residents from taking food away from the 120,000 or so rural Alaskans that either can't go to the grocery store or can't afford to buy much at a village grocery store.</p>
<p>Abundant restrictions or over-reach</p>	<p>Over 200 State regulations are adopted, implemented and monitored by the NPS on National Preserves. A handful (&lt; a dozen) have been restricted.</p> <p>These rules affect about 20 million acres out of about 360 million acres in AK.</p>
<p>How many animals have been taken as a result of these new methods?</p>	<p>We currently know of none on NPS-managed lands. We don't have information pertaining to recent harvest outside of park areas.</p> <p>The NPS employs a precautionary principle to prevent natural ecosystems from being altered; as opposed to waiting until impacts are documented, and then working to rehabilitate or repair a given situation.</p> <p>It should also be noted that the proposed rule addresses a legal conflict between state and federal management direction.</p> <p>These new practices have been temporarily restricted in park areas during the last several years, so the impact wouldn't be much.</p>
<p>Excessive limitations to take of predators</p>	<p>Since Statehood, until the last few years, a hunter has never been able to take cubs or sows with cubs from a den using artificial light... nor has a hunter been able to take a brown bear over bait, nor shoot a wolf or coyote during the denning period.</p> <p>A hunter can take 3-5 black bear, year-round on national preserves.</p> <p>A hunter can take 10 wolves/day for 9 months (8/10-4/30) of the year on national preserves.</p>

	A hunter can take an unlimited number of coyotes for 9 months of the year.
Baiting brown bears	NPS simply cannot reconcile this practice given human food habituation issues and safety concerns.
Brown bear restrictions vs. Black	Acknowledge the discrepancy.  Existing regs have had this discrepancy for decades.  NPS is asking for comment in the proposed rule.
Year-round coyote take occurs in L48	Acknowledge the legitimacy.  Coyote management in the L48 has strong ties to the livestock depredation issue; a rare issue in Alaska.  In Alaska, coyotes have a subsistence use. Every coyote shot or trapped with a bad pelt is one fewer prime pelt that a trapper can sell or use.  The coyote hunting season was changed in the 2012-2013 regulatory year, from either 4/30 or 5/25 to year-round.
These hunting practices are not new	The coyote hunting season was changed in the 2012-2013 regulatory year, from either 4/30 or 5/25 to year-round.
What authority does the NPS have to do this?	The US Congress passed the Organic Act of 1916, giving the NPS management responsibilities for park areas including the wild life therein. Further authorities are spelled out in the Redwood Amendment to the Organic Act, ANILCA Title II, Title VIII and Section 1313; among others.
State predator harvest methods represent nothing more than an increased hunting opportunity	What has been liberalized in recent years is not consistent with past hunting seasons. The written record of initial predator harvest

	<p>liberalizations have been clear.</p> <p>In specific recognition of the need to reduce wolf predation on caribou in Units 9 and 10, an emergency order extended wolf seasons until June 30 and eliminated the delay in the implementation of the Board's regulations (ADF&amp;G Emergency Order, April, 2011)</p> <p>The harvest of denning black bear sows and sows with cubs was approved by the BOG, it was prohibited by State policy, <i>unless</i> determined necessary to implement predator control (2006-164-BOG, General Bear Management).</p> <p>2012-198-BOG Bear Conservation Policy prohibited the harvest of sows and cubs unless tied to a predator control program. The policy was changed a week or two after being brought up.</p> <p>The NPS has long complied with the principles of fair chase. Pursuing an animal or animals in a weakened or vulnerable state is not consistent with the principles of fair chase.</p>
<p>Why a rule? Why now?</p>	<p>The NPS has been criticized for not codifying the standards we operate under in statute and policy and this rule answers those criticisms.</p> <p>The NPS has spent the better part of the last decade trying to encourage a State solution that would make Federal action unnecessary. There has been no willingness from the State to do so.</p> <p>We are looking to get back to cooperating on the development of hunting regulations that respect both State and Federal objectives whenever possible. The NPS continues to believe it is possible to meet our shared obligation to the public.</p>
<p>New closure procedures give Sup'ts authority</p>	<p>Current &amp; existing closure procedures were</p>

<p>to close anything they want.</p>	<p>intended as temporary when they were written over 30 years ago.</p> <p>Closure processes created before widespread internet access, cellphones and social media do not reflect how the public communicates today.</p> <p>These new procedures align NPS closure processes with those of the FSB.</p> <p>These changes will not lessen or limit public discourse. The NPS is looking for ways to increase participation by the American public and by Alaskans.</p>

DRAFT