



DENALI CITIZENS COUNCIL

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

Monday, November 5, 2018

RE: RIN: 1024-AE38

RE: Environmental Assessment, "Sport Hunting and Trapping in National Preserves in Alaska (August 2018)"

Dear Director Frost,

I am submitting these comments on behalf of the board and members of the Denali Citizens Council (DCC), a 300 member group of local, regional and national citizens founded at the gateway of Denali National Park. DCC is a public advocacy organization, active in the gateway communities of Denali National Park since 1974. We support the mission of the National Park Service, to preserve naturally functioning ecosystems and the natural abundance of native wildlife populations. We supported the expansion of then McKinley Park by the Alaska National Interest Lands Conservation Act (ANILCA, 1980) and the creation of Denali National Park's approximately 1.3 million acres of national preserves. While we accept that hunting regulations for the national preserves are established by the State of Alaska Department of Fish and Game, we believe that the National Park Service has the authority and the obligation to limit hunting methods and means that are likely to affect the natural diversity of wildlife populations in the national preserves.

DCC supported NPS in 2015 when it promulgated 36 CFR 13.42, a regulation banning hunting practices such as taking black bears and cubs in dens using artificial light, hunting wolves and coyotes in the denning season (May 1-Aug 9), and taking brown and black bears over bait, along with taking caribou while swimming and using dogs to hunt black bears. We agreed with NPS that these activities are designed to and can have the effect of reducing predators aggressively and to low levels. Additionally, our members were convinced that these practices violate the doctrine of fair chase, and have no place in the sport hunting regulations.

Now, in 2018, we ask the National Park Service (NPS) **not to move forward** with RIN: 1024-AE38, which would eliminate the authorities enacted in (f) and the bans enacted in (g) of 36 CFR 13.42. The process that NPS conducted in promulgating 36 CFR 13.42 was robust, analytical and well-vetted publicly, whereas the current draft rule, introduced in May of 2018, appears to have been hastily prepared, incompletely vetted and based on inappropriate and unconvincing authorities.

In addition we ask NPS to select the **No Action Alternative (Alternative 2)** in the Environmental Assessment, "Sport Hunting and Trapping in National Preserves in Alaska (August 2018)." This EA was published a short four years after the Environmental Assessment, "Wildlife Harvest on National Park System Preserves in Alaska (September 2014)," that led to 36 CFR 13.42. The 2018 EA provides insufficient supporting documentation and is unable to establish a compelling need for change.

More detailed arguments supporting our opposition to the rule change are presented in the points below:

1. Secretarial Orders 3347 and 3356 provide insufficient authority, in and of themselves, to make these particular changes to wildlife regulations on NPS preserves in Alaska.

Any regulatory change must be based upon a compelling need, to be described in both the draft regulation and in the EA. However, the **need** for this rule change (presented in RIN: 1024-AE38 and in Section 1.1 of the EA (2018)) emanates solely from directives handed down in two Secretarial Orders.

These orders have a broad focus and apply to a spectrum of federal agencies managed by the Department of the Interior - the National Park Service, the Bureau of Land Management and the Fish and Wildlife Service. The Executive Order from which they obtain their authority, 13443, was written in 2007 and applies to even more federal land management agencies.

Secretarial Order 3356, dated September 15, 2017 and signed by Secretary Ryan Zinke, extends the mandates of Order 3347 and directs the agencies to implement numerous actions to expand hunting, fishing and shooting opportunities on department lands, conduct habitat management, and to

*work cooperatively with state, tribal, and territorial wildlife agencies to ensure that hunting and fishing regulations for Department lands and waters complement the regulations on the surrounding lands and waters to the extent legally practicable; and within 180 days, in close coordination and cooperation with the appropriate state, tribal, or territorial wildlife agency, begin the necessary process to modify regulations in order to advance shared wildlife conservation goals/objectives that align predator management programs, seasons, and methods of take permitted on all Department-managed lands and waters with corresponding programs, seasons, and methods established by state, tribal, and territorial wildlife management agencies to the extent legally practicable. **Section 4, Directive (p. 5)***

*To the extent there is any inconsistency between the provisions of this Order and any Federal laws and regulations, the laws or regulations will control. **Section 6, Effect of Order (p. 5)***

The plain language of the Order makes it clear that NPS must examine any proposed action that complies with directives in the Order for inconsistency with existing laws and regulations. In this case, the proposed action is to undo sections (f) and (g) of 36 CFR 13.42. It is imperative that NPS examine carefully whether the importance of hunter access and conformity with state hunting regulations is compelling enough compared with wildlife management goals in NPS enabling legislation and management policies. We think that, after considering existing laws and regulations under #2, NPS cannot move forward with this particular action.

2. The laws and policies that obligate NPS to restrict certain hunting practices on the national preserves are clearly laid out in the *Wildlife Harvest on National Park System Preserves EA (2014)*, as quoted below:

The NPS Organic Act states: “The NPS shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations ... to conserve the scenery and the natural and historic objects and the wild life 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.”

ANILCA directs the Secretary of Interior, through the NPS, to administer Alaska NPS units in accordance with the NPS Organic Act as amended (ANILCA 201, 203) and specifically provides that national preserves are to be managed in the same manner as national parks with the exception that sport hunting and trapping are allowed (ANILCA, sec. 1313). Title II of ANILCA describes the key purposes and values for each area established under the Act (see Appendix A, II Evaluation Process) and identified species addressed in these regulations whose habitat and populations shall be protected.

NPS Management Policies of 2006 interpret the NPS Organic Act as amended and the policies provide direction to NPS managers on implementing the Organic Act. Section 4.4.1 of NPS Management Policies describes general principles the NPS follows to manage biological resources, including: "Preserving and restoring the natural abundances, diversities, dynamics, distributions, habitats, and behaviors of native plants and animal populations and the communities and ecosystems in which they occur; and minimizing human impacts on native plants, animals, populations, communities, and ecosystems, and the processes that sustain them." Section 4.4.3 specifically states: "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."

Prior to the passage of ANILCA, the Senate Committee on Energy and Natural Resources stated "[i]t is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem, and that concept should be maintained" (Alaska National Interest Lands, Report of the Senate Committee on Energy and Natural Resources, Report No. 96-413 at page 171).

ANILCA provides the NPS, through the Secretary of the Interior, authority to restrict taking wildlife for sport purposes for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment (ANILCA § 1313).

Section 1.1.1 Background, Wildlife Harvest on National Park System Preserves in Alaska (September 2014), pp. 2,3

The Department of the Interior will likely find many ways to implement Secretarial Orders 3347 and 3356 across its many agencies. However no provision in those orders compels the National Park Service to violate its legal mandates, above, on Alaska's national preserves using the sole justification of increasing hunter opportunity or aligning regulations with the State of Alaska.

- 3. We support the conclusions of the National Park Service in its 2014 EA and its 2015 Finding of No Significant Impact that the hunting activities restricted in 36 CFR 13.42 are designed to reduce predators and enhance ungulate populations, and should continue to be restricted under the NPS management authorities listed above.**

We disagree with assertions by the State of Alaska in the 2018 EA that taking bears and cubs in dens, taking wolves in the denning season, and the other practices banned by 36 CFR 13.42 are only employed to increase hunter opportunity, not to enhance ungulate populations. The State is being intentionally deceptive in its efforts to persuade the public and the federal government to go along with its regulations.

The State of Alaska has asserted that the hunting regulations banned under 36 CFR 13.42 are not “predator control,” and that therefore NPS is wrong to prohibit them. However, the State of Alaska has a very narrow definition of what can be called “predator control,” a state-authorized program of specific activities designed to severely reduce an identified population of predators. Instead, the state has emphasized “predator reduction” through liberal hunting regulations (large bag limits, long season lengths and, especially, the baiting of brown bears, not permitted until very recently under hunting regulations). It was this emphasis on the part of the State that triggered promulgation of 36 CFR 13.42. These types of predator reduction regulations are frequently discussed at Board of Game meetings as ways to help the Department of Fish and Game meet “harvest objectives,” along with providing hunter opportunity. It is disingenuous for representatives of the State to assert that aggressive predator reduction under the hunting regulations is only meant to increase hunter opportunity. NPS would err in accepting the state’s assertion regarding the intended effect of these hunting practices.

Although the State of Alaska claims that its regulations seeking to aggressively reduce predators will not have a “population level” impact on predator or prey populations, overall, the potential for “localized effects” to regional populations is clearly conceded in the 2018 EA:

*The proposed action could result in localized impacts to individual animals, family groups, and packs (e.g., direct mortality, increased mortality risk due to loss of family or group members, and food conditioning), resulting from the removal of current prohibitions on methods of take. However, due to the low level of additional take anticipated as a result of removing the current prohibitions, biological population-level effects are not anticipated. 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. The use of dogs to hunt black bears is expected to be rare and is likely to result in minimal and localized environmental impacts. No meaningful population-level impacts are expected to caribou. **Sport Hunting and Trapping in National Preserves, Alaska (August 2018), p. 9.***

Despite protestations from the State of Alaska that enhanced predator harvest practices like bear baiting and taking wolves in the denning season will have minimal effect on wildlife in the national preserves, DCC feels that NPS has compelling justification to keep the bans and authorities established in 36 CFR 13.42. It is only necessary that the banned hunting regulations were designed to or would be likely to reduce predator populations to enhance prey populations. This design and intent are clear, from the record.

4. The 2018 EA has not identified a deficit in hunter opportunity on the national preserves, nor has it shown that the proposed rule change will make any significant increase in hunter opportunity on the national preserves. It does identify potential user conflicts, however, if the rule change occurs.

The Alaska Hunting Regulations 2017-2018 booklet, shows the following seasons and bag limits in Unit 16B, which includes the SW Denali Preserve, revealing a robust hunting season despite existing restrictions under 36 CFR 13.42:

Brown bears, 2 bears every regulatory year, with no closed season.

Black bears, 3 bears every regulatory year, no closed season.

Caribou, 1 bull, August 10- Sept 30

Moose, 1 bull with size limitations, Aug 20-Sept 25

Dall Sheep, one ram every 4 years for nonresidents, every year for resident hunters, Aug 10 - Sept 20

Wolves, 10 wolves per hunter, Aug 10-Apr 30

The Denali Park website lists two guides authorized to operate in the preserves. These guides tout the remote and pristine nature of their hunts in their advertising. Those Alaskans who do not require a guide are free to avail themselves of the current hunting opportunities in the preserves. We believe that the hunting opportunities provided here are consistent with the role of national preserves and do not require enhancement. Additionally, the 2018 EA and Draft Regulation have shown no convincing need.

The small increase in hunter opportunity that may occur with this rule change is barely discussed and not quantified in the Impacts Analysis of the 2018 Sport Hunting in the National Preserves EA. The EA states:

*The proposed action could result in increased sport hunting opportunities in certain, localized areas of the preserves. It could also result in reduced opportunities for some visitors to observe predators in certain locations, especially opportunities to view wolves and bears along access corridors, and a corresponding increase in opportunities to view prey species. The avoidance of areas around bear baiting stations by recreational visitors could result in a reduction in other public uses and experience of those areas and safety issues related to bear baiting by sport hunters could also affect public use and experience. **Sport Hunting and Trapping in National Preserves in Alaska September 2018, p.15***

NPS must consider the user conflicts and diminished opportunities for other recreationists that could result from promulgating RIN:1024-AE38. Particularly salient is the problem of food-conditioned bears, if bait stations are permitted. It has been the policy of NPS for many years to require bear resistant food containers in the national park backcountry, and to encourage hikers to keep food scent away from their camps. Since food-conditioned bears are much more likely to injure or kill people as they aggressively seek human food, these policies have been essential in keeping the parks safe for visitors. Bait stations would complicate that effort and create a dilemma for management. Surely, the Secretarial Orders promoting increases in hunter access on federal lands did not intend to create new conflicts or make national parks less safe for visitors.

5. The National Park Service should be the defender of fair chase principles when it comes to sport hunting on service lands. Alaskans expect it.

The Boone and Crockett Club, founded in 1887, has become the premier voice in the hunting community for fair chase. It is significant that Charles Sheldon, whose efforts resulted in the establishment of Mt. McKinley National Park, was an early member of the club. Two significant paragraphs from the club's position on Fair Chase are quoted below.

As a means of separating the actions of commercial market hunters from those of sportsmen, an ethical code of hunter conduct was discussed at the first meeting of the Boone and Crockett Club in 1887. The name given to this code was fair chase and it is defined by the Club as "the ethical, sportsmanlike, and lawful pursuit and taking of any free-ranging wild, native North American big game animal in a manner that does not give the hunter an improper advantage over such animals."

*As a leading conservation organization and promoter of fair chase in North America, it is important to the Boone and Crockett Club that the nuances and benefits of fair chase are clearly understood by hunters and non-hunters. The Club is concerned that hunting practices that were once deemed unacceptable are becoming more commonplace. This is not only eroding our overall hunting ethic, but the public's widespread support for hunting. **From Position Statement on Fair Chase, Revised June 21, 2016***

Although the issue of “fair chase” is not specifically referenced in either of the EAs on hunting in the national preserves, DCC feels it was implied when NPS, in 2014, determined that its enabling laws and policies could not allow practices that tended to reduce populations by **taking an unfair advantage**, for example by using bait to take bears or hunting wolves in the denning season, when key individuals are raising young and their loss could compromise the integrity of the entire pack.

Alaskans have expressed opposition to the activities banned under 36 CFR 13.42. A poll commissioned by the Humane Society of the United States and conducted by Remington Research Group asked a sample of 1,004 Alaskans in June 2018 their opinion of various hunting practices. The results are listed below:

1. Position on killing hibernating black bears in the den with aid of artificial light: 71% opposed
2. Position on using dogs to hunt black bears: 69% opposed
3. Position on killing swimming caribou (including using motor boats): 75% opposed
4. Baiting brown and black bears: 60% opposed
5. Taking wolves in the denning season, including at den sites: 57% opposed

6. We support the exemption of subsistence hunting (by federally qualified rural users) from the hunting restrictions in 36 CFR 13.42, and we support the continuation of the rural subsistence preference on federal conservation system units created by ANILCA, including the national preserves.

This means that in certain limited areas, bear baiting and taking swimming caribou could be practiced in conservation system units by rurally qualified subsistence users, but not sport hunters. We support this exemption, knowing that in certain areas, some of the banned practices were traditionally used. We would expect the numbers of individuals practicing these activities to be small.

In conclusion, DCC remains somewhat shocked and surprised that it is **you**, the National Park Service itself, that, after a scant three years, has decided to consider overturning a robustly justified, extensively heard and well received regulation, 36 CFR 13.42, one that has caused little if any impact on human use in the national preserves, according to your own analysis. This change is justified by two very broad Secretarial Orders to improve hunter opportunity, without proof of a need, and to cooperate more with the State of Alaska, with whom you already cooperate quite well on many levels.

We, as a small but experienced and educated group of park advocates, would prefer that the State of Alaska cooperate more with you, in the spirit of the Master Memorandum of Understanding between NPS and ADF&G, signed in October 1982. In that MMOU, the Department of Fish and Game agreed to “recognize that the taking of fish and wildlife by hunting, trapping or fishing on certain Service lands in Alaska is authorized in accordance with applicable State and Federal law unless State regulations are found to be incompatible with documented Park or Preserve goals, objectives or management plans.” You have longstanding, solid authority to determine what sport hunting regulations are or are not compatible with preserve purposes. You already showed that in the 2014 EA and in 36 CFR 13.42. Please do not change that.

Sincerely,

Nancy Bale, DCC Board of Directors

Denali Citizens Council Board

Nancy Bale, Steve Carwile, Nan Eagleson, Charlie Loeb, Hannah Ragland