



TRUSTEES FOR ALASKA

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November 5, 2018

National Park Service
Herbert C. Frost
Regional Director
Alaska Regional Office
240 West 5th Ave.
Anchorage, AK 99501

Submitted via regulations.gov and hand delivery

RE: Comments on National Park Service Proposed Rule for Hunting and Trapping in National Preserves in Alaska (Regulation Identifier Number 1024–AE38)

Dear Mr. Frost:

Trustees for Alaska submits these comments on the proposed rule (“2018 Rule”) on behalf of Alaskans for Wildlife, Alaska Wildlife Association, Alaska Wilderness League, Center for Biological Diversity, Copper Country Alliance, Defenders of Wildlife, Denali Citizens Council, Friends of Alaska National Wildlife Refuges, Humane Society of the United States, Humane Society Legislative Fund, Kachemak Bay Conservation Society, National Parks Conservation Association, Natural Resources Defense Council, National Wildlife Refuge Association, Northern Alaska Environmental Center, Oasis Earth, The Wilderness Society, Sierra Club, and Wilderness Watch.¹ The National Park Service (“Park Service” or “NPS”) must reject the 2018 Rule. The 2018 Rule proposes to strike two provisions of a Park Service regulation finalized in 2015 (“2015 Rule”). The 2015 Rule clarified that, under applicable statutes, the Park Service does not allow the State of Alaska (“State”) to conduct “predator reduction efforts (as defined in [the] rule)” on national preserves.² The 2015 Rule precludes

¹ The exhibits referenced in these comments were hand delivered via USB flash drive due to the upload restrictions on the Federal eRulemaking Portal.

² 80 Fed. Reg. 64,326, 64,343 (Oct. 23, 2015) (section 13.42(f) reads, in part: “State of Alaska management actions or laws or regulations that authorize taking of wildlife are not adopted in park areas if they are related to predator reduction efforts. Predator reduction efforts are those with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes, in order to increase harvest of ungulates by humans.”). The administrative record for the 2015 Rule is included as an attachment to the hand-delivered copy of these comments and should be included as part of this record.

“predator reduction efforts”³ achieved via the State’s sport hunting regulations,⁴ and does not allow specific methods of harvest within national preserves, such as bear baiting.⁵ The 2018 Rule removes the 2015 Rule prohibitions and allows State regulations to apply.⁶ However, only non-conflicting state law, including hunting regulations, can apply on national preserves. Allowing intensive management and predator control or any of the specific activities prohibited by the 2015 Rule conflicts with federal statutory mandates that govern wildlife management on national preserves.

The Alaska Board of Game has expanded these practices over the last fifteen years with the specific goal of reducing predator populations to increase human harvest of ungulates, and refused to exempt national preserves despite repeated requests from the Park Service. The 2015 Rule did not change the status quo: the Park Service had been issuing temporary regulations in annual compendiums to prevent these conflicting state regulations from applying in national preserves. With strikingly little justification, relying only on two Secretarial Orders, the 2018 Rule now seeks to undo this, stating a goal of achieving “consistency” between state and federal regulations.⁷ In so doing, the 2018 Rule completely fails to recognize that the statutory directives that underlie the 2015 Rule still apply, and cannot be waived through Secretarial Order. Finalizing the 2018 Rule would violate the Alaska National Interests Lands Conservation Act (ANILCA), the National Park Service Organic Act, and the Wilderness Act. The Park Service must comply with its federal mandates and leave the 2015 Rule in place.

I. ALIGNING PARK SERVICE REGULATIONS WITH STATE REGULATIONS CONFLICTS WITH FEDERAL LAW.

Generally, the State manages sport hunting in Alaska, including administering sport hunting activities on national preserves. However, when state regulations conflict with federal mandates on federal lands, federal mandates control.⁸ Increasingly over the past fifteen years, the Board of Game has passed sport hunting regulations that conflict with federal mandates.

³ These “predator reduction efforts” are referred to as “intensive management and predator control” throughout these comments.

⁴ 80 Fed. Reg. 64,326–327.

⁵ *Id.* at 64,343 (section 13.42(g) prohibits, among other things, baiting bears, taking wolves and coyotes during the denning season, and taking cub bears or female bears with cubs).

⁶ 83 Fed. Reg. 23,621, 23,622 (May 22, 2018) (“The proposed rule would apply the State of Alaska’s hunting regulations to national preserve lands, with limited exceptions found elsewhere in NPS regulations. *See, e.g.,* 36 C.F.R. § 13.42(d).”).

⁷ 83 Fed. Reg. 23,622. Despite this stated goal, the 2018 Rule fails to mirror State prohibitions, which the 2015 Rule specifically included. *See* 80 Fed. Reg. 64,325 (“This rule affirms current State prohibitions on harvest practices by adopting them as federal regulation.”).

⁸ *See* 36 C.F.R. § 2.2(b)(4) (“Where hunting or trapping or both are authorized, such activities shall be conducted in accordance with Federal law and the laws of the State within those exterior boundaries a park area or a portion thereof is located. Nonconflicting State laws are adopted as a part of these regulations.”); *see also* 36 C.F.R. § 13.40(d)(1) (“Hunting and trapping are allowed in national preserves in accordance with applicable Federal and non-conflicting State law and regulations.”).

Accordingly, the Park Service has acted to prevent application of those regulations on national preserves, first through temporary regulations and then with implementation of the 2015 Rule. As noted by the Park Service, the 2015 Rule was necessary “to eliminate the adverse impacts associated with the Alaska Board of Game harvest regulations that are inconsistent with federal laws and policies intended to protect the resources and values of the National Park System in Alaska.”⁹ Revoking the 2015 Rule and finalizing the 2018 Rule would reverse the long-standing Park Service policy prohibiting predator reduction, contradict numerous factual determinations previously made by the Park Service, and violate numerous federal mandates.

A. The State Manages Wildlife to Inflate Ungulate Populations and Suppress Predators.

The State bases its legal framework for managing wildlife in Alaska on sustained yield, which is defined by state statute to mean “the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game.”¹⁰ The Board of Game is directed to “adopt regulations to provide for intensive management programs to restore the abundance or productivity of identified big game prey populations as necessary to achieve human consumptive use goals.”¹¹ As a result, State wildlife management is almost wholly focused on increasing the number of ungulates available for human harvest.¹² As former Alaska Department of Fish and Game (ADF&G) Assistant Commissioner Corey Rossi once stated, “the intent of Alaska’s Constitution and the Intensive Management Law is to maintain fish and wildlife populations at the upper end of the range of sustainability. In other words, we are to manage for abundance, rather than mediocrity”¹³ The Board of Game has become increasingly aggressive in its efforts to increase ungulates through implementation of both state-sponsored intensive management and predator control programs, and predator reductions through liberalization of

⁹ Nat’l Park Serv., *Wildlife Harvest n Nat’l Park System Preserves in Alaska: Evtl. Assessment*, at 5, Sept. 2014 [hereinafter “2014 EA”] (attached as Exhibit 60).

¹⁰ AS 16.05.255(k)(5); *see also* Alaska Const. Art. VIII, § 4 (“Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.”).

¹¹ AS 16.05.255(e); The Alaska Supreme Court has upheld intensive management of predators under the sustained yield clause of the Alaska Constitution, “[e]ven where the regulation sets an objective of reducing black and brown bear populations to ‘the lowest level possible’” within a portion of a GMU. *West v. State, Bd. of Game*, 248 P.3d 689, 700 (Alaska 2010); *see also id.* at 698 (holding that “the principle of sustained yield set forth in Alaska’s intensive management statute applies to predator populations but that the management of wildlife resources may include a selection between predator and prey populations” such that the State may pursue intensive management programs that manipulate wildlife populations).

¹² *See, e.g.*, ADF&G, *Intensive Mgmt. Protocol*, Dec. 2011, at 5 (“This [intensive management] law is intended to achieve or maintain wild ungulate harvests in defined areas at elevated but sustainable levels through some combination of management practices.” (emphasis in original, definition at 21)) (attached as Exhibit 67).

¹³ Corey Rossi, *Managing for Abundance, Producing a Bounty for All Users to Enjoy*, THE SPORTSMEN’S VOICE (Summer 2009) (attached as Exhibit 78).

sport hunting and trapping regulations.¹⁴ The efforts have become so extreme that thirty-nine former biologists or supervisors for ADF&G's Division of Wildlife Conservation voiced concerns that the Division's science-based management was being replaced with "a simplistic abundance management model where maximum production of wild game meat is the State of Alaska's single, overriding objective."¹⁵

1. The Board of Game has Vastly Expanded State-Designated Predator Control Areas to Virtually Surround the Boundaries of Most National Preserves.

In 1994, the Alaska Legislature passed the Intensive Management Statute.¹⁶ The explicit goal of that statute is to maintain, restore, or increase the abundance of big game populations for human consumptive use.¹⁷ Where prey (such as moose and caribou) population levels are not considered to be high enough to meet human consumptive needs, the Board of Game is legislatively prohibited from taking other conservation measures unless it also implements an "intensive management" plan.¹⁸ Although habitat improvement projects can qualify as intensive management, predator control has been nearly universally adopted under these plans. Further, there are no ongoing habitat improvement projects under the intensive management law.¹⁹

The statutory definition of "intensive management" makes clear that the State's wildlife management objective is to increase prey populations for human harvest by, in part, reducing predator populations:

[the] management of an identified big game prey population consistent with sustained yield through active management measures to enhance, extend, and develop the population to maintain high levels or provide for higher levels of

¹⁴ This is true even as studies conducted in Alaska show that predator control fails to achieve these goals because of carrying capacity, which is limited in an Arctic climate and compounded by stochastic weather events. *See e.g.*, R. D. Boertje, et al., *Demography of an Increasing Caribou Herd with Restricted Wolf Control*, 81(3) J. OF WILDLIFE MGMT. 1 (Apr. 2017) (attached as Exhibit 91); C. D. Mitchell, et al., *Population Density of Dall's Sheep in Alaska: Effects of Predator Harvest?*, 60(1) MAMMAL RESEARCH 21 (Jan. 2015) (attached as Exhibit 92); L. R. Prugh & S. M. Arthur, *Optimal Predator Mgmt. for Mountain Sheep Conservation Depends on the Strength of Mesopredator Release*, 124(9) OIKOS 1241 (Sep. 2015) (attached as Exhibit 93).

¹⁵ Letter from Warren Ballard, et al. to Denby Lloyd, Dir., ADF&G (Mar. 20, 2010) (attached as Exhibit 89).

¹⁶ AS 16.05.255.

¹⁷ *Id.* at 16.05.255(e).

¹⁸ *Id.* at 16.05.255(f).

¹⁹ Sterling D. Miller, et al., *Trends in Brown Bear Reduction Efforts in Alaska, 1980–2017*, 28(2) URSUS 135,135–136 (2017) (attached as Exhibit 13) ("Habitat management (e.g., fire for moose) was also identified as a mechanism under the [intensive management] law to increase ungulate abundance in Alaska, but there are no ongoing habitat improvement projects.") (internal citation omitted).

human harvest, including control of predation and prescribed or planned use of fire and other habitat improvement techniques.²⁰

ADF&G’s description of predator control includes sport hunting of predators as part of the State’s overall strategy to artificially raise prey populations:

Predator control is intended to ultimately allow a higher sustainable harvest of prey in a particular area. The initial objective in a control program is a reduction (not elimination) in numbers of predators in the shortest possible time, in a specified area, followed by maintenance of predators at this temporarily lower level to enable the prey population to increase. After harvest and prey population goals set by the Alaska Board of Game (board) and ADF&G have been met, and predator populations have begun to increase in response to increased food resources, *regulated hunting and trapping harvests of predators need to be sufficient to limit the growth of those predator populations.*²¹

Some examples of intensive management and predator control actions include aerial shooting of wolves,²² gassing wolf pups in dens,²³ same-day airborne tracking,²⁴ liberalizing or creating unlimited bag limits and unlimited seasons,²⁵ bear baiting,²⁶ snaring,²⁷ reclassifying black bears as furbearers to allow for trapping,²⁸ and hunting of sows and cubs.²⁹

In response to the controversy generated by predator control efforts, in 1995 Governor Tony Knowles commissioned the National Academy of Sciences to review Alaska’s programs. The academy’s National Research Council (NRC) review included recommendations to bring Alaska’s intensive management and predator control programs in line with modern wildlife

²⁰ AS 16.05.255(j)(4).

²¹ ADF&G, *Predator Mgmt. in Alaska*, Nov. 2007, at 4 (attached as Exhibit 75) (emphasis added).

²² See AS 16.05.783 (allowing the Board of Game to authorize airborne shooting or same day airborne shooting as part of game management plans); 5 AAC 92.110 (allowing for the “reduc[ti]on of] wolf populations . . . by any means.”); *Id.* at 92.123(b)(5)(C) (“the commissioner may issue public aerial shooting permits, public lands and shoot permits, or ground-based shooting permits”).

²³ See Zaz Hollander, *Federal Judge Rejects Predator-Control Lawsuit Against Interior Dep’t*, ANCHORAGE DAILY NEWS (June 13, 2018) (“Fish and Game did gas wolf pups in dens but only in one program in 2008 and 2009, officials say.”) (attached as Exhibit 109).

²⁴ See, e.g., 5 AAC 92.122(b)(4)(D)(iii).

²⁵ See, e.g., *Id.* at 92.122(b)(4)(D)(ii).

²⁶ See, e.g., *Id.* at 92.122(b)(4)(D)(v).

²⁷ See, e.g., *Id.* at 92.122(b)(4)(D)(vii).

²⁸ See, e.g., ADF&G, *Predation Mgmt. Summary, 2007–2009*, Feb. 2010, at 3 (“At its January 2010 statewide meeting, the Board reclassified black bears as furbearers, thus providing future opportunities to allow trained trappers to snare bears in areas where the board establishes trapping seasons and bag limits.”) (attached as Exhibit 68).

²⁹ See e.g., ADF&G, *Predator Control in Unit 16*, at 4 (attached as Exhibit 65).

science.³⁰ The recommendations were never wholly applied and quickly fell out of use.

After a decade largely free of major intensive management and predator control actions, the administration of then Governor Frank Murkowski implemented large-scale intensive management programs in 2003, which have only increased in size and scope.³¹ The maps attached as Exhibit 12 illustrate the expansion of state designated intensive management and predator control areas, and how the boundaries of most national preserves have been encroached upon and many have become virtually surrounded by predator control areas.³²

2. *The Board of Game has Dramatically Liberalized the Methods and Means Authorized by Sport Hunting Regulations to Reduce Predator Populations.*

Like the expansion of predator control areas, the liberalization of hunting and trapping methods and means has increased dramatically over the past fifteen years.³³ Some intensive

³⁰ NAT'L RESEARCH COUNCIL, WOLVES, BEARS, AND THEIR PREY IN ALASKA, BIOLOGICAL AND SOCIAL CHALLENGES IN WILDLIFE MGMT. (1997) (attached as Exhibit 37).

³¹ For a history of the expansion of predator control programs in Alaska, see Victor Van Ballenberghe, Biological Standards and Guidelines for Predator Control in Alaska: Application of the Nat'l Research Council's Recommendations (Nov. 2004) (attached as Exhibit 1); Victor Van Ballenberghe, *Predator Control, Politics, and Wildlife Conservation in Alaska*, 42 ALCES 1 (2006) (attached as Exhibit 2); Victor Van Ballenberghe, *Intensive Mgmt.—or mismanagement? Exploring Alaska's Predator Control Programs*, 5(4) THE WILDLIFE PROF'L, 74 (2011) (attached as Exhibit 76); Caroline Kennedy & Theresa Fiorino, *Alaska's Predator Control Programs: Managing for Abundance or Abundant Mismanagement?*, DEFENDERS OF WILDLIFE (2011) (attached as Exhibit 5); see also NPS Manipulation of Wildlife Populations in NPS Areas, Summary Position Statement, Sept. 30, 2011, at 1 (“Since 2004, the [intensive management] statute has been more broadly applied by the [Board of Game] over much larger areas of the State. Intensive management in combination with more recently espoused, but legally undefined strategies of, ‘active management’ and ‘abundance-based management,’ have been used by the [ADF&G] to attempt to increase prey populations — generally moose and caribou — largely by incentivizing harvest of predator populations — generally wolves and bears. The State has implemented intensive management on NPS Preserves where managing one species for benefit of another is not generally permissible under existing federal law and NPS policy.”) (attached as Exhibit 54); NPS Briefing Statement FY 2015, Jan. 29, 2014, at 1 (“To maintain large prey populations, the state has established predator reduction objectives and attempted to increase the harvest or predators in areas including national preserves using elevated bag limits (i.e., 10 wolves/day, longer seasons and liberalized hunting methods.”) (attached as Exhibit 85).

³² See Nat'l Park Serv., Alaska Region GIS Team, *State of Alaska Predator Control Areas* (attached as Exhibit 12); see also 2014 EA at 17 (map of Intensive Management areas indicating that the majority of the State is subject to intensive management); *id.* at 18 (map of predator control areas).

³³ For a history of the Board of Game's liberalization of brown bear hunting, see Sterling D. Miller, et al., *Trends in Intensive Mgmt. of Alaska's Grizzly Bears, 1980–2010*, 75(6) J. OF WILDLIFE MGMT. 1243 (2011) (attached as Exhibit 4).

management and predator control methods — such as aerial gunning of wolves — are easily identified as predator control and codified as official state predator control programs in 5 AAC 92.125. But the Board of Game also seeks to reduce populations of predators by liberalizing methods and means authorized by sport hunting regulations.³⁴ In fact, “[e]fforts designed to reduce predation by liberalizing hunting regulations for predators is the default mechanism utilized to accomplish the [intensive management] law’s desired outcome of increasing hunter harvest of moose and caribou.”³⁵ ADF&G identifies that “[t]he sequence of intensive management actions typically progresses from the more benign to the most aggressive.”³⁶ These measures have included:

- increasing bag limits and lengthening hunting seasons for predators to increase their harvest, including allowing for the harvest of sows, bear cubs, and wolf pups;³⁷
- eliminating the need for hunters to obtain or purchase hunting tags or permits for predators (monetarily incentivizing hunting of predators);³⁸
- authorizing the incidental taking of predators;³⁹

³⁴ See, e.g., Exhibit 13 at 3 (“To our knowledge, outside of Alaska, no place in the world has management objectives designed to reduce population abundance across large areas by encouraging increased hunter harvests. The primary reason for this objective in Alaska is to increase the number of moose (*Alces alces*) and caribou (*Rangifer tarandus*) available for harvest by Alaskan hunters (Miller et al. 2011). In Alaska, this predator reduction objective also applies to American black bears (*U. americanus*; hereafter, black bears) and wolves (*Canis lupus*; Van Ballenberghe 2006; Miller et al. 2011, 2013; Schmidt et al. 2017a.”); Alaska Dep’t of Fish & Game, *Overview of Relationships Between Bears, Wolves, and Moose in Alaska* (June 23, 2013) (“During the last 10 years, the Alaska Board of Game has made a deliberate effort to reduce numbers of grizzly bears in a few important hunting areas . . . by increasing the bag limit and extending hunting seasons.”) (attached as Exhibit 19 at 1–2); NPS internal email, (Feb. 20, 2014) (noting increase in bag limits for black bears in 25C – YUCH from 3 to 5 per year, increase in brown bears baited at black bear bait stations in 24C – GAAR, and increased interest in black bear baiting in 12 and 20E) (attached as Exhibit 69); ADF&G, Regulatory Proposal Book 2017–2018 at 96–97 (“The Board of Game (board) liberalized brown bear hunting regulations including the tag fee exemption to increase the harvest of brown bears in Units 11, 13, and 16 during the March 2003 board meeting and in Unit 17 during the March 2011 board meeting.”) (attached as Exhibit 70).

³⁵ Exhibit 13 at 3 (citing ADF&G no date; Paragi 2016a, b); see also Exhibit 75 at 5 (“Take of predators by conventional hunting and trapping may be increased through liberalized seasons and bag limits to reduce the effects of predation on prey populations.”).

³⁶ Exhibit 75 at 8 (“initial actions may include reducing or eliminating non-resident hunting, reducing or eliminating resident hunting, liberalizing hunting and trapping regulations for wolves and bears, and habitat improvement projects”).

³⁷ See, e.g., Exhibit 75.

³⁸ Alaska Board of Game, Bear Conservation and Mgmt. Policy, 2004-147-BOG, at 8 (Mar. 8, 2004) (attached as Exhibit 32).

³⁹ See, e.g., ADF&G, Summary of Changes for 2018–2019 at 1 (allowing take of brown bears at bait stations during the open black bear baiting season) (attached as Exhibit 71); Alaska Hunting

- authorizing same-day airborne hunting and trapping, which allows hunters to harvest predators the same day they have been flying;⁴⁰
- “[e]xpanding public hunting and trapping [for wolves] into seasons when wolf hides are not prime;”⁴¹
- allowing the use of bait for hunting wolves;⁴² and
- expanding baiting practices.⁴³

Over the last fifteen years, the Board of Game has liberalized brown bear hunting regulations in the vast majority of the state without any accompanying research or monitoring to evaluate potential impacts to bear populations, and “has made little effort to estimate sustainable harvest rates of bear populations.”⁴⁴ In 2004 and 2006, the Board of Game explicitly identified that the purpose of its Bear Conservation and Management Policy is to provide guidance “when the Board of Game determines ungulate populations important for human consumption are being kept at low levels because of bear predation.”⁴⁵ The first “Guiding Principle” is “to reduce bear numbers through general hunting provisions such as liberalized seasons, bag limits, hunting methods and means, and tag waivers.”⁴⁶ The 2004 Board of Game Findings Regarding Bear Baiting illustrates how the Board of Game views liberalized methods and means as a way to achieve the State’s goals under the intensive management programs, noting that “[p]opulation and harvest objectives for species important for human use, particularly for food, may be attainable without drastic bear control measures if a considerable number of bears are taken by bear baiters.”⁴⁷ These policies continue today. In 2011, 2012, and 2016, the Board of Game issued its “Bear Conservation, Harvest, and Management Policy.”⁴⁸ The “Guiding Principles”

Regulations 2018–2019, Bear Baiting Seasons and Requirements at 2 (allowing take of wolves at bait stations) (attached as Exhibit 40).

⁴⁰ See, e.g., Alaska Board of Game, Wolf Mgmt. Policy, 2016-215-BOG, at 9 (Mar. 17, 2016) (attached as Exhibit 36).

⁴¹ *Id.*

⁴² *Id.*

⁴³ See, e.g., ADF&G, *Intensive Management in Alaska*, <http://www.adfg.alaska.gov/index.cfm?adfg=intensivemanagement.main>.

⁴⁴ Exhibit 13 at 9.

⁴⁵ See Exhibit 32 at 7); Alaska Board of Game, Bear Conservation and Mgmt. Policy, 2006-64-BOG, at 7 (May 14, 2006) (same statement) (attached as Exhibit 33).

⁴⁶ Exhibit 32 at 8; Exhibit 33 at 7 (same statement).

⁴⁷ Alaska Board of Game, Finding Regarding Bear Baiting Allocation, 2004-151-BOG (March 10, 2004) (attached as Exhibit 31); see also Exhibit 36 at 8 (“These [wolf hunting and trapping] seasons provide for both subsistence and other traditional economic harvest opportunities and, as a side benefit, allow for participants to directly aid in mitigating conflicts between wolves and humans or improving ungulate harvest levels.”); *id.* at 9 (“As ungulate harvest objectives are met, the Board will transition from a wolf control program to a wolf management program, relying to a greater extent on public hunting and trapping.”).

⁴⁸ Alaska Board of Game, Bear Conservation, Harvest, and Mgmt. Policy 2011-186-BOG, (Mar. 25, 2011) (attached as Exhibit 34); Alaska Board of Game, Board of Game Bear Conservation, Harvest, and Mgmt. Policy, 2012-194-BOG, (Jan. 18, 2012) (attached as Exhibit 35); Exhibit 36.

again used general hunting provisions to reduce bear numbers, stating it “[f]avor[s] conventional hunting seasons and bag limits to manage bear numbers.”⁴⁹

Some examples of the Board of Game’s attempts to achieve the intensive management program’s goals through liberalized sport hunting regulations include:

- The Board of Game liberalized hunting regulations in Unit 20E “in an attempt to reduce the brown bear population to decrease predation pressure on moose calves.” Beginning in the early 1980s, measures included lengthening the brown bear season, increasing the bag limit from one bear every four years to one bear every year, and waiving the tag fees.⁵⁰
- The Board of Game increased the bag limit for brown bears in Units 6A, 6B, and 6C from one bear every four years to one bear every year. The Board of Game first made this change in 1997 for resident hunters, and expanded it in 2001 for all hunters, “in response to low moose calf survival in Unit 6B.”⁵¹
- In 2004, the Board of Game reauthorized the brown bear tag fee exemption in Units 19D, 20D, and 20E⁵² because “moose are currently below their population or harvest objectives” and “tag fee exemptions will encourage harvesting opportunistically associated with other hunting practices.”⁵³
- In November 2005, the Board of Game lengthened the brown bear season in Unit 22A because “bear predation . . . is contributing to a serious decline in moose population.”⁵⁴

⁴⁹ Exhibit 34 at 4; Exhibit 35 at 4; Alaska Board of Game, Board of Game Bear Conservation, Harvest, and Mgmt. Policy, 2016-214-BOG, at 4 (Mar. 17, 2016).

⁵⁰ ADF&G, Brown Bear Mgmt. Report of Survey-Inventory Activities, 1 July 2010–20 June 2012, at 243 (Patricia Harper & Laura A. McCarthy, eds.) (2013) (attached as Exhibit 74).

⁵¹ *Id.* at 57; *see also id.* at 168 (noting that “The bag limit in Subunit 16B was liberalized from 1 bear every 4 years to 1 bear every year in RY01 and increased again to 2 bears every year in RY05. The bag limit in Subunit 16A was also liberalized from 1 bear every 4 years to 1 bear per year in RY05.”).

⁵² State hunting regulations are typically specific to particular game management units, which are geographic areas of the state. There are currently 26 units, with subunits. *See* Alaska Dep’t of Fish & Game, Game Management Unit (GMU) Information, <http://www.adfg.alaska.gov/index.cfm?adfg=huntingmaps.gmuinfo>; *see also* 2018-2019 Alaska Hunting Regulations (attached as Exhibit 39); Exhibit 12 at 7.

⁵³ Julie Lurman & Sanford P. Rabinowitch, *Preemption of State Wildlife Law in Alaska: Where, When, and Why*, 24 ALASKA L. REV. 145, 156 n. 49 (2007) (*citing* ADF&G, Summary of Actions, 24, Feb. 26–Mar. 10, 2004) (attached as Exhibit 3); ADF&G, Summary of Actions, Feb. 26–Mar. 10, 2004 (attached as Exhibit 110).

⁵⁴ 24 Alaska L. Rev. 145, 156 n. 49 (*citing* ADF&G, Summary of Actions, Nov. 11–14, 2005, at 9); ADF&G, Summary of Actions, Nov. 11–14, 2005 (attached as Exhibit 111).

- In January 2006, the Board of Game allowed trapping of black bear and the sale of hides and skulls, stating: “Board members felt that allowing the sale of hides provides an opportunity to increase harvest in predator control areas.”⁵⁵
- In March 2006, the Board of Game eliminated brown bear tag fees in Unit 25C because “[a]dopting this proposal is consistent with the intensive management goals for the Fortymile caribou herd. Eliminating bear tag fees is another way of encouraging more brown bear harvest.”⁵⁶
- In the spring of 2013, the Board of Game approved the harvest of brown bears at black bear stations in Unit 12, finding that “[c]onsiderable interest in hunting grizzly bears over bait has been expressed by hunters who bait black bears in Unit 12. *This method has the potential to substantially increase harvest.*”⁵⁷

To reflect the State’s desired lower predator population levels, the Board of Game also manipulates the population objective of predators and then modifies sport hunting regulations in an attempt to reduce populations to those levels. For example, in Unit 16, ADF&G has lowered brown bear population objectives and lengthened brown bear hunting seasons to boost moose numbers:

[d]uring 1994, the Board of Game directed the department to allow the brown bear population in Unit 16 to decline. The board determined moose was the priority species in Unit 16, and a high population of brown bears conflicted with moose population productivity. Griese (1995) *modified the brown bear population objective to reflect that priority. It was modified again in 1998, producing management goals and objectives intended to reduce the bear population.* Because harvest levels were not reaching objectives and the ratio of bears to moose was greater than desired, the Board of Game adopted a 10 August opening date in RY99 in Unit 16B. The board lengthened the season in Unit 16A by moving the opening date from 1 September to 10 August, beginning in RY09.⁵⁸

The “Management Direction” is to “[r]educe the impact of brown bear predation on moose calves in the unit. . . .”⁵⁹

⁵⁵ *Id.* (citing ADF&G, Summary of Actions, (Jan. 27–29, 2006) at 4); *see also* Alaska Board of Game, Fall 2005 Proposal Book, Dec. 2005 at 16 (proposal 21 allowing for hunter and trapper permits to sell hides and skulls of black bears “[i]n units or subunits where the board has determined that black bear populations need to be reduced”) (attached as Exhibit 112); Alaska Board of Game, Meeting Summary, Jan. 27–30, 2006 (proposal 21 carried as amended) (attached as Exhibit 113).

⁵⁶ *Id.* (citing ADF&G, Summary of Actions, Mar. 10–21, 2006 at 5); *see also* ADF&G, Summary of Actions, Mar. 10–21, 2006 (attached as Exhibit 114).

⁵⁷ Exhibit 74 at 136 (emphasis added).

⁵⁸ *Id.* at 169 (emphasis added).

⁵⁹ *Id.*

Even in units without formal predator reduction programs, the Board of Game has liberalized sport hunting regulations to decrease predator populations to artificially manipulate prey numbers. For example, in Unit 20, bag limits were liberalized in 2004 and the seasons liberalized in 2006, 2010, and again in 2012.⁶⁰ Also in 2012, the Board of Game first authorized brown bear baiting. This was done under the State’s hunting regulations — as opposed to a formal predator control program — because the Board of Game found that not enough hunters obtained predator control permits, and the Board of Game wanted to increase bear harvest by hunters to aid “elevated yields” of ungulates.⁶¹ In its “Conclusions and Recommendations” ADF&G states:

[a]lthough there is no formal grizzly bear reduction program in these intensive management areas, moose and caribou populations are managed for elevated yields by legislative mandate. Therefore, harvesting grizzly bear populations at the higher range of sustainable harvest would be consistent with the mandate to increase moose and caribou populations.⁶²

In addition to the liberalization methods identified above, the Board of Game noted that it should “develop innovative ways of increasing bear harvests if conventional hunting seasons and bag limits are not effective at reducing bear numbers to mitigate predation on ungulates”⁶³

The Board of Game has also focused on liberalizing methods and means of sport hunting to reduce wolf populations in an attempt to achieve the intensive management statute’s goals. For example, a proposal in 2004 increased the wolf hunting season and bag limit in Unit 19 because doing so was “vital in reducing the predator population and helping to conserve the moose population.”⁶⁴ More recently, in 2011, the Board of Game issued an emergency order to extend wolf hunting and trapping seasons in GMUs 9 and 10 to increase caribou numbers and get around the U.S. Fish & Wildlife’s prohibition on aerial wolf control programs on Unimak

⁶⁰ *Id.* at 219.

⁶¹ See Email from Sandy Rabinowitch to Deb Cooper, *Brief history – Brown bear baiting – And some bullets*, (Apr. 4, 2014) (attached as Exhibit 30).

⁶² Exhibit 74 at 221.

⁶³ Exhibit 34 at 4; Exhibit 35 at 4; Exhibit 36 at 4; *see also* Exhibit 74 at 147 (noting that “despite high documented moose calf mortality, the options are limited for further increasing the take of brown bears in this area. One potential option would be to change the guide requirement to allow nonresidents to hunt brown bears in Unit 13 without a guide.”); *id.* at 248 (“Total moose populations throughout Unit 20E have not yet increased to desired levels and grizzly bear harvest remains low. Incentives or methods and means other than those allowed under current hunting regulations or the brown bear control program (RY04–RY08) will be necessary if the brown bear population is to be substantially reduced to accomplish our management objectives. Several ideas to increase the number of brown bears killed include allowing nonresidents to hunt brown bears in Unit 20E without a guide under general hunting regulations, allowing sale of tanned hides, snaring as a means of take, and a bag limit of any bear under the bear control program.”).

⁶⁴ Exhibit 74 at 248.

Island.⁶⁵

The Board of Game’s policy positions and utilization of sport hunting regulations to further the intensive management program goals are reflected in ADF&G documents. For example, in its 2007 *Predator Control Management in Alaska*, ADF&G stated:

harvest of wolves and bears — traditional hunting and trapping or other means — must limit the natural growth of predator populations, which otherwise normally return the predator-prey situation to the same low density dynamic equilibrium condition that existed before the control program was initiated. Efforts by the public . . . will sometimes be a necessary part of overall, intensive management programs designed to increase harvests of moose and caribou.⁶⁶

Further, ADF&G’s 2007–2009 *Predation Management Summary* notes that intensive management goals are met, in part, by “liberalizing harvest of predators.”⁶⁷ And, for some units, ADF&G specifies the management goal of “manag[ing]” predators to reduce predation on ungulates.⁶⁸ ADF&G has acknowledged that the State specifically liberalizes hunting regulations as a way to try to achieve increases in prey populations in areas where Park Service regulations prohibit formal predator control programs:

The predator control component of “intensive management” would probably be ineffective for increasing moose numbers in Unit 23 because >60% of the unit is federal public land [including Bering Land Bridge National Preserve, Noatak National Preserve, and Gates of the Arctic National Preserve]. Therefore, since the early 1990s the state has incrementally liberalized brown bear and wolf hunting regulations to afford the public greater opportunity to harvest these species thereby reducing predation on moose and sheep.⁶⁹

While the Board of Game adopts these liberalized methods and means as part of its regulatory process for sport hunting and trapping regulations, the clear aim is to support the formal intensive management programs and to achieve the goal of the intensive management law: the reduction of predator populations and increase in prey populations.

⁶⁵ ADF&G, *Hunting and Trapping Emergency Order No. 04-01-11* (Mar. 31, 2011) (attached as Exhibit 9).

⁶⁶ Exhibit 75 at 18.

⁶⁷ ADF&G, *Predation Mgmt. Summary, 2007–2009*, Feb. 2010, at 2 (attached as Exhibit 77).

⁶⁸ See, e.g., Exhibit 74 at 223 (listing the following management goal: “As directed by the Alaska Board of Game, manage grizzly bears to reduce the effects of predation on ungulate species in portions of Unit 20D.”).

⁶⁹ ADF&G, *Wolf Mgmt. Report of Survey and Inventory Activities 1 July 1999–30 June 2002 at 218* (2003).

3. *The Park Service has Repeatedly Stated that the Board of Game’s Predator Reduction Efforts are Inconsistent with Park Service Mandates.*

The Park Service has consistently maintained that predator reduction efforts, including those adopted outside of formal programs like liberalized sport hunting and trapping regulations, are inconsistent with its mandates.⁷⁰ However, the Board of Game has repeatedly refused to exempt national preserves from its predator reduction efforts. This is despite the Master Memorandum of Understanding signed by the Park Service and ADF&G in 1982, which committed the State to “manage wildlife on NPS managed lands for natural species diversity and natural process.”⁷¹

Many of the State’s efforts to reduce predator populations have included national preserve lands. For example, in 2004, the Board of Game authorized a brown bear tag fee exemption in parts of Yukon Charley Rivers National Preserve and Denali National Preserve.⁷² In 2006, the Board of Game extended the wolf hunting season to “help increase moose numbers” in portions of Denali National Preserve, Wrangell-St. Elias National Preserve, and Yukon Charley Rivers National Preserve.⁷³ As of 2013, “liberal hunting and trapping regulations for bears, wolves, and coyotes . . . which clearly support intensive management objectives” would — without Park Service intervention — apply to ninety-percent of National Preserve lands in Alaska.⁷⁴

The Park Service has repeatedly asked the Board of Game to exempt its lands from such regulations without success. Through August 2013, the Park Service objected to proposed State regulations 61 times.⁷⁵ The following table summarizes the conflict:

⁷⁰ See, e.g., Testimony from Michael Finley, Assoc. Reg. Dir. NPS to the Board of Game, March 26, 1985 (addressing the differing mandates and requesting that any Board of Game actions within GMUs that apply to units of the Park System be consistent with the Federal purposes and policies) (attached as Exhibit 56); Testimony of Roger J. Contor, Reg. Dir, NPS, to the Board of Game at 9 (Dec. 2, 1984) (explaining to the Board of Game that “predator control may not be used in units of the National Park System in Alaska”) (attached at Exhibit 57).

⁷¹ 80 Fed. Reg. 64,331; see also NPS/ADF&G, Master Memorandum of Understanding (Oct. 1982) at 2 (attached as Exhibit 38).

⁷² Exhibit 3 at 8 n. 86 (citing March 2004 Summary of Actions at 24, 38); Exhibit 110 at 24, 38.

⁷³ *Id.* at 3 n. 90 (*quoting* March 2006 Summary of Actions at 18); Exhibit 114 at 18.

⁷⁴ Memorandum from Geoff Haskett, Alaska Reg’l Dir. FWS & Sue Masica, Alaska Reg’l Dir. NPS, (Nov. 11, 2013) at 1 (attached as Exhibit 48).

⁷⁵ See Exhibit 6 (Table showing requests from Park Service that the Board of Game exempt national preserves from state regulations); see also 80 Fed. Reg. 64,326 (“In the last ten years, the NPS has objected to more than fifty proposals to liberalize predator harvest in areas that included national preserves, and each time the [Board of Game] has been unwilling to exclude national preserves from State regulations designed to manipulate predator/prey dynamics for human consumptive use goals.”); Krista Lanlois, *Alaska’s Wildlife War*, HIGH COUNTRY NEWS, May 27, 2014 at 3 (“Since 2001, the Park Service has asked the Board of Game roughly 60

| National Preserve | Actions Authorized by the Board of Game But Prohibited by Temporary Park Service Regulations through 2014 ⁷⁶ | Times the Board of Game Has Passed Regulations Over Park Service Objections through 2014 ⁷⁷ | Methods and Means Authorized by the Board of Game That Conflict with Park Service Mandates through 2014 ⁷⁸ |
|--|---|--|---|
| Gates of the Arctic National Preserve | Spotlight hunting of black bears and cubs Hunting wolves through May 31 (in GMU 24) | 17 | |
| Yukon Charley Rivers National Preserve | Bait hunting brown bears Hunting wolves through May 31 | 7 | |
| Wrangell-St. Elias National Preserve | Bait hunting brown bears Hunting wolves through May 31 (in GMU 12) | 12 | Black bear baiting Bag limit of 10 wolves per day (increased from 5 wolves per season) in GMU 13C |
| Denali National Preserve | Spotlight hunting black bears and cubs Bait hunting brown bears Hunting wolves through May 31 | 18 | Black bear baiting Bag limit of 10 wolves per day (increased from 5 wolves per season) in GMUs 19C and 19D |
| Lake Clark National Preserve | Hunting wolves through May 31 in northern Lake Clark Preserve (GMU 19B) and through June 30 in southern Lake Clark Preserve (Unit 9B) | 22 | Black bear baiting Bag limit of 10 wolves per day (increased from 5 wolves per season) |
| Aniakchak National Preserve | Hunting wolves through June 30 | 14 | Bag limit of 10 wolves per day |
| Katmai National Preserve | Hunting wolves through June 30 | 11 | Bag limit of 10 wolves per day (increased from 5 per season) |

When denying a request to exempt national preserves from liberalized regulations, the Board of Game asserted that the Park Service is responsible for compliance with federal laws and policies applicable to national preserves, and that the Park Service could use its own

times to exclude certain practices from national preserves. Each time, the board has said no”) (attached as Exhibit 100); Phil Taylor, *Ban on Predator Hunting in Alaska Preserves Sparks Uproar*, E&E NEWS, Oct. 6, 2014 (“the National Park Service has objected to at least 50 proposals by Alaska wildlife officials to liberalize the killing of predators within national preserves, but to no avail.”) (attached as Exhibit 53).

⁷⁶ See generally 2014 EA at 9 and 15.

⁷⁷ This total comes to 101 because, of the 61 regulations adopted over Park Service objections, many affected more than one specific preserve.

⁷⁸ See *id.*

authority to ensure compliance.⁷⁹ The 2015 Rule is partially the result of this position taken by the Board of Game.⁸⁰

In adopting the 2015 Rule, the Park Service anticipated that the Board of Game would continue to further liberalize State regulations in a way that is “inconsistent with NPS management directives, policies, and federal law.”⁸¹ Accordingly, the 2015 Rule included a provision requiring the Regional Director to “compile a list updated at least annually of State laws and regulations not adopted” on national preserves because they are predator reduction efforts.⁸²

The years since the 2015 Rule was adopted have demonstrated the need for this provision, as the Board of Game has continued to seek to subject national preserves to predator reduction efforts and has further liberalized allowable methods and means. For example, if the 2015 Rule was not in place, current State sport hunting regulations would allow:

- Bear baiting in parts of Aniakchak National Preserve, Bering Land Bridge National Preserve, Denali National Preserve, Gates of the Arctic National Preserve, Glacier Bay National Preserve, Katmai National Preserve, Lake Clark National Preserve, Noatak National Preserve, Wrangell-St. Elias National Preserve, and Yukon Charley Rivers National Preserve;⁸³
- Brown bear baiting in parts of Wrangell-St. Elias National Preserve, Denali National Preserve, Lake Clark National Preserve, Yukon Charley Rivers National Preserve, Gates of the Arctic National Preserve, Noatak National Preserve, and Bering Land Bridge National Preserve;⁸⁴
- Wolf trapping during the denning season in parts of Katmai National Preserve and

⁷⁹ See, e.g., Transcript of Proceedings, Alaska Board of Game (Excerpt), Feb. 27, 2010 (attached as Exhibit 25).

⁸⁰ Ironically, the State then sued the Park Service, alleging that the Park Service had no authority to promulgate the 2015 Rule and “unlawfully preempt[ed] the State’s authority to manage wildlife resources.” Compl. for Decl. J. and Inj. Relief at 2, *Alaska v. Jewell*, No. 3:17-cv-00013 JWS (Jan. 13, 2017) (attached as Exhibit 79).

⁸¹ 80 Fed. Reg. 64,326.

⁸² 36 C.F.R. § 13.42(f)(1).

⁸³ See, e.g., Exhibit 40 at 2 (identifying Units 1A, 1B, 1D, 2, 3, 5, 6A, 6B, 6C, 6D, 7, 9, 11, 12, 13, 14A, 14B, 15, 16, 17, 18, 19, 20, 21A, 21B, 21C, 21E, 23, 24, 25A, 25B, and 25C as areas open to bear baiting); compare with Exhibit 12 at 7 (identifying GMUs and national preserves). Board of Game regulations are GMU-specific (or sometimes statewide) unless an exception is written into the regulations.

⁸⁴ See Exhibit 40.

Lake Clark National Preserve;⁸⁵ and

- The shooting of wolves by trappers from stationary snowmachines in parts of Katmai National Preserve, Denali National Preserve, Yukon Charley Rivers National Preserve, Gates of the Arctic National Preserve, Noatak National Preserve, and Bering Land Bridge National Preserve.⁸⁶

In its 2018–2019 regulations, the Board of Game also lengthened the brown bear season in a GMU that includes part of Wrangell-St. Elias National Preserve, without including an exception for the Preserve lands.⁸⁷

This trend is likely to continue. The Board of Game’s most recent Bear Conservation, Harvest, and Management Policy notes how “conventional harvest programs” have been insufficient to “deliberately reduc[e] black bear numbers to improve moose calf survival” and that the Board of Game “has had to resort to more innovative regulations promoting baiting and trapping with foot snares.”⁸⁸ Further, the Board of Game committed to “develop[ing] innovative ways of increasing bear harvests if conventional hunting seasons and bag limits are not effective at reducing bear numbers to mitigate predation on ungulates.”⁸⁹ This policy is effective through June 30, 2021.⁹⁰ The Board of Game’s pursuit of “more innovative regulations” underscores its intent to continue to liberalize regulations to achieve its predator reduction goals, and demonstrates the importance of the 2015 Rule in ensuring the Park Service complies with its statutory mandates.

B. The Park Service’s Wildlife Mandates Prohibit the Inflation of Ungulate Populations and Reduction of Predators on National Preserves in Alaska.

Manipulating natural systems and processes conflicts with laws and policies applicable to national preserves, where the Park Service must preserve natural wildlife populations.⁹¹ Since

⁸⁵ See 2017–2018 Alaska Trapping Regulations at 34 (allowing trapping through June 30) (attached as Exhibit 59). In addition, “[i]t is legal to take a wolf at a bear bait station during an open wolf hunting season” See Exhibit 40 at 2.

⁸⁶ Exhibit 59 at 34, 39, and 44.

⁸⁷ Exhibit 71 at 1; Exhibit 39 at 5.

⁸⁸ Exhibit 36 at 4. In fact, as identified in *Trends in Brown Bear Reduction Efforts in Alaska, 1980–2017*, since the Intensive Management law passed in 1994, no studies have demonstrated that increased bear harvest has led to increased ungulate populations in any portion of Alaska. Exhibit 13 at 11. And the preliminary analyses conclude that increased bear harvest has had zero effect on moose neonate survival. *Id.* It is important to note that regardless of whether the State’s intensive management program meets its goals of increasing ungulate numbers, the program’s intent conflicts with Park Service mandates.

⁸⁹ *Id.*

⁹⁰ *Id.* at 1.

⁹¹ Nat’l Park Serv., Mgmt. Policies (2006) at §§ 4.1, 4.4.3 (attached as Exhibit 43); see also NPS Memorandum, Authority and Process Background Info., Wildlife Harvest, at 1 (unknown date)

even before the State passed the intensive management law in 1994, the Park Service recognized the incompatibilities between state and federal statutory mandates.⁹² Because of these statutory conflicts, the 2015 Rule specifically prevents application of state regulations that are incompatible with national preserve management requirements.⁹³ The 2018 Rule would eviscerate those provisions, and fail to comply with the Park Service’s statutory mandates to protect the national preserves. The 2018 Rule merely asserts that “NPS has broad discretion in managing wildlife on national preserves under applicable laws, policies, and regulations.”⁹⁴ In fact, the only authority the 2018 Rule relies on is Management Policy 4.4.3, which — rather than supporting the 2018 Rule — specifically prohibits predator control activities on National Park System lands, and two Secretarial Orders, which cannot overrule statutory mandates. The Park

(“Policies implementing the NPS Organic Act require the NPS to protect natural ecosystems and processes, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, and behaviors of wildlife. (NPS Management Policies 2006 §§ 4.1, 4.4.1, 4.4.2). Activities to reduce native species for the purpose of increasing numbers of harvested species (i.e. predator control) are not allowed on lands managed by the NPS. (NPS Management Policies 2006 § 4.4.3)”) (attached as Exhibit 41); NPS Memorandum, Overview on Proposed Rule and 2015 Proposed Compendiums at 1 (The laws establishing the National Park System and Service and the Alaska National Interest Lands Conservation Act (ANILCA) tell us to manage national parklands in ways to preserve intact, naturally-functioning ecosystems. . . . It also means that specific practices used by the State of Alaska, . . . focusing intense hunting pressure on predator species to benefit prey populations, are not allowed.”) (attached as Exhibit 44); NPS 2013 Compendium Preamble, Summary of Comments and NPS Response to Wildlife Provisions, at 5 (“The NPS manages neither for abundance nor sustained yield. Management actions designed to ‘support a high level of human harvest’ are inconsistent with the legal and policy framework for NPS areas.”) (attached as Exhibit 88).

⁹² See, e.g., Exhibit 38 (1982 MOU recognizing different mandates); Exhibit 22 (communications from the Park Service to the State from 2003–2017 reiterating the Park Service’s long-held position that there are incompatibilities between State and Federal mandates); Exhibit 10 (2013 NPS letter to Commissioner Campbell citing different mandates); NPS News Release, *NPS-Alaska Proposes Hunting Regulations for Nat. Preserves* (Sept. 4, 2014) (noting that the “manipulation of natural population dynamics conflicts with National Park Service law and policy.”) (attached as Exhibit 42); NPS-FWS Briefing for the U.S. Dep’t of the Interior at 4 (July 2014) (comparing the federal and state legal frameworks) (attached as Exhibit 45); NPS letter from Joel Hard, Deputy Reg. Dir., NPS, to Doug Vincent-Lang, Acting Dir., ADF&G (Dec. 14, 2012) (addressing disparity between the State’s and the Park Service’s duties and obligations) (attached as Exhibit 49); Internal NPS Memorandum, *Compilation of Closure Authority Background Material*, Dec. 11, 2012 (identifying Park Service mandates to protect park and preserve resources, including closure authority) (attached as Exhibit 50).

⁹³ 80 Fed. Reg. 64,328 (“The rule responds to State hunting regulations that authorize wildlife harvest practices that conflict with ANILCA’s authorization for sport hunting, the statutory purposes for which national preserves were established, and the NPS Organic Act as implemented by the NPS. . . . National park areas are managed for natural ecosystems and processes, including wildlife populations. The NPS legal and policy framework prohibits reducing native predators for the purpose of increasing numbers of harvested species.”).

⁹⁴ 83 Fed. Reg. 23,622.

Service's discretion in wildlife management does not extend to allow the State to implement predator reduction on national preserves, whether directly through intensive management programs or through liberalized sport hunting regulations.

1. The Organic Act and Park Service's Management Policies

The Park Service's Organic Act requires the Park Service to manage the National Park System "to conserve the scenery, natural and historic objects and the wild life" and provide for visitor enjoyment of the same for this and future generations.⁹⁵ The Park Service's management policies implementing the Organic Act reflect the agency's long tradition of nonintervention in wildlife dynamics.⁹⁶ Since the late 1960s, the Park Service has had a policy of "natural regulation," allowing wildlife populations to fluctuate without direct human intervention. In the 1980s, the agency's policy "emphasize[d] maintenance of natural ecological processes as a means of managing native wildlife."⁹⁷ And since as early as 1984, the Park Service has taken the consistent position that State of Alaska management proposals intended to reduce predators are prohibited on NPS-administered lands, including national preserves.⁹⁸

The Park Service recognized in annual compendiums since 2010⁹⁹ and by adopting the

⁹⁵ 54 U.S.C. § 100101.

⁹⁶ Exhibit 3 at 2.

⁹⁷ *Id.* at 2, n.14 (quoting Rolf O. Peterson, *Wolf-Moose Interaction on Isle Royale: The End of Natural Regulation?*, 9 *ECOLOGICAL APPLICATIONS* 10–11 (1999)).

⁹⁸ See Exhibit 22 (communications from the Park Service to the State from 2003–2017 reiterating the Park Service's long-held position regarding conflicts between State hunting regulations and NPS mandates). For specific examples, see *id.* at 1–2, 4, 7–9, 16–17, 19, 23–25, 29–32, 34, 38, 44, 46, 49, 51–56, 59, 62, 67–68, 72–73, 75–78, 82–83, 85–86, 89–92, 95–100, 102–105, 108, 112–113, 115, 117–118, 121, 124, 126, 130, 135–141, 143–144, 146–149, 151, 157, 161, 163, 169–170, 172–173 (identifying conflicts between State hunting measures and NPS mandates and requesting that NPS lands be excluded); Letter from Debora Cooper, Assoc. Reg. Dir., NPS to Ted Spraker, Chairman Alaska Board of Game (Feb. 1, 2018) (attached at Exhibit 23) (reiterating the Park Service's long-held position); Letter from Joel Hard, Deputy Reg. Dir., NPS, to Doug Vincent-Lang, Acting Dir., ADF&G (April 03, 2013) at 1 ("As has repeatedly been communicated in writing and verbally, the differing legal frameworks for the State of Alaska and the National Park Service compel each of our agencies to assess issues associated with wildlife management and the national park areas differently.") (attached as Exhibit 61); *id.* at 6 ("Management actions designed to 'support a high level of human harvest' are inconsistent with the legal and policy framework for NPS areas."); Testimony of Roger J. Contor, Reg. Dir., NPS, to the Board of Game, Dec. 2, 1984 (same) (attached as Exhibit 57); Letter from Roger Contor, Reg. Dir., NPS, to the Board of Game (Aug. 22, 1984) (same) (attached as Exhibit 58); Ex. 103 at 1 ("Predator control . . . is incompatible with the Park Service's mandate to preserve 'natural ecosystems,' including at its 20 million acres of national preserves in Alaska, NPS said.").

⁹⁹ See 2014 EA at 10 ("The NPS has adopted several temporary restrictions since 2010, which have limited certain harvest practices that are inconsistent with NPS laws and policies."), and 15 ("Although recent [State of Alaska] liberalized predator harvest included areas in national

2015 Rule that “[t]hese practices are not consistent with the NPS’s implementation of ANILCA’s authorization of sport hunting and trapping in national preserves.”¹⁰⁰ The preamble to the 2018 Rule contains no reasoned justification for reversing this decades-old, consistently held position. Rather, it simply states that the State “disputes that the hunting methods and seasons (allowed by the State but prohibited by current NPS regulations) are intended to function as a predator control program” and are, according to the State, merely intended “to provide opportunity for harvest” of predators.¹⁰¹ This new assertion by the Park Service is contradicted by repeated statements by the Board of Game that it has liberalized methods and means specifically to achieve predator-reduction goals.¹⁰²

In proposing to undo the 2015 Rule, the Park Service notes that “[t]he State also maintains that any effects to the natural abundances, diversities, distributions, densities, age-class distributions, habitats, genetics, and behaviors of wildlife from implementing its regulations are likely negligible.”¹⁰³ However, the 2015 Rule was based on applicable federal statutes and policies to “reflect[] the NPS responsibility to manage national preserves for natural processes, including predator-prey relationships, and responds to practices [authorized by the State] that are

preserves, the NPS has prevented these activities through annual temporary restrictions since 2010.”); *compare with* U.S. Nat’l Park Serv., Alaska Region, Sport Hunting and Trapping in Nat’l Preserves in Alaska Env’tl. Assessment, Aug. 2018 at 4 [hereinafter “2018 EA”] (noting that in 2010, “some national preserves placed temporary restrictions on certain sport hunting practices” but noticeably omitting that such practices are inconsistent with NPS laws and policies).

¹⁰⁰ 80 Fed. Reg. 64,326; *see also id.* at 64,332 (“The harvest methods prohibited by the [2015 Rule] stem from general hunting and trapping restrictions in State law and regulation, some of which have been relaxed in recent years in response to proposals to the [Board of Game]. Some of these proposals to relax hunting and trapping restrictions were adopted in whole or in part to reduce predators.”).

¹⁰¹ 83 Fed. Reg. 23,622.

¹⁰² *See, e.g.*, 80 Fed. Reg. 64,332 (“[T]he record shows some of these proposals and the decisions to act on them were based wholly or in part on a desire to reduce predator populations, and often far in excess of any previous authorizations. Before the [Board of Game] authorized taking cubs and sows with cubs at den sites, it had only allowed this activity as part of a predator control program. (Findings of the Alaska Board of Game 2012-194-BOG, Board of Game Bear Conservation, Harvest, and Management Policy, expiration June 30, 2016 (January 18, 2012)). The State’s decision to expand wolf and coyote seasons was based in part on a desire to elevate survival rates of moose and caribou calves.”); Kim Titus, *Intensive Mgmt. of Wolves, Bears and Ungulates in Alaska*, Alaska Dep’t of Fish & Game at 6 (ADF&G slideshow specifically listing wolf and bear hunting regulations being liberalized as one way the State implements the Intensive Management statute) (attached as Exhibit 16); Transcript of Proceedings, Alaska Board of Game (Excerpt), Mar. 6, 2010, at 7 (discussion indicating that the Board of Game believed it needed to “be consistent with what we’ve done in the past by adding the lengthening of trapping and hunting seasons to show that we’ve used all our other options in predator control”) (attached as Exhibit 26).

¹⁰³ 83 Fed. Reg. 23,622.

intended to alter those processes,” and was not based on particular population levels.¹⁰⁴ The Park Service went on to state:

[t]he NPS recognizes that the number of bears harvested over bait in national preserves may not be large. However, this provision [prohibiting bear baiting] 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.¹⁰⁵

The Park Service does not need to wait for actual harm to occur to wildlife it is charged with protecting before taking action, and can take action for reasons other than biological considerations.¹⁰⁶ Given the Park Service’s Organic Act, the agency “should generally err on the side of conservation, especially in situations where data are limited.”¹⁰⁷ In the Park Service’s

¹⁰⁴ 80 Fed. Reg. 64,334.

¹⁰⁵ *Id.* at 64,336.

¹⁰⁶ *See, e.g.*, 16 U.S.C. § 3201 (authorizing the Park Service to restrict sport hunting in national preserves for reasons of public safety, administration, floral and faunal protection, and/or public use and enjoyment); Exhibit 43 at §§ 1.4.2 (“The Senate committee report stated that under the Redwood amendment, ‘The Secretary has an absolute duty, which is not to be compromised, to fulfill the mandate of the 1916 Act to take whatever actions and seek whatever relief as will safeguard the units of the national park system.’”), § 1.4.3 (“NPS managers must always seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values.”), § 1.4.4 (“discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired.”), § 1.4.5 (“impairment that is prohibited by the Organic Act and the General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values.”), § 1.4.7 (“If it is determined that there is, or will be, an impairment, the decision-maker must take appropriate action . . . to eliminate the impairment.”), § 1.4.7.1 (“the Service will apply a standard that offers greater assurance that impairment will not occur. The Service will do this by avoiding impacts that it determines to be unacceptable. These are impacts that fall short of impairment, but are still not acceptable within a particular park’s environment.”); NPS, Nat. and Healthy, Guidance on Managing Harvest of Fish and Wildlife on NPS Lands Under ANILCA, July 2005 at 10 (“The plain language and administrative record of ANILCA clearly reveals the intent of Congress to provide for the harvest of wild, renewable resources . . . but only to the extent that the harvest is consistent with healthy wildlife populations, the NPS Organic Act, and the purposes for which each unit was established.”) (attached as Exhibit 55); *Greater Yellowstone Coal. v. Kempthorne*, 577 F. Supp. 2d 183, 193 (D.D.C. 2008) (“NPS is required to exercise its discretion in a manner that is ‘calculated to protect park resources’ and genuinely seeks to minimize adverse impacts on park resources and values.”).

¹⁰⁷ G. V. Hilderbrand, et al., *Wildlife Stewardship in Nat’l Park Serv. Areas in Alaska: A Report to the Alaska Leadership Council Sub-Group on Wildlife Harvest on Parklands*, Nat. Res. Report NPS/AKSO/NRR—2013/663, at 14 (2013) (attached as Exhibit 15).

2015 compendium for Denali National Park and Preserve, the Park Service notes:

The NPS Organic Act is a Federal law that provides the fundamental purpose of national park areas is conservation of park resources and values, including the scenery, the natural and historic objects, and wild life therein, and prohibits impairment of park resources or values. Policies implementing this mandate require the NPS to protect natural systems, processes, and wildlife populations, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife. NPS Management Policies 2006 §§ 4.1, 4.4.1, 4.4.1.2, 4.4.2.

Under NPS Management Policies, activities that may result in impairment include those that impact a “resource or value whose conservation is . . . key to the natural . . . integrity of the park or to provide opportunities for enjoyment of the park.” (NPS Management Policies, 1.4.5) Because the impact threshold at which impairment occurs is not always readily apparent, the NPS policies require managers avoid unacceptable impacts to park resources and values.¹⁰⁸

The Park Service’s current management policies still reflect this long-established approach.¹⁰⁹ The management policies state that “[t]he Service will not intervene in natural biological or physical processes” and specifically prohibit the manipulation of wildlife populations to benefit human harvest of prey:

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.¹¹⁰

Interpreting Management Policy 4.4.3 to allow application of Alaska’s aggressive management of predators abdicates the Park Service’s statutory duty to protect and conserve wildlife. The 2018 Rule wrongly asserts that the 2015 Rule “goes beyond the plain language of section 4.4.3 of Management Policies”¹¹¹ on the grounds that the 2015 Rule rejects state management with the “intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes, in order to increase harvest of ungulates by humans.”¹¹² The 2015 Rule expressly followed section 4.4.3 of the management policies by

¹⁰⁸ 2015 NPS Compendium for Denali National Park and Preserve, at 52 (attached as Exhibit 63).

¹⁰⁹ Older Park Service management policies also reflect this approach: “native predators may not be manipulated, controlled, or eradicated for the purpose of increasing harvestable species.” J. Hard, *Intensive Mgmt. and Implications for NPS Preserves in Alaska* (May 29, 2009), at 3 (quoting Nat. Res. Mgmt. Guideline, NPS-77 Chap. 2 p. 29) (attached as Exhibit 24); *See* Exhibit 43 at §§ 4.1, 4.4.1, 4.4.1.4, 4.4.2.

¹¹⁰ Exhibit 43 at §§ 4.1 and 4.4.3.

¹¹¹ *See* 83 Fed. Reg. 23,622.

¹¹² *See* 80 Fed. Reg. 64,327.

prohibiting predator reduction efforts that are intended to boost ungulate populations. The Park Service now presents an unsubstantiated position that is at odds with its Management Policies. The 2018 Rule offers no support for allowing predator reduction aimed at artificially increasing prey numbers. This stands in stark contrast with the 2015 Rule, which was firmly grounded in applicable federal statutes.¹¹³

2. *The Alaska National Interest Lands Conservation Act*

When Congress passed the Alaska National Interests Lands Conservation Act (ANILCA) — which established most of the national park units in Alaska — it did not disrupt the Organic Act’s approach to wildlife management.¹¹⁴ ANILCA allows sport hunting on Alaska’s 22 million acres of national preserves, but only when consistent with the mandate to protect and conserve wildlife resources.¹¹⁵

Congress passed ANILCA to preserve nationally significant areas “for the benefit, use, education, and inspiration of present and future generations” and to preserve wildlife, wilderness values, and natural, undisturbed, unaltered ecosystems while allowing for recreational opportunities, including sport hunting.¹¹⁶ By establishing national preserves and other conservation system units, ANILCA protects habitat for and populations of certain wildlife species.¹¹⁷ In many of Alaska’s national preserves, predator species like wolves and brown bear are specifically listed as species that the Park Service is obligated to protect.¹¹⁸ For example, nine out of ten national preserves state that they shall be managed for the protection of — or even specifically to maintain high populations of — brown bears, and six of the preserves are

¹¹³ See 80 Fed. Reg. 64,331 (“[N]either the temporary restrictions nor [the 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 this rule, is the NPS legal and policy framework, which has been communicated verbally and in writing [to the State] several times.”). The 2018 Rule does not explain the Park Service’s longstanding change in position.

¹¹⁴ See, e.g., S. Rep. No. 96-413, at 232–331 (1979) (“[T]he Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population’s dynamics, and manipulations of the components of the ecosystem.”).

¹¹⁵ See 16 U.S.C. § 3201; see also 2014 EA at 5 (“ANILCA provides the NPS authority to restrict taking wildlife for sport purposes for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment.” citing 16 U.S.C. § 3201).

¹¹⁶ 16 U.S.C. §§ 3101(a)–(b).

¹¹⁷ See Title II of ANILCA, Pub. L. No. 96-487, 94 Stat. 2371, 2377–2383 (1980); see also NPS internal email from Joel Hard to Debora Cooper and John Quinley, Re: ADF&G Consultation (Feb. 28, 2014) (NPS Deputy Regional Director noting that “[p]rotection of undisturbed ecosystems is reflected in ANILCA 101 (b), and protecting habitat for, and populations of, Brown/grizzly bears and wolves are specifically articulated in ANILCA Sec 201 as fundamental purposes for specific units ... We don’t share the state’s goal to allocate any harvestable surplus of game to hunters, but have sole responsibility to maintain natural ecosystem function to the extent we can given our hunting mandates.”) (attached as Exhibit 47).

¹¹⁸ See *id.*; see also 2014 EA at 12.

also managed for the protection of wolves.¹¹⁹ Bering Land Bridge National Preserve, Gates of the Arctic National Preserve, Denali National Preserve, Noatak National Preserve, Wrangell-St. Elias National Preserve, and Yukon Charley Rivers National Preserve are managed for the protection of brown/grizzly bears and wolves, while Lake Clark National Preserve, Katmai National Preserve, and Aniakchak National Preserve are managed for brown/grizzly bears.¹²⁰

ANILCA's legislative history reinforces that Congress created the National Park System units — including national preserves — to maintain natural, undisturbed ecosystems.¹²¹ For example, when drafting ANILCA, Congress identified Gates of the Arctic, Denali, Katmai, and Glacier Bay National Parks as “large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause.”¹²²

Congress did allow sport hunting on national preserves, unlike areas designated as national parks.¹²³ But Congress expressly granted authority to the Park Service to prohibit or limit hunting and trapping in national preserves for a variety of reasons, including public safety and the protection of wildlife and vegetation.¹²⁴ Congress also made clear that the Park Service must place the protection of natural and healthy populations of wildlife above hunting.¹²⁵ Prior to the passage of ANILCA, Representative Udall emphasized this point, stating:

[T]he Secretary shall manage National Park System units in Alaska to assure the optimum functioning of entire ecological systems in undisturbed natural habitats. The standard to be met in regulating the taking of fish and wildlife and trapping is

¹¹⁹ See 16 U.S.C. § 410hh.

¹²⁰ *Id.* at §§ 401hh(1), (2), (4)(a), (7)(a), (8)(a), (9), (10) and 401hh-1(2) and (3)(a). Katmai National Preserve is specifically managed for “high concentrations of brown/grizzly bears and their denning areas. *Id.* at 401hh-1(2).

¹²¹ See, e.g., S. Rep. No. 96-413, at 137 (1979) (“Certain units have been selected because they provide undisturbed natural laboratories — among them the Noatak, Charley, and Bremner River watersheds.”).

¹²² S. Rep. No. 96-413, at 137 (1979).

¹²³ 16 U.S.C. § 3201 (directing that national preserves shall be managed “in the same manner as a national park . . . except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve.”); see also 126 Cong. Rec. H10549 (Nov. 12, 1980) (Statement of Rep. Udall) (describing the sole purpose of including the designation of “national preserves” in Alaska was to allow sport hunting and commercial trapping, unlike in areas designated as national parks).

¹²⁴ 16 U.S.C. § 3201 (“[W]ithin 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.”).

¹²⁵ 16 U.S.C. § 3125(1) (“Nothing in this title shall be construed as . . . granting any property right in any fish or wildlife or other resource of the public lands or as permitting the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife.”).

that the preeminent natural values of the Park System shall be protected in perpetuity, and shall not be jeopardized by human uses.¹²⁶

The Senate Committee on Energy and Natural Resources also expressly rejected the idea that wildlife within the National Park System be managed under a system like that currently administered by the Board of Game, stating:

[i]t is contrary to the National Park System 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. . . . Accordingly, the Committee does not expect the National Park Service to engage in habitat manipulation or control of other species for the purpose of maintaining subsistence uses within National Park System units.¹²⁷

ANILCA does not contain any provisions allowing for intensive management and predator control activities. The practice of reducing predator populations to increase moose and caribou hunting in national preserves is inconsistent with ANILCA’s provision requiring the conservation of natural and healthy populations.¹²⁸

The 2018 Rule makes no mention of ANILCA’s requirements, nor does it explain how the new rule would comply with them. This starkly contrasts with the 2015 Rule, which recognized that ANILCA requires the Park Service to protect populations of fish and wildlife, including predators.¹²⁹

3. *The Wilderness Act*

Pursuant to the Wilderness Act of 1964, wilderness areas “shall be administered for the use and enjoyment of the American people in such manner as will leave [the area] unimpaired for future use and enjoyment as wilderness.”¹³⁰ The Act further specifies that wilderness is “an

¹²⁶ 126 Cong. Rec. H10527–10552, H10549 (Nov. 12, 1980) (Statement of Rep. Udall).

¹²⁷ S. Rep. No. 96-413, at 171; *see also* U.S. Dept. of the Interior letter to E. Interior Alaska Subsistence Reg’l Advisory Council, Dec. 19, 2006 at 3 (stating that “[t]he legislative history to ANILCA clearly expresses congressional intent in regards to intensive management, including predator control.”) (attached as Exhibit 46). While these statements were made in the context of subsistence practices, the intent regarding intensive management applies to both subsistence and sport hunting.

¹²⁸ The regulations implementing the Federal Subsistence Management Program on public lands in Alaska define the “conservation of healthy populations” as the “maintenance of fish and wildlife resources and their habitats in a condition that assures stable and continuing *natural* populations and species mix of plants and animals in relation to their ecosystem.” 50 C.F.R. § 100.4 (emphasis added).

¹²⁹ 80 Fed. Reg. 64,326.

¹³⁰ 16 U.S.C. § 1131(a).

area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its *natural conditions*,” including the essential characteristic that it “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable.”¹³¹

Section 701 of ANILCA designated wilderness areas in Alaska’s National Park System units, including parts of national preserves.¹³² Alaska national preserves contain approximately 8,095,000 acres of designated wilderness and approximately 11 million acres of eligible wilderness.¹³³

The Park Service is “responsible for preserving the wilderness character” of wilderness areas in national preserves.¹³⁴ The Park Service’s Management Policies set out that:

The principle of nondegradation will be applied to wilderness management, and each wilderness area’s condition will be measured and assessed against its own unimpaired standard. Natural processes will be allowed, insofar as possible, to shape and control wilderness ecosystems. Management should seek to *sustain the natural distribution, numbers, population composition, and interaction of indigenous species*. Management intervention should only be undertaken to the extent necessary to correct past mistakes, the impacts of human use, and influences originating outside of wilderness boundaries.¹³⁵

The Park Service Director’s Order for Wilderness Stewardship further states that “[t]he goal of wilderness stewardship is to keep these areas as natural and wild as possible in the face of competing purposes and impacts brought on by activities that take place elsewhere in the park and beyond park boundaries.”¹³⁶ In another Park Service guidance document regarding management of wilderness, the Park Service specifically identified that predator control impairs the “untrammled” wilderness character.¹³⁷ In a review of the wilderness character for Lake Clark National Park and Preserve, the Park Service noted that “[p]redator control on two sides of the park impacts the natural predator/prey systems that are a hallmark of the area” and that “[p]redator control efforts outside the park boundary threaten to manipulate natural predator/prey systems.”¹³⁸

¹³¹ *Id.* § 1131(c) (emphasis added).

¹³² 2014 EA at 28; 2018 EA at 16.

¹³³ 2014 EA at 28; 2018 EA at 17; *see also* 2014 EA at 29 (map of designated wilderness areas in Alaska national preserves).

¹³⁴ 16 U.S.C. § 1133(b).

¹³⁵ Exhibit 43 at 93 (emphasis added).

¹³⁶ NPS Director’s Order 41: Wilderness Stewardship, May 13, 2013, at 7 (attached as Exhibit 64).

¹³⁷ *See* U.S. Nat’l Park Serv., Keeping it Wild in the Nat’l Park Serv., A User Guide to Integrating Wilderness Character into Park Planning, Mgmt., and Monitoring, Jan. 2014 at 172, 177 (attached as Exhibit 102).

¹³⁸ *Id.* at 182 and 185.

In the 2014 EA, the Park Service evaluated the effects of adopting State of Alaska wildlife harvest regulations in national preserves on wilderness.¹³⁹ The Park Service affirmed that “[w]ilderness ecological systems are substantially free from the *effects* of modern civilization.”¹⁴⁰ The Park Service stated that:

predator harvest liberalizations . . . that intend to decrease predator populations and increase ungulates available for harvest would degrade the natural quality of the wilderness areas from the reduction in populations of indigenous predators and the concomitant increase in prey species and by altering natural wildlife behavior (for example, baiting of bears alters their behavior).¹⁴¹

The Park Service concluded that allowing harvest pursuant to the State’s regulations in wilderness “is expected to result in long-term negative impacts to wilderness character. It could degrade the natural quality, untrammelled quality, opportunities for solitude, and the undeveloped quality throughout the preserves.”¹⁴²

In the 2018 EA, the Park Service again identified that:

Under the proposed action, the natural quality of wilderness could be adversely impacted because ecological systems may be altered by the take of additional predators, which could reduce numbers of predators and increase numbers of prey in localized areas. The additional take of predators and the practice of bear baiting would also affect wildlife behavior. These changes to numbers and behavior of wildlife could further alter natural systems in localized areas within wilderness, where sport hunting already occurs.¹⁴³

The Park Service also found that “[t]he proposed action could adversely affect the untrammelled quality of wilderness character in localized areas because the take of additional wildlife and the baiting of bears involves intentional control and manipulation of wildlife.”¹⁴⁴ Moreover, the Park Service noted that bear baiting would degrade wilderness values:

The proposed action may result in increases in the number of bear baiting stations and associated debris. While the State requires that all bait, litter, and equipment be removed when hunting is completed, bait stations and debris could be highly visible and a clear sign of human modification and occupation of the area. These actions would degrade the undeveloped quality of wilderness while they are present on the landscape.¹⁴⁵

¹³⁹ See 2014 EA at 28–32.

¹⁴⁰ *Id.* at 28 (emphasis in original).

¹⁴¹ *Id.* at 29.

¹⁴² *Id.* at 31.

¹⁴³ 2018 EA at 17.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 18.

The 2018 EA then surprisingly concluded that, although “[t]he proposed action would adversely impact the natural and untrammeled qualities of wilderness” and “would degrade the undeveloped quality of wilderness,” the wilderness character would be maintained in a manner similar to current conditions because harvest is anticipated to be “low.”¹⁴⁶ Finding that wilderness will be impaired but then concluding that wilderness will be maintained in a manner similar to current conditions is arbitrary. Moreover, the management of wildlife to support unnaturally high levels of ungulates in preserves that encompass wilderness is contrary the Wilderness Act.

C. The Park Service has a Duty to Prohibit Conflicting State Regulations.

The State’s authorization of increasingly liberal methods and means is not consistent with the Park Service’s implementation of ANILCA’s authorization of sport hunting and trapping in national preserves or with the Park Service’s management policies implementing the Organic Act. To comply with federal law and Park Service policy, the Park Service previously made repeated requests that the Board of Game exempt national preserves from the liberalized methods and means.¹⁴⁷

For example, in 2014, the Park Service requested that the State exempt preserves from a number of liberalized hunting measures because they conflicted with federal mandates:

As the State of Alaska works to provide hunting opportunities consistent with state conservation mandates and other state laws, the NPS similarly needs to make sure these opportunities are consistent with federal law. There have been many liberalizations allowing increased predator harvest in recent years. Several of

¹⁴⁶ *See id.*

¹⁴⁷ *See* Exhibit 42 (“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 largely denied. State officials have also objected to the use of repeated temporary federal closures, and advised the NPS to seek permanent regulations.”); *see also* Exhibit 22 (communications from the Park Service to the State including repeated requests to exempt national preserves from state regulations); NPS Info. Memorandum for the Secretary, Wildlife Mgmt. in the Nat’l Park Serv., at 3 (“The NPS has repeatedly — and unsuccessfully — requested that the AK Board of Game exclude NPS Preserves from these regulations.”) (attached as Exhibit 51); NPS Info. Memorandum for the Secretary, June 20, 2013, at 1 (“Repeated NPS requests to exclude national preserves from these practices have not been acted on by the [Board of Game].”) (attached as Exhibit 52); NPS Info. Memorandum for Deputy Secretary, Wildlife Mgmt. Regulations on AK Federal Lands, March 28, 2014 (“All of the above are in conflict with the NPS Organic Act, ANILCA, and NPS Management Policies (2006). The NPS has addressed these state actions through annual compendium restrictions over the past four years. . . . The NPS and FWS have gone before the [Board of Game] numerous times to speak against proposed regulations as being in conflict with their management objectives and mandates. The requests have been denied.”) (attached as Exhibit 84).

these liberalizations affect preserves. As has been said in past NPS letters to this Board, we would like the State to exempt preserves from some of these changes. To be clear, the NPS seeks your action to exempt preserves from a number of recently adopted proposals, as delineated in this current [agenda change request].

...

To a great extent, the conflict addressed in the agenda change request is the result of a difference in mandates. The [Board] is bound by State statutes. The NPS is bound by federal statutes. State wild life management objectives can differ greatly from NPS's direction to manage for natural ecosystems & natural processes. The laws of the National Park Service, beginning in 1916 with the NPS Organic Act, and policies implementing the Organic Act establish the foundation that directs management. ANILCA is an important part of the framework. While ANILCA provides for some differences in Alaska (compared to lower 48 NP management), it also directs that preserves are to be managed as national parks in accordance with the Organic Act except that sport hunting and trapping are allowed.

...

On the ground, the objectives of abundance-based management, that is, providing for high levels of human harvest of big game species[] are incompatible with NPS laws and implementing policies, which require maintaining natural processes, systems, and wildlife populations.¹⁴⁸

The Park Service highlighted for the Board of Game that “[a]ctivities intended to reduce the number of native species for the purpose of increasing the numbers of harvested species are prohibited.”¹⁴⁹ It noted specific measures, including using artificial lights to harvest black bears, the taking of cubs, the taking of sows with cubs, taking brown bears over bait, and taking wolves or coyotes with young pups as “inconsistent with the management of national parks.”¹⁵⁰

In light of repeated Board of Game rejections to the Park Services' requests, the Park Service adopted annual temporary restrictions, through annual compendiums, from 2010 to 2015 to prevent the application of the Board of Game's increasingly liberalized methods and means of hunting predators.¹⁵¹ The Park Service then adopted final regulations on October 23, 2015, that prohibit predator control in national preserves and ban certain practices.¹⁵² These restrictions protect wildlife and provide for public use and enjoyment consistent with ANILCA, the Organic Act, and the Wilderness Act.

¹⁴⁸ Exhibit 22(dd) at 134–135.

¹⁴⁹ *Id.* at 136.

¹⁵⁰ *Id.*

¹⁵¹ 2014 EA at 15; *see also, e.g.*, Nat'l Park Serv., Determination of Need for a Restriction, Condition, Public Use Limit, or Closure (unknown date) (attached as Exhibit 18).

¹⁵² 80 Fed. Reg. 64,325.

D. Conflicting State Wildlife Laws Are Preempted.

Contrary to statements in the 2018 Rule, state law must yield where it conflicts with federal law, not the other way around.¹⁵³ The concept of preemption derives from the Supremacy Clause of the Constitution, which invalidates state laws that interfere with, or are contrary to, federal law.¹⁵⁴ Congress passed the Organic Act and ANILCA under the Property Clause of the U.S. Constitution.¹⁵⁵ In *Kleppe v. New Mexico*, the U.S. Supreme Court recognized that Congress has the power to enact legislation respecting federal lands pursuant to the Property Clause and — when Congress does enact such legislation — it “necessarily overrides conflicting state laws under the Supremacy Clause.”¹⁵⁶

Courts have consistently found state wildlife laws to be preempted when those laws conflict with the Park Service’s mission or regulations.¹⁵⁷ In *New Mexico State Game Commission v. Udall*, the Tenth Circuit Court of Appeals found that the Park Service had the authority to remove deer from Carlsbad Caverns National Park for research purposes without seeking a permit from the state as required under New Mexico state law.¹⁵⁸ Similarly, in *United*

¹⁵³ The 2018 Rule notes that “states have primary jurisdiction to manage wildlife throughout their state. In addition, NPS has broad discretion in managing wildlife on national preserves” but makes no reference to controlling law regarding preemption. *See* 83 Fed. Reg. 23,622. The Park Service recognized the correct rule of law when adopting the 2015 Rule. *See* 80 Fed. Reg. 64,329 (“NPS regulations . . . govern in the event of a conflict with State law or regulation.”); 80 Fed. Reg. 64,332 (“*NPS Response*: Under the Property and Supremacy Clauses of the U.S. Constitution, State wildlife laws that conflict with NPS’s efforts to carry out its statutory mandate are preempted. *See, e.g., Kleppe v. New Mexico*, 426 U.S. 529 (1976); *Hunt v. United States*, 278 U.S. 96 (1928); *New Mexico State Game Comm’n v. Udall*, 410 F.2d 1197 (10th Cir.), *cert. denied*, *New Mexico State Game Comm’n v. Hickel*, 396 U.S. 961 (1969); *United States v. Brown*, 552 F.2d 817 (8th Cir. 1977). Certain State authorized hunting and trapping practices are not consistent with the NPS implementation of the NPS Organic Act, ANILCA, and the Wilderness Act. Consequently, the final rule is an appropriate exercise of the authority affirmed by the cases cited above.”).

¹⁵⁴ U.S. Const. art. VI, cl. 2; *see also Nat’l Audubon Soc’y v. Davis*, 307 F.3d 835, 851 (9th Cir. 2002) (state laws are invalidated by the Supremacy Clause of the U.S. Constitution where they conflict with federal law).

¹⁵⁵ U.S. Const. art. IV, § 3, cl. 2 (“Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”).

¹⁵⁶ 426 U.S. 529, 543 (1976).

¹⁵⁷ Robert L. Glickman & George Cameron Coggins, *Modern Public Land Law* 260 (2001) (“Because the NPS Organic Act does not defer to state wildlife law, the Park Service is not constrained by that law.”); *see also* R. Gerald Wright, *Wildlife Management in National Parks: Questions in Search of Answers*, 9 *ECOLOGICAL APPLICATIONS* 30, 32 (1999) (“From its beginning, the NPS has maintained exclusive jurisdiction over the management of wildlife in parks. And, although legally contested by individual state game departments, court decisions have uniformly supported the right of the NPS to own and manage wildlife on its lands.”).

¹⁵⁸ 410 F.2d 1197, 1199 (1969).

States v. Moore, the court stated that “the power of the United States to regulate and protect wildlife living on the federally controlled property cannot be questioned.”¹⁵⁹ In that case, the court found that the Park Service had the authority to prevent the state from spraying pesticides to eliminate black flies in the New River Gorge National River because the Park Service’s regulations prohibited the taking of wildlife, including black flies. Another example is *United States v. Brown*, where the State of Minnesota wanted to assert the dominance of state hunting laws on water adjacent to and surrounded by Voyageurs National Park.¹⁶⁰ The court stated that “[w]here the State’s laws conflict with the . . . regulations of the National Park Service . . . the local laws must recede.”¹⁶¹

The Park Service has adopted regulations that apply state wildlife law where there is no conflict.¹⁶² However, the intensive management statute — and the Board of Game’s implementation of it — operate as an obstacle to achieving Congress’s objectives set out in ANILCA, the Organic Act, and the Wilderness Act. Longstanding Park Service Management Policies seek to sustain and protect natural populations and processes while avoiding artificial manipulation of species.¹⁶³ The Board of Game, on the other hand, is charged with maintaining consistently high numbers of prey populations.¹⁶⁴ This does not allow for the natural populations and predator-prey processes the Park Service must protect.¹⁶⁵ The intensive management statute on its face conflicts with federal laws that specifically promote conservation of natural processes and natural and healthy populations, rather than the “achieve[ment of] human consumptive use goals.”¹⁶⁶

E. Action Pursuant to Secretarial Orders Must Still Comply With Park Service Mandates.

The 2018 Rule bases the proposed reversal of the Park Service’s long-standing position on intensive management and predator control on two Secretarial Orders: Secretarial Order 3347,

¹⁵⁹ 640 F. Supp. 164, 166 (S.D. W. VA. 1986); *see also Organized Fishermen of Fla v. Andrus*, 488 F. Supp. 1351, 1355 (S.D. Fla. 1980) (“[T]here is no question that the complete power Congress has over public lands under the Property Clause of the Constitution . . . necessarily includes the power to regulate and protect the wildlife living there.”).

¹⁶⁰ 431 F. Supp. 56, 59 (D. Minn. 1976).

¹⁶¹ *Id.* at 63; *see also Kleppe*, 426 U.S. at 541 (holding that the argument that Congress lacks power to administer public lands contrary to state law without state consent is “without merit”).

¹⁶² *See* 36 C.F.R. § 13.42 (adopting non-conflicting state laws into National Park Service regulations).

¹⁶³ *See* Exhibit 43 at 62.

¹⁶⁴ AS 16.05.255(e).

¹⁶⁵ It is also important to note that artificially reducing predator populations like wolves affects species other than caribou and moose. *See, e.g.,* Laura R. Prugh & Stephen M. Arther, *Optimal Predator Mgmt. for Mountain Sheep Conservation Depends on the Strength of Mesopredator Release*, 000 OIKOS 001–010 (2015) (attached as Exhibit 14) (wolves limit coyote populations, which can increase in response to that limitation being removed, which can then actually increase overall predation pressure on sheep).

¹⁶⁶ AS 16.05.255(e).

Conservation Stewardship and Outdoor Recreation; and Secretarial Order 3356, Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with State, Tribes, and Territories.¹⁶⁷ These Secretarial Orders encourage the federal agencies in the Department of the Interior to expand hunting opportunities and enhance cooperation with the States. The 2018 Rule, however, cannot override applicable statutory mandates in seeking these goals.¹⁶⁸ The Secretarial Orders must be implemented in a way that is compatible with federal statutes and protects the wildlife values of the National Park System.

Further, in the 2018 EA, the Park Service seeks to justify the 2018 Rule by deferring to the State's obligation under the Alaska Constitution to manage wildlife for sustained yield.¹⁶⁹ However, the Park Service completely fails to explain its departure from its long-standing position that management under the State's sustained yield framework falls far short of complying with the Park Service's statutory mandates to manage for natural populations.¹⁷⁰ As explained above, the two management schemes are incompatible and the Park Service cannot abdicate its responsibility under the Organic Act, ANILCA, and the Wilderness Act.

II. THE SPECIFIC PRACTICES PROHIBITED BY THE 2015 RULE ARE INTENDED AS INTENSIVE MANAGEMENT AND PREDATOR CONTROL.

The 2018 Rule reverses position on whether specific practices can be allowed on national preserves. In so doing, the 2018 Rule completely fails to mention the statutory mandates discussed above and relied on by the 2015 Rule. Rather, the 2018 Rule makes the unsupported and absurd conclusion that “[a]llowing these practices is consistent with NPS Management Policy 4.4.3 which provides that NPS does not allow activities to reduce the numbers of native species for the purpose of increasing the numbers of harvested species.”¹⁷¹ It is clear that the Board of Game has adopted these practices to increase human harvest of ungulates.¹⁷²

¹⁶⁷ 83 Fed. Reg. 23,621 (“Since the publication of the Final Rule, the Secretary of the Interior issued two Secretarial Orders regarding how the Department of the Interior should manage recreational hunting and trapping in the lands and waters it administers, and directing greater collaboration with state, tribe, and territorial partners in doing so.”).

¹⁶⁸ See *United States v. Maes*, 546 F.3d 1066, 1068 (9th Cir. 2008) (“a regulation does not trump an otherwise applicable statute unless the regulation’s enabling statute so provides.”) (citing *Chevron U.S.A. Inc. v. Nat’l Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984)).

¹⁶⁹ See 2018 EA at 9 (“The State manages take of wildlife under a ‘sustained yield’ principle . . . and has assured the NPS that in the event harvest were to increase beyond sustainable levels . . .” but failing to recognize that the Park Service must manage populations for more than just sustainability).

¹⁷⁰ See, e.g., Letter from Roger Contor, Reg. Dir., NPS, to the Board of Game (Aug. 22, 1984) (describing sustained yield management as “dramatically inappropriate for implementation within units of the National Park System.”) (attached at Exhibit 58).

¹⁷¹ 83 Fed. Reg. 23,622.

¹⁷² See *supra* Section I.A.

The 2018 Rule also asserts that:

[w]ith respect to the practices that NPS previously determined to be inconsistent with federal law authorizing harvest for sport purposes in national preserves in Alaska, no applicable federal law or regulation defines “sport hunting.”¹⁷³

This fails to explain the agency’s reversal of its long-held position that these practices violate federal law. Further, in adopting the 2015 Rule, the Park Service correctly noted that while “sport hunting” is not defined in ANILCA, “each term in a statute is presumed to have meaning.”¹⁷⁴ When Congress enacted ANILCA, “[s]portsmanship in hunting [had] more than a hundred years of tradition and meaning in the conservation movement in America.”¹⁷⁵ As such, “[w]hen methods of harvest go beyond traditionally accepted norms of ‘sport’ in hunting, they may fall outside of what Congress intended when it authorized hunting in statutes like ANILCA.”¹⁷⁶

The Park Service has been sparing in its approach to preempting conflicting state wildlife regulations. Before the 2015 Rule, the Park Service had only restricted State practices through federal regulations one time outside of the annual compendium process: to prohibit same-day airborne hunting of predators in 1995.¹⁷⁷ But the Board of Game has increasingly departed from traditional methods and means of sport hunting in recent years.¹⁷⁸ These departures, which seek “to advance the goals of increasing harvested species by targeting predators,” conflict with federal law and Park Service policy.¹⁷⁹

A. The State of Alaska Manages Bears Over Most of the State to Reduce Their Populations.

Alaska has the largest and most intact population of brown bears in the world outside of Russia.¹⁸⁰ Alaska is also the only place in the world where brown bears are managed to reduce their populations over large areas by encouraging high levels of human harvest.¹⁸¹ The Board of Game began liberalizing bear hunting regulations in response to research that documented predation by brown bears on neonatal moose.¹⁸² The Board of Game’s objective in adopting liberalized regulations is to increase the numbers of moose and caribou available for human harvest.¹⁸³ The Board of Game has liberalized methods and means for the harvest of brown bear

¹⁷³ *Id.*

¹⁷⁴ 80 Fed. Reg. 64,333.

¹⁷⁵ *Id.* (citing John F. Reiger, *Am. Sportsmen and the Origin of Conservation*, WINCHESTER PRESS (1975)).

¹⁷⁶ *Id.*

¹⁷⁷ 80 Fed. Reg. 64,329, 64,333.

¹⁷⁸ *See supra* Section I.A.2.

¹⁷⁹ 80 Fed. Reg. 64,333.

¹⁸⁰ Exhibit 13 at 2–3; Exhibit 4.

¹⁸¹ Exhibit 13 at 9.

¹⁸² *Id.* at 3.

¹⁸³ *Id.*

in approximately 76% of Alaska.¹⁸⁴ Between the 1995–1996 and 2017–2018 regulatory years, the Board of Game liberalized hunting regulations for resident brown bear hunters 222 times.¹⁸⁵ In the same timeframe, the resident brown bear hunting regulations were made more conservative four times.¹⁸⁶ The changes since the 2010–2011 regulatory year have primarily been to increase bag limits to two bears per year from one bear per year or one bear every four years, to allow the commercial sale of hides with claws attached and skulls, and to allow brown bear baiting.¹⁸⁷ Earlier liberalizations had focused on extending seasons, which now exceed 350 days in some areas, and eliminating the requirement in most areas to pre-purchase a brown bear tag.¹⁸⁸

The Board of Game’s liberalization of methods and means is correlated with an increase in hunter harvest of brown bears.¹⁸⁹ In the early 1980s, the four-year running average of brown bear harvest was approximately 400 bears.¹⁹⁰ Since the 2007–2008 regulatory year, it has exceeded 800 bears, peaking at 910 bears in the 2011–2012 regulatory year.¹⁹¹

Bear baiting, use of artificial light at denning sites, bear snaring, and hunting with dogs are all measures that conflict with Park Service mandates. Prior to issuing the 2015 Rule, the Park Service prohibited these measures through annual compendiums.¹⁹² For example, in the 2014 compendium for the Gates of the Arctic National Park and Preserve, the Park Service stated:

The 2013 compendiums for some preserves included restrictions on the use of artificial light to take black bear cubs and sows at den sites, brown bears over bait stations, and taking wolves and coyotes during the summer months. After the NPS approved the proposed compendiums and before they were posted, the state Board of Game declined to consider a request by the NPS to revisit these authorizations for taking black bear cubs and sows with artificial light at dens, brown bears over bait stations, and wolves and coyotes during the summer months. Accordingly, the NPS is moving forward with temporary restrictions.¹⁹³

In the 2015 proposed compendium for Denali National Park and Preserve, the Park

¹⁸⁴ *Id.* at 4. The remaining areas of the state are places with low moose and caribou populations, or where either wolves are the primary predators (and are targeted by the Board of Game for reduction), or where bears are large and valued as a trophy species. *Id.* at 9.

¹⁸⁵ Exhibit 13 at 5.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 7.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² See 2014 EA at 15.

¹⁹³ See 2014 Gates of the Arctic Nat’l Park and Preserve Compendium, at 1 (attached as Exhibit 62); see also 2014 Denali Nat’l Park and Preserve Compendium at 1 (same) (attached as Exhibit 86).

Service identified the following reasons for the proposed restrictions:

[T]he NPS is charged with the responsibility for assuring that the take of fish and wildlife is consistent with the fundamental purposes of the park system and individual park units. . . . Policies implementing this mandate require the NPS to protect natural systems, processes, and wildlife populations, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife. NPS Management Policies 2006 §§ 4.1, 4.4.1, 4.4.1.2, 4.4.2.¹⁹⁴

The 2018 Rule fails to protect natural systems, processes, and wildlife populations, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife by allowing measures like baiting, use of artificial light at den sites, snaring, and use of dogs. None of these measures are consistent with federal mandates and Park Service policies.

1. Bear Baiting

The Park Service adopted the prohibition on bear baiting in national preserves in the 2015 Rule to “avoid public safety issues, to avoid food-conditioning bears and other species, and to maintain natural bear behavior as required by NPS law and policy.”¹⁹⁵ Revoking this prohibition will threaten public safety and alter bears’ natural behaviors, in contravention of applicable statutory directives. The 2018 Rule fails to explain how allowing bear baiting will avoid these outcomes and comply with Park Service law and policy.

One of the Board of Game’s reasons for authorizing bear baiting is to increase harvest of bears, to reduce bear predation on caribou and moose so that the Board of Game can then allow increased human harvest of caribou and moose.¹⁹⁶ While it has not been shown that increased bear harvest results in increased human harvest of caribou and moose, it is clear that bear baiting practices leads to higher harvests of bears.¹⁹⁷ For example, as noted in the 2014 EA but omitted

¹⁹⁴ Exhibit 63 at 2–3; *see also* Exhibit 86 at 1 (“the NPS has repeatedly sought a state solution to these conflicts and has taken action only after the State has declined to do so and stated the NPS is responsible for ensuring preserves are managed consistent with federal law and policy.”); 2014 Lake Clark Nat’l Park and Preserve Compendium at 1 (same) (attached as Exhibit 87).

¹⁹⁵ 80 Fed. Reg. 64,329.

¹⁹⁶ *See* ADF&G, *Intensive Management in Alaska*,

http://www.adfg.alaska.gov/index.cfm?adfg=intensivemanagement.main&_ga=2.108616578.1891254223.1540419597-616096363.1540419597 (“If the selected moose, caribou, or deer populations drop below what the Board of Game (Board) determines is needed to meet people’s needs, the Board directs the Alaska Department of Fish and Game (ADF&G) to undertake intensive management of that population.”); *see also* Exhibit 36 at 6 (2016 Board of Game management policy identifying bear baiting as a means to control bear populations to prevent populations of ungulates from declining to low levels).

¹⁹⁷ *See* Exhibit 13 at 8 (“Hunting over bait likely contributed to greater harvests on the Kenai Peninsula during RY 2013–2014 and subsequently.”); *see also* 81 Fed. Reg. 27030, 27036 (May

from the 2018 EA, “[t]here has been a notable increase in demand for bear bait stations in some game management units where the take of brown bears is also allowed at black bear bait stations.”¹⁹⁸ Baiting is intended to be, and already has been, a proven and highly effective means of manipulating (i.e., reducing) natural bear populations—and is thus an incompatible practice on national preserve lands. This increase in demand for bait stations where brown bear baiting is permitted also demonstrates how it is arbitrary to allow bear baiting on the basis of past, relatively low levels of participation by hunters, as those numbers can and do rapidly increase. Relying on past low levels of participation by hunters also fails to acknowledge improvements in access that have been occurring or are planned for the national preserves. For example the 2018 EA conspicuously fails to recognize that the potential road to Ambler would significantly increase access opportunities, as recognized by the 2014 EA.¹⁹⁹

Bear baiting should also not be allowed in national preserves because it poses a significant public safety threat. Access to garbage and human food is a major contributor to aggressive bear behavior toward people.²⁰⁰ Most bear attacks occur in national park areas where habituated bears are seeking food:

[M]ost black bear-inflicted injuries occur in national parks, typically happening in campgrounds where black bears were seeking food. At least 90% of the injuries

5, 2016) (noting that “[h]arvest levels, and overall human-caused mortalities, of brown bears increased substantially following the changes in State hunting regulations enacted in 2012 and 2013, with resulting impacts on the Kenai Peninsula’s brown bear population” after allowing take of brown bears over bait).

¹⁹⁸ 2014 EA at 21 (noting as an example that “in GMU 12 requests for bear bait stations increased by 78% (from an 11 yr. average of 50 permits to a Spring 2013 request of 89 permits), and in GMU 20E the request increased by 93% (from an 11 yr. average of 12 permits to a Spring 2013 request of 23 permits”).

¹⁹⁹ 2014 EA at 22.

²⁰⁰ See Stephen Herrero and Susan Fleck, *Injury to People Inflicted by Black, Grizzly or Polar Bears: Recent Trends and New Insights*, BEARS: THEIR BIOLOGY AND MGMT., in Vol. 8, A Selection of Papers from the Eighth Int’l Conference on Bear Research and Mgmt., Victoria, B.C., Can., Feb. 1989, 25–32 (1990) (identifying elevated risk associated with food-conditioned bears) (attached as Exhibit 73); STEPHEN HERRERO, BEAR ATTACKS: THEIR CAUSES AND AVOIDANCE, Winchester Press (1985); Stephen Herrero, et al., *Fatal Attacks by American Black Bear on People: 1900-2009*, 75(3) J. OF WILDLIFE MGMT. 596 (2011) (attached as Exhibit 72); Thomas Eveland, *Baiting the Black Bear: The Ecological and Social Impacts of New Jersey Bear and Deer Baiting Programs* (2012) (summarizing literature on food conditioning of black bears in response to baiting) (attached as Exhibit 80); Rachel M. Gray et al., *Feeding Wild Am. Black Bears in Virginia: A Survey of Virginia Bear Hunters*, 1998–99, 15(2) URSUS 188 (2004) (“Habituation, though not always dependent on food conditioning (McCullough 1982), is a possible consequence of feeding and can lead to encounters dangerous to humans as well as bears.”) (attached as Exhibit 81); The Wildlife Soc’y, *Baiting and Supplemental Feeding of Game Wildlife Species*, Technical Review 06-1, at 36, 39 (Dec. 2006) (noting that habituated black bears rarely revert to wild behavior and that baiting can impact home ranges) (attached as Exhibit 103).

inflicted by black bears during the period between 1960 and 1980 I attribute to bears habituated to people and conditioned to eat human foods.²⁰¹

The Park Service consistently states that feeding bears poses a significant threat to public safety and changes natural behaviors of bears.²⁰² The Park Service has found that baiting is “essentially equivalent to other forms of food conditioning[,]” and poses similar safety concerns.²⁰³ The Wrangell-St. Elias National Park & Preserve identified food-conditioned bears as a particular problem in the Kennicott Valley of the park.²⁰⁴ A graduate student found that the vast majority of bear-human conflicts there were “caused by the widespread availability of garbage and human food” and that this may be causing a population sink for local bear populations “due to the high quality of its natural food resources . . . and human-induced mortality of bears.”²⁰⁵

Increasing the number of bears habituated to foods threatens the safety of all those visiting Alaska’s national preserves, as was convincingly demonstrated in Wrangell-St. Elias Park & Preserve. The majority of bear baiting in that national preserve occurs along the McCarthy road, where rangers have monitored bear baiting since 1996.²⁰⁶ In 1996, after a researcher was mauled by a bear, Park Service rangers discovered a bait station in the middle of a study plot and one right outside of a study plot.²⁰⁷ Later, when the Crystalline Hills trail was constructed, rangers found a bait station installed right on the trail.²⁰⁸ Rangers have also found bait stations that failed to provide the required warning signs to prevent visitors from unwittingly encountering them.²⁰⁹ This is concerning, as the rangers themselves “have come upon both black and brown bear on the bait.”²¹⁰

Bears habituated at bait stations may subsequently seek out human food from backpackers, campers, and others. If this behavior is aggressive enough, the bear will either be shot as a “problem bear” or a member of the public may be hurt from the bear aggressively seeking out additional human food. In 2002, a brown bear was killed in defense of life or

²⁰¹ STEPHEN HERRERO, *BEAR ATTACKS: THEIR CAUSES AND AVOIDANCE* at 93, Winchester Press (1985).

²⁰² See, e.g., NPS, *Bear Facts*, <https://www.nps.gov/anch/learn/nature/bear-safety-in-alaska.htm>; NPS, *Do not feed the bears! Storing your food*, <https://www.nps.gov/slbe/learn/nature/do-not-feed-the-bears.htm>; NPS, *Bear Safety: Storing Food*, <https://www.nps.gov/articles/bearsafetyfood.htm>.

²⁰³ Alaska Region Wildlife Briefing Paper, *Bear Baiting on NPS Lands in Alaska* (unknown date) at 1–2 (attached as Exhibit 27).

²⁰⁴ James M. Wilder, *Quantifying Bear Populations and Bear-Human Conflicts Using Non-Invasive Genetic Sampling in the Kennicott Valley of Wrangell-St. Elias Nat’l Park & Preserve, Alaska* (Jan. 2003) (excerpts attached as Exhibit 7).

²⁰⁵ *Id.* at 3.

²⁰⁶ *Bear Baiting in WRST, Nat’l Park Serv.* at 1 (date unknown) (attached as Exhibit 28).

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 2.

²¹⁰ *Id.*

property near a bait station in the Wrangell-St. Elias national preserve.²¹¹ Once a bear becomes conditioned to human food, even “averse conditioning will likely not deter it from actively seeking human foods and garbage.”²¹²

The Park Service emphasizes to all backcountry travelers the importance of bear safety and preventing bears from becoming habituated to food, for the safety of both the bear and person. For example, in Denali National Park & Preserve, backcountry travelers are required in many areas of the park to use bear resistant food containers “to prevent bears and other wildlife from obtaining and habituating to food and garbage, thus protecting wildlife and park visitors alike.”²¹³ These efforts are diminished when another user group is permitted to set out human garbage to attract bears.²¹⁴

The Park Service acknowledged in the 2014 EA the problems associated with baiting, including the conflict with NPS policy, stating:

By design, baiting of bears alters their behavior to increase their predictability and facilitate harvest. This behavioral alteration directly conflicts with NPS policy to maintain natural processes and wildlife populations, including behaviors. Further, conditioning bears to unnatural food items increases the likelihood that bears will become nuisance bears, and thus be destroyed outside of harvest regulations. Similarly food conditioned bears are more likely to become a public safety risk relative to non-food conditioned bears.²¹⁵

The Park Service also recognized in the 2014 EA that removing bear baiting stations “would reduce the conditioning of bears to human foods and improve visitor safety and use of national preserve lands.”²¹⁶ Food conditioning can cause bears to “pose a nuisance or threat to visitors in the area for many years”²¹⁷ and bait stations “tend to be located in accessible areas due to the infrastructure (typically a 55 gallon drum) and quantity (including weight) of bait used to engage in this activity and the frequency with which the stations must be replenished.”²¹⁸

²¹¹ Letter from NPCA, et al. to Vic Knox, re: Bear Baiting (Aug. 22, 2005) (attached as Exhibit 8).

²¹² Exhibit 7 at 23.

²¹³ Exhibit 86 at 9.

²¹⁴ See Grant Hilderbrand, *Using Ethics Arguments to Preserve Naturalness: A Case Study of Wildlife Harvest Practices on NPS Lands in Alaska*, 13(1) ALASKA PARK SCI. 47, at 50 fig. 7 (photograph of a black bear bait station within Wrangell-St. Elias National Preserve) (attached as Exhibit 17).

²¹⁵ 2014 EA at 19 (citations omitted); compare with 2018 EA at 7 (including the first statement about how baiting alters behavior but noticeably omitting the second sentence that such alteration conflicts with NPS policy).

²¹⁶ 2014 EA at 10; compare with 2018 EA at 7 (noting that food conditioned bears present a public safety risk but noticeably omitting the statement from the 2014 EA that removing stations would reduce the conditioning of bears).

²¹⁷ 2014 EA at 21–22.

²¹⁸ 80 Fed. Reg. 64,336.

“Because of the accessibility of [bear baiting] areas, they are typically used by multiple user groups, which contributes to the public safety concerns associated with baiting.”²¹⁹ The Park Service concluded in the 2014 EA that prohibiting bear baiting would “assure[] bears in national preserves maintain more natural foraging and feeding behaviors.”²²⁰ Eliminating bear baiting “would result in more natural and unaltered behaviors.”²²¹ When adopting the 2015 Rule, the Park Service noted that “[b]y design, baiting typically uses human or pet food *to alter the natural behavior* of bears to predictably attract them to a specific location for harvest.”²²²

In addition to the habituation and safety concerns identified above, harmful ecological impacts associated with baiting include: disease transmission, disruption of animal movement patterns and spatial distribution, alteration of community structure with reduced diversity and abundance, the introduction and invasion of exotic plant species, and general degradation of habitat.²²³

The Park Service has also found that most bait stations experience impacts including “tree cutting, spilled grease, trees stained with grease, spikes in trees from construction of tree stands, trees limbed and scarred from the use of self-climbing tree stands, and digging around the bait barrel by bears to get at spilled grease and food items.”²²⁴ Further, “[m]ost of the stations also have illegal ATV trails into them.”²²⁵

As detailed above, the Park Service is charged with maintaining natural behaviors and baiting conflicts with that mandate. The only attempt the Park Service makes to explain its proposed wholesale reversal of its factual, legal, and policy position on bear baiting is a recitation of the State’s position:

With regard to NPS’s statement in the 2015 Rule that baiting poses an increased public safety risk, the State of Alaska’s position is that baiting does not cause bears to become food-conditioned, and therefore a greater safety concern.²²⁶

²¹⁹ *Id.* at 64,329, 64,336.

²²⁰ 2014 EA at 21.

²²¹ *Id.*; *see also id.* at 26 (“baiting of bears alters their behavior”); *see also* Ex. 86 at 24 (“Due to the transfer of knowledge from sows to cubs and the long life span of individual bears, young bears exposed to human foods may display unnatural and unacceptable behavior for decades.”).

²²² 80 Fed. Reg. 64,335–64,336 (emphasis added).

²²³ *See* L. Dunkley & M. R. L. Cattet, *A Comprehensive Review of the Ecological and Human Social Effects of Artificial Feeding and Baiting of Wildlife*, CAN. COOP. WILDLIFE HEALTH CENTRE: NEWSLETTERS & PUBL’N 21 (2003) (attached as Exhibit 82); R.A. Inslerman, et al., *Baiting and Supplemental Feeding of Game Wildlife Species*, THE WILDLIFE SOC’Y (2006) (attached as Exhibit 94).

²²⁴ Exhibit 28 at 1.

²²⁵ *Id.*

²²⁶ 83 Fed. Reg. 23,622. *Compare with* Exhibit 72 at 4 (“In 38% (15 of 40) of incidents, peoples’ food or garbage probably influenced the bear being in the attack location.”); Grant Hilderbrand, et al., *Black Bear Baiting in Alaska and in Alaska’s Nat’l Park Serv. Lands, 1992–2010*, 24(1)

Reliance on this unsupported statement is in stark contrast to the 2015 Rule’s recognition of the significant safety concerns caused by baiting, which are well-documented in the scientific literature.²²⁷ Further, the 2018 Rule offers no explanation of the change in position regarding the impact of baiting to the natural actions and behaviors of bears and other wildlife that the Park Service is charged with protecting.

2. *Harvest of Bears with Artificial Light at Den Sites*

The 2015 Rule prohibits the use of artificial lights to hunt any wildlife.²²⁸ Hunting bears by using artificial lights at den sites is done to increase harvest and reduce bear populations, and has long been prohibited by the State for that reason.²²⁹ As the Park Service previously pointed out, “[w]hen the harvest of black bears to include sows with cubs at dens using artificial lights was initially allowed, the State’s policy (2006-164-BOG) precluded harvest of sows and cubs except when associated with predator control.”²³⁰ Because the Board of Game adopted this hunting practice specifically to aid predator control efforts, the 2015 Rule’s prohibition of this practice cannot be overturned without violating applicable statutory mandates. Further, the Park Service has offered no justification for overturning its findings regarding the use of artificial light.

3. *Bear Snaring*

The 2015 Rule also bans the use of snares to harvest bears.²³¹ Bear snaring, illegal in Alaska until 2010, falls under the Board of Game’s trapping regulations. It involves securing a bucket filled with bait to a tree above the ground. When the bear tries to remove its paw from the bucket, a snare is triggered. In January 2012, 77 biologists called this practice “incompatible with scientific principles and the ethics of modern wildlife management.”²³² Snaring of bears is a measure listed by the Board of Game to prevent the human harvest of ungulates from failing to reach the desired high levels, and to support intensive management and predator control

URSUS 91, 95 (2013) (“However, baiting may alter the natural behavior of bears by conditioning them to human foods; this conditioning is inconsistent with NPS policy”) (attached as Exhibit 29).

²²⁷ See *supra* note 196.

²²⁸ 80 Fed. Reg. 64,325.

²²⁹ *Id.* at 64,326 (“In the last several years, the State of Alaska has allowed an increasing number of liberalized methods of hunting and trapping wildlife and extended seasons to increase opportunities to harvest predator species. Predator harvest practices recently authorized on lands in the State, including lands in several national preserves, include: Taking any black bear, including cubs and sows with cubs, with artificial light at den sites.”).

²³⁰ See Letter from Sue Masica, NPS Alaska Reg’l Dir., to Cora Campbell, ADF&G Comm’r at 2 (June 3, 2013) (attached as Exhibit 10).

²³¹ 80 Fed. Reg. 64,325.

²³² Dan Joling, *Ex-Governor Joins Opposition to Expansion of Bear Snaring*, Alaska Dispatch (Jan. 12, 2012) (attached as Exhibit 105).

programs.²³³ As such, it must be prohibited on national preserves.

The Board of Game allows snaring of both brown and black bears. Snaring bears had been illegal since statehood, until the Board of Game implemented an “experimental program” for black bears in Unit 16B — across Cook Inlet from Anchorage — during the summer of 2009.²³⁴ That summer, 81 black bears were killed by snare and 8 brown bears were snared, 3 of which were killed.²³⁵ That program has continued, and was expanded to legally include brown bears. In a press release regarding approval of brown bear predator control in 2011, ADF&G noted that

[t]he board has previously authorized snaring and baiting for harvesting black bears, which has proven to be an extremely effective method of take. The board decided to extend the same baiting and foot-snaring methods to reduce brown bears in the 900 square mile experimental area. . . . In an effort to increase moose populations, wolf reduction efforts began in 2004 resulting in higher winter survival of calves. In 2007, the board liberalized bear regulations to reduce bear numbers in order to increase spring and summer calf survival.²³⁶

Snaring is not yet widespread in Alaska but given the Board of Game’s clear trend toward liberalization of bear hunting regulations, the 2015 Rule proactively prohibits this practice on national preserve lands. Also, because snaring involves bait, it is barred by the 2015 Rule’s prohibition on bear baiting. The Park Service fails to offer any justification for overturning its previous findings regarding snaring.

4. *Hunting Big Game with the Use of a Dog*

The 2015 Rule prohibits hunting black bears with the use of dogs.²³⁷ Using dogs to hunt black bears involves letting the dogs run free to track the bear. As noted by the Park Service when adopting the 2015 Rule, “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.”²³⁸

In most National Parks and Preserves, dogs are only permitted in restricted areas and must be leashed.²³⁹ This is because dogs, especially loose dogs, can harm wildlife. Dogs may harass or kill native wildlife that is protected within park areas, or may themselves be killed by

²³³ Exhibit 36 at 6.

²³⁴ ADF&G, *News* at 1 (Sept. 4, 2009) (attached as Exhibit 106).

²³⁵ *Id.*

²³⁶ ADF&G Press Release, Brown Bear Control Program Approved in Unit 16B, Mar. 11, 2011 (attached as Exhibit 66).

²³⁷ 80 Fed. Reg. 64,343 (Prohibited acts include “[t]aking big game with the aid or use of a dog”).

²³⁸ 80 Fed. Reg. 64,336.

²³⁹ *See, e.g.*, NPS, *Pets*, Apr. 14, 2015 (attached as Exhibit 108).

park wildlife such as bears, wolves, or coyotes.²⁴⁰ Dogs also have the potential to transmit diseases to native wildlife.²⁴¹ Allowing hunting of black bears with the use of dogs raises all of the above concerns and conflicts with Park Service mandates.

B. The State of Alaska Manages Wolves to Reduce Their Populations to Achieve Human Harvest Objectives of Ungulates.

The Board of Game's wolf management policy establishes that the "primary purpose of this policy" is, among other things, "to greatly reduce wolf numbers to aid recovery of low prey populations or to arrest undesirable reductions in prey populations."²⁴² The Board of Game identifies wolf management as setting "season and bag limits to . . . allow public participants to directly aid . . . in improving ungulate levels."²⁴³ The Board of Game distinguishes wolf control as "the planned, systematic regulation of wolf numbers to achieve a temporarily lowered population level using aerial shooting, hiring trappers, denning, helicopter support, or other methods which many not normally be allowed in conventional public hunting and trapping."²⁴⁴

The Board of Game identifies the following methods to implement its wolf control program:

- Expanding public hunting and trapping into seasons when wolf hides are not prime;
- Use of baiting for hunting wolves;
- Allowing same-day-airborne hunting of wolves when 300 feet from aircraft;
- Allowing land-and-shoot by the public;
- Allowing aerial shooting by the public;
- Allowing use of Department staff and helicopters for aerial shooting;
- Encouraging the Department to hire or contract with wolf trappers and other agents who may use one or more of the methods listed here; and
- Allowing denning by Department staff and use of gas for euthanasia of sub-adults in dens.²⁴⁵

²⁴⁰ See Joeline Hughes & David W. Macdonald, *A Review of the Interactions Between Free-Roaming Domestic Dogs and Wildlife*, 157 *BIOLOGICAL CONSERVATION* 341 (2013) (reviewing existing scientific literature on interactions between dogs and wildlife and concluding that "problems recorded were primarily caused by predation (50% of the 69 studies recorded predation) and disease transmission (20%)") (attached as Exhibit 83); Stefano Grignolio, et al., *Effects of Hunting with Hounds on a Non-Target Species Living on the Edge of a Protected Area*, 144 *BIOLOGICAL CONSERVATION* 1 (2011) (attached as Exhibit 95); Emiliano Mori, *Porcupines in the Landscape of Fear: Effect of Hunting with Dogs on the Behaviour of a Non-Target Species*, 62 *MAMMAL RESEARCH* 3 (2017) (attached as Exhibit 96).

²⁴¹ See *id.*

²⁴² Exhibit 36 at 7 (Board of Game Wolf Management Policy).

²⁴³ *Id.* at 8.

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 9.

Wolf seasons have been lengthened and bag limits increased specifically to achieve the State's goals under the Intensive Management law. For example, when the U.S. Fish & Wildlife Service barred the State from implementing aerial wolf control on Unimak Island in 2011, the Board of Game adopted regulations to extend wolf hunting and trapping "in a further attempt to allow affected users to try to reduce wolf predation" on the island.²⁴⁶ Then the Commissioner of Fish and Game used an emergency order to "reduce wolf predation on caribou . . . [by] extend[ing] wolf hunting and trapping seasons until June 30."²⁴⁷

In 2014, in response to State efforts to extend wolf seasons to months when adults have pups and increasing bag limits from five per season up to 20 per season or 10 per day, Chief of Resources for Yukon Charley Rivers National Preserve stated that those actions were completely incompatible with Park Service objectives.²⁴⁸

The 2015 Rule prohibits taking wolves and coyotes from May 1 through August 9. When adopting this prohibition, the Park Service noted that "[t]hese dates reflect previously longstanding State harvest seasons that provided harvest opportunities while maintaining viable wolf and coyote populations" and maintain that "decades-old management paradigm of State and federal managers, rather than adopting recently liberalized State regulations that lengthen the hunting seasons."²⁴⁹ When adopting the 2015 Rule, the Park Service recognized that the State's intent in lengthening the seasons is to reduce populations, as discussed above. The 2015 Rule protects wolves when they are most vulnerable, and protects "the opportunity to harvest wolves when the pelts are thicker for cold winter temperatures."²⁵⁰ At times, even ADF&G has requested that the Board of Game not extend the wolf hunting season into May because the denning period is a vulnerable time in their life cycle.²⁵¹ The Board, however, "says that the most effective time to kill wolves is during caribou calving season, when the wolves are focused on the heard. But that's also the time when pups are in the dens."²⁵²

The 2018 Rule offers no justification for its change in position. It also fails to recognize that wolf populations in some national preserves are already dramatically impacted by the State's

²⁴⁶ Alaska Department of Fish & Game, Emergency Order 04-01-11 (Mar. 31, 2011), at 3 (attached as Exhibit 21).

²⁴⁷ *Id.*

²⁴⁸ *See* Exhibit 100 at 3.

²⁴⁹ 80 Fed. Reg. 64,337.

²⁵⁰ *Id.*

²⁵¹ ADF&G emphasized this point to the Board of Game in its comments opposing the extension of the wolf hunting season in GMU 22, stating that "[m]ost wolf hunting seasons statewide, *outside of areas with intensive management programs*, end on April 30 due to increased vulnerability during the denning period." *See* ADF&G, *Staff Comments Arctic and Western Region Regulatory Proposals* at 32–33, Alaska Board of Game Meeting (January 10–13, 2014) (Exhibit 11) (emphasis added).

²⁵² Tracy Ross, *Palin, Politics, and Alaska Predator Control* at 10, HIGH COUNTRY NEWS (Feb. 21, 2011) (attached as Exhibit 115).

intensive management activities conducted outside of preserve boundaries.²⁵³

III. THE 2018 EA IS INADEQUATE AND THE PARK SERVICE SHOULD PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

The 2018 EA fails to take the requisite hard look at the direct, indirect, and cumulative impacts that would occur under the proposed action. The purpose of an EA is to provide the agency with sufficient evidence and analysis to determine whether to prepare an Environmental Impact Statement (EIS) or issue a Finding of No Significant Impact (FONSI).²⁵⁴ Pursuant to the National Environmental Policy Act's (NEPA) "hard look" requirement, an agency must prepare an up-front, coherent, and comprehensive environmental review.²⁵⁵

The 2018 EA fails to meet NEPA's environmental review threshold. The EA provides a cursory review of potential consequences, dismissing impacts on the improper grounds that "population-level effects" are not anticipated.²⁵⁶ Such statements fail to satisfy NEPA's hard look requirement.²⁵⁷ Whether the removal of current prohibitions will have a significant effect

²⁵³ See, e.g., Joshua H. Schmidt, et al., *Effects of Wolf Control on the Dynamics of an Adjacent Protected Wolf Population in Interior Alaska*, 198 WILDLIFE MONOGRAPHS 1, 26 (2017). ("[I]t is well recognized that management actions and other activities that take place on lands outside park boundaries can affect park resources (NPS 2006). In our case, although wolf control actions occurred only outside the boundaries of YUCH, we demonstrated that such actions could have direct impacts on wolf population dynamics over broader areas. These findings suggest that managers of protected areas need to think more deeply to address the types of changes we observed in YUCH. The passive management approach often employed by managers in response to external threats may be insufficient to prevent a shift in ecosystem dynamics when management regimes differ in adjacent areas, particularly in the case of wolf control.") (attached as Exhibit 104).

²⁵⁴ 40 C.F.R. § 1508.9.

²⁵⁵ *Ctr. for Biological Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1166 (9th Cir. 2003).

²⁵⁶ See e.g. 2018 EA at 9 ("based on input from the Alaska Department of Fish and Game (ADFG), population-level effects on prey species are not expected"), 10 ("While an increase in the number of wolves taken between May 1 and August 9 is expected under the proposed action, the increase is expected to be small and would have little to no population-level effect on wolves"), *id.* ("only small numbers of black bears would be expected to be taken over bait in national preserves each year under the proposed action. No meaningful population-level effects would be expected"), 11 ("When the State decided to allow the taking of brown bears over black bear baiting stations it determined that practice would not affect the conservation of brown bears at the population level"), 12 ("Due to the low level of additional take of caribou expected under the proposed action, no meaningful population-level impacts are expected to caribou"), 13 ("due to the low level of additional take anticipated as a result of removing the current prohibitions, biological population-level effects are not anticipated").

²⁵⁷ See *W. Watersheds Project v. USDA APHIS Wildlife Servs.*, 320 F. Supp. 3d 1137, 1145 (D. Idaho 2018) (finding agency failed to take a hard look in its EA at a predator control program that included an almost identical statement that "[T]he current program would not result in the elimination of any predator population and impacts on apex predators are only temporary and in

does not depend on whether there will be population-level effects.²⁵⁸ Moreover, the EA provides only general, conclusory statements about how there may be “localized impact” and “increased mortality risk . . . resulting from the removal of current prohibitions on methods of take.”²⁵⁹ The Ninth Circuit has found similar conclusory statements insufficient.²⁶⁰

The agency must consider both short-term and long-term impacts, both local and regional impacts, and cumulative impacts that may arise in combination with other actions (including reasonably foreseeable state actions).²⁶¹ The 2018 EA fails to take a hard look at localized impacts, which the 2014 EA regarded as “substantial.”²⁶² The 2014 EA observed that “[t]hese changes would be incompatible with NPS mandates to maintain natural ecosystems, processes, and behavior of affected wildlife, especially bears.”²⁶³

Cumulative impacts from the State’s intensive management programs have already been significant. As observed in the 2014 EA, and omitted from the 2018 EA, these “localized” cumulative impacts of predator control actions have resulted in the Forty Mile Caribou Herd doubling in size over the previous ten years, overgrazing the herd’s core range, and shifting its winter range into Canada.²⁶⁴ The wolves in the Yukon Charley Rivers National Preserve have been so impacted by State efforts under formal intensive management programs that the Park Service discontinued studies because so many wolves were killed that it was “no longer feasible to conduct research.”²⁶⁵ The 2018 EA fails to analyze these cumulative impacts, as well as those

relatively small or isolated geographic areas, compared with population levels of target species and would not have significant overall impacts on prey populations or ecosystem function.”).²⁵⁸ The 2018 EA fails to clarify at what scale “populations” of predators are being evaluated when it says that “population-level effects” are not anticipated. 2018 EA at 9–12. It is unclear whether the populations being evaluated are the entire populations, populations in Alaska, populations in each GMU, or populations in each national preserve.

²⁵⁹ See 2018 EA at 13.

²⁶⁰ See, e.g., *W. Watersheds Project v. Bureau of Land Mgmt.*, 443 F. App’x 278, 279–280 (9th Cir. 2011) (finding statements like “some species could incur population-level effects,” “further mortality” and “a somewhat larger percent increase in mortality” to be general and conclusory statements); see also *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998) (“General statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.”).

²⁶¹ 40 C.F.R. §§ 1508.7 (“Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”), 1508.27(a), (b)(7).

²⁶² 2014 EA at 15; see also *id.* at 17 (“Localized effects on individual animals, family groups, and packs are expected to be substantial.”).

²⁶³ 2014 EA at 17.

²⁶⁴ 2014 EA at 15.

²⁶⁵ Anna V. Smith, *Park Serv. Ended a Wolf Study in Alaska, Since so Many Have Been Killed*, HIGH COUNTRY NEWS, Aug. 12, 2016 (noting that according to Yukon Charley Rivers National Preserve Superintendent Dudgeon, 90 wolves with ranges in the Preserve have been killed since 2005) (attached as Exhibit 97); E-mail from Bruce Dale, ADF&G, to Richard Steiner (July 7, 2016) (noting that 30% of wolves killed by ADF&G between 2011 and 2015 were in the Upper

posed by the State's formal intensive management programs.

The 2018 Rule is also likely to provoke reasonably foreseeable State action. The State will likely take additional intensive management and predator control actions and continue to liberalize hunting practices that were previously prohibited by the 2015 Rule. The 2018 EA fails to include these reasonably foreseeable actions in its analysis.

Under NEPA, an agency must prepare an EIS if there is a "substantial question" whether an action may have a significant effect on the environment.²⁶⁶ To determine whether a project's impacts are significant, an agency must consider several factors listed in NEPA's implementing regulations, including whether there are any unique characteristics of the area affected, the degree to which the effects of the action are either controversial or uncertain, and whether the action threatens a violation of a substantive environmental law.²⁶⁷ The existence of any one of these factors may be enough to require an EIS.²⁶⁸ The EA fails to address these factors and cannot support a FONSI.

The 2018 Rule would depart from the Park Service's long-held position and would result in significant impacts on natural ecosystems and processes, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife within the preserves in Alaska. Because the impacts from the 2018 Rule are likely to be significant, the Park Service must prepare an EIS.

Preparation of an EIS is also required because, by allowing sport hunting practices that are intended to artificially reduce predator populations, the Park Service will violate its statutory duties and jeopardizes natural resources that the preserve system was established to protect.²⁶⁹

Further, under NEPA's regulations, an EIS must be prepared when the effects of an action are controversial, uncertain, or may establish a precedent for future actions.²⁷⁰ The 2018

Yukon-Tanana wolf control area) (attached as Exhibit 98); Letter from Greg Dudgeon, Nat'l Park Serv., to Dr. Richard Steiner, (July 29, 2016) (identifying that the State's intensive management program killed 90 wolves and impacted nine wolf packs with home ranges in the Yukon Charley Rivers National Preserve) (attached as Exhibit 99); Jeff Richardson, *Park Serv., State Clash on Interior Wolf Killings*, FAIRBANKS DAILY NEWS-MINER (Mar. 2, 2014) at 1 (Superintendent Dudgeon noting that state predator control efforts killed 36 wolves in the spring season, reducing the population by more than half) (attached as Exhibit 101).

²⁶⁶ *Blue Mts. Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998); 42 U.S.C. § 4332(C)(2)(i); 40 C.F.R. §§ 1500.2, 1508.3 ("Affecting means will or may have an effect on").

²⁶⁷ 40 C.F.R. § 1508.27(b).

²⁶⁸ *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 865 (9th Cir. 2005).

²⁶⁹ Under NEPA, an agency must consider "[w]hether the action threatens a violation of Federal, State, or local law" in determining whether an action is significant. 40 C.F.R. § 1508.7.

²⁷⁰ 40 C.F.R. §§ 1508.27(b)(4)-(b)(6); *see also Nat'l Parks & Conserv. Ass'n v. Babbitt*, 241 F.3d 722, 731 (9th Cir. 2001) (finding the "outpouring of public protest" against the project triggered an EIS); *Native Ecosystems Council & All. for the Wild Rockies v. U.S. Forest Serv. ex*

Rule is controversial. As of October 31, 2018, almost 180,000 public comments had been submitted via regulations.gov.²⁷¹ The intense controversy surrounding wildlife management in the national preserves is illustrated by the 2015 Rule, which resulted in three lawsuits with sport hunting and guiding interests and the State challenging the 2015 Rule and fifteen conservation organizations intervening on the side of the Park Service in each lawsuit to defend the 2015 Rule. Given the controversy surrounding this issue, and the 2018 Rule in particular, the Park Service must prepare an EIS.

IV. CONCLUSION

The Park Service has failed to provide any meaningful and reasoned justifications for its 2018 Rule. The Park Service has also failed to adequately explain how or why its findings underlying the 2015 Rule no longer apply. The 2018 Rule fails to provide a means by which the Park Service will continue to meet its federal obligations. The State's efforts to increase harvest of ungulates through predator control, intensive management, and liberalization of hunting regulations plainly conflict with Park Service mandates governing wildlife management on national preserves. The Park Service has consistently explained this conflict to the State and repeatedly prohibited conflicting state regulations on national preserves. Only non-conflicting state regulations can apply on national preserves. The Park Service cannot simply "align" its regulations with those of the State and still comply with its federal mandates. For these reasons, the Park Service should not finalize the 2018 Rule. Rather, the agency should leave the 2015 Rule in place.

Thank you for considering these comments. If you have any questions regarding these comments, please do not hesitate to contact me.

Sincerely,

/s K.Strong
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Brian Litmans
Trustees for Alaska
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rel. Davey, 866 F. Supp. 2d 1209, 1229 (D. Idaho 2012) (finding effects of Forest Service action to be controversial, uncertain and precedential, warranting need for an EIS).

²⁷¹ See <https://www.regulations.gov/docket?D=NPS-2018-0005> (last visited Oct. 31, 2018).

Exhibits submitted via hand delivery on a USB flash drive for Trustees for Alaska Comments, submitted Nov. 5, 2018, on National Park Service Proposed Rule for Hunting and Trapping in National Preserves in Alaska (Regulation Identifier Number 1024–AE38), and on the Sport Hunting and Trapping in National Preserves EA

| Exhibit | Title |
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| 1 | Victor Van Ballenberghe, Biological Standards and Guidelines for Predator Control in Alaska: Application of the Nat’l Research Council’s Recommendations (Nov. 2004) |
| 2 | Victor Van Ballenberghe, <i>Predator Control, Politics, and Wildlife Conservation in Alaska</i> , 42 <i>ALCES</i> 1 (2006) |
| 3 | Julie Lurman & Sanford P. Rabinowitch, <i>Preemption of State Wildlife Law in Alaska: Where, When, and Why</i> , 24 <i>ALASKA L. REV.</i> 145 (2007) |
| 4 | Sterling D. Miller, et al., <i>Trends in Intensive Management of Alaska’s Grizzly Bears, 1980–2010</i> , 75(6) <i>J. OF WILDLIFE MGMT.</i> 1243 (2011) |
| 5 | <i>Alaska’s Predator Control Programs: Managing for Abundance or Abundant Mismanagement?</i> DEFENDERS OF WILDLIFE (2011) |
| 6 | Table showing requests from Park Service that the Board exempt national preserves from state regulations |
| 7 | James M. Wilder, Quantifying Bear Populations and Bear-Human Conflicts Using Non-Invasive Genetic Sampling in the Kennicott Valley of Wrangell-St. Elias Nat’l Park & Preserve, Alaska (Jan. 2003) |
| 8 | Letter from NPCA, et al. to Vic Knox, re: Bear Baiting (Aug. 22, 2005) |
| 9 | ADF&G, <i>Hunting and Trapping Emergency Order No. 04-01-11</i> (Mar. 31, 2011) |
| 10 | Letter from Sue Masica, NPS Alaska Reg’l Dir., to Cora Campbell, ADF&G Comm’r (June 3, 2013) |
| 11 | ADF&G, <i>Staff Comments Arctic and Western Region Regulatory Proposals</i> , Alaska Board of Game Meeting (January 10–13, 2014) |
| 12 | Nat’l Park Serv., Alaska Region GIS Team, <i>State of Alaska Predator Control Areas</i> |
| 13 | Sterling D. Miller, et al., <i>Trends in Brown Bear Reduction Efforts in Alaska, 1980–2017</i> , 28(2) <i>URSUS</i> 135 (2017) |
| 14 | Laura R. Prugh & Stephen M. Arther, <i>Optimal Predator Mgmt. for Mountain Sheep Conservation Depends on the Strength of Mesopredator Release</i> , 000 <i>OIKOS</i> 001 (2015) |
| 15 | G. V. Hilderbrand, et al., Wildlife Stewardship in Nat’l Park Serv. Areas in Alaska: A Report to the Alaska Leadership Council Sub-Group on Wildlife Harvest on Parklands, Natural Res. Report NPS/AKSO/NRR—2013/663 14 (2013) |
| 16 | Kim Titus, <i>Intensive Mgmt. of Wolves, Bears and Ungulates in Alaska</i> , Alaska Dep’t of Fish & Game (unknown date) |
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| 18 | Nat’l Park Serv., Determination of Need for a Restriction, Condition, Public Use Limit, or Closure (unknown date) |
| 19 | Alaska Dep’t of Fish & Game, <i>Overview of Relationships Between Bears, Wolves, and Moose in Alaska</i> (June 23, 2013) |

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| 23 | Letter from Debora Cooper, Assoc. Reg. Dir., NPS to Ted Spraker, Chairman Alaska Board of Game (Feb. 1, 2018) |
| 24 | J. Hard, <i>Intensive Mgmt. and Implications for NPS Preserves in Alaska</i> (May 29, 2009) |
| 25 | Transcript of Proceedings, Alaska Board of Game (Excerpt), Feb. 27, 2010 |

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| 27 | Alaska Region Wildlife Briefing Paper, Bear Baiting on NPS Lands in Alaska (unknown date) |
| 28 | Bear Baiting in WRST, Nat'l Park Serv. (unknown date) |
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| 30 | Sandy Rabinowitch to Deb Cooper re: Brief history — Brown bear baiting — And some bullets (April 4, 2014) |
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| 37 | NAT'L RESEARCH COUNCIL, WOLVES, BEARS, AND THEIR PREY IN ALASKA, BIOLOGICAL AND SOCIAL CHALLENGES IN WILDLIFE MGMT. (1997) |
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| 47 | NPS internal email from Joel Hard to Debora Cooper and John Quinley, Re: ADF&G Consultation (Feb. 28, 2014) |
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| 49 | NPS letter from Joel Hard, Deputy Reg. Dir., NPS, to Doug Vincent-Lang, Acting Dir., ADF&G (Dec. 14, 2012) |
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| 63 | 2015 NPS Compendium for Denali Nat'l Park and Preserve; 2013 NPS Compendium for Denali Nat'l Park and Preserve |
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