

**4312-52**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Part 13**

**[NPS-AKRO-36475; PPAKAKROZ5, PPMRLE1Y.L00000]**

**RIN 1024-AE70**

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

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Park Service amends its regulations for sport hunting and trapping in national preserves in Alaska to prohibit bear baiting and clarify trapping regulations.

**DATES:** This rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]

**ADDRESSES:** *Docket:* For access to the docket to read comments received, go to <https://www.regulations.gov> and search for Docket ID: NPS-2023-0001.

*Document Availability:* The Revisiting Sport Hunting and Trapping on National Park System Preserves in Alaska Revised Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) provide information and context for this rule and are available online at <https://parkplanning.nps.gov/akro> by clicking the link entitled “Revisiting Sport Hunting and Trapping on National Park System Preserves in Alaska” and then clicking the link entitled “Document List.”

**FOR FURTHER INFORMATION CONTACT:** Regional Director, Alaska Regional

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

## **SUPPLEMENTARY INFORMATION:**

### **Background:**

The Alaska National Interest Lands Conservation Act (ANILCA) allows harvest of wildlife in national preserves in Alaska for subsistence purposes by local rural residents under Federal regulations. ANILCA also allows harvest of wildlife for sport purposes by any individual under laws of the State of Alaska (referred to as the State) that do not conflict with Federal laws. ANILCA requires the National Park Service (NPS) to manage national preserves consistent with the NPS Organic Act of 1916, which directs the NPS “to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 54 U.S.C. 100101(a). Thus, the NPS recognizes that its conservation stewardship mandate for national preserves in Alaska includes both utilitarian uses of wildlife as well as recognition of their intrinsic value. The NPS also recognizes that both the utilitarian use and intrinsic value of wildlife are concepts that predate the NPS Organic Act, and thus the NPS.

On June 9, 2020, the NPS published a final rule (2020 Rule; 85 FR 35181) that

removed restrictions on sport hunting and trapping in national preserves in Alaska that were implemented by the NPS in 2015 (2015 Rule; 80 FR 64325). These included restrictions on the following methods of taking wildlife that were and continue to be authorized by the State in certain locations: taking black bear cubs, and sows with cubs, with artificial light at den sites; harvesting bears over bait; taking wolves and coyotes (including pups) during the denning season (between May 1 and August 9); taking swimming caribou; taking caribou from motorboats under power; and using dogs to hunt black bears. The 2015 Rule prohibited other harvest practices that were and continue to be similarly prohibited by the State. These prohibitions also were removed by the 2020 Rule. The 2020 Rule also removed a statement in the 2015 Rule that State laws or management actions that seek to, or have the potential to, alter or manipulate natural predator populations or processes in order to increase harvest of ungulates by humans are not allowed in national preserves in Alaska. The NPS based the 2020 Rule in part on direction from the Department of the Interior (DOI) to expand recreational hunting opportunities and align hunting opportunities with those established by states. Secretary's Orders 3347 and 3356. The 2020 Rule also responded to direction from the Secretary of the Interior to review and reconsider regulations that were more restrictive than state provisions, and specifically the restrictions on harvesting wildlife found in the 2015 Rule. On January 9, 2023, the NPS published a proposed rule (88 FR 1176) that would prohibit certain harvest practices, including bear baiting; and would prohibit predator control or predator reduction on national preserves. In developing the proposed rule, NPS sought input from Tribal entities, subsistence user groups, and the State of Alaska.

The harvest practices at issue in the 2015 Rule, 2020 Rule, and this final rule are

specific to harvest under the authorization for sport hunting and trapping in ANILCA. None of these rules address subsistence harvest by rural residents under title VIII of ANILCA.

*The 2015 Rule.*

Some of the harvest methods prohibited by the 2015 Rule targeted predators. When the NPS restricted these harvest methods in the 2015 Rule, it concluded that these methods were allowed by the State for the purpose of reducing predation by bears and wolves to increase populations of prey species (ungulates) for harvest by human hunters. The State's hunting regulations are driven by proposals from members of the public, fish and game advisory entities, and State and Federal government agencies. The State, through the State of Alaska Board of Game (BOG), deliberates on the various proposals publicly. Many of the comments made in the proposals and BOG deliberations on specific hunting practices showed that they were intended to reduce predator populations for the purpose of increasing prey populations. Though the State objected to this conclusion in its comments on the 2015 Rule, the NPS's conclusion was based on State law and policies;<sup>1</sup> BOG proposals, deliberations, and decisions;<sup>2</sup> and Alaska Department of Fish and Game actions, statements, and publications leading up to the 2015 Rule.<sup>3</sup>

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

<sup>2</sup> See, e.g., Alaska Board of Game Proposal Book for March 2012, proposals 146, 167, 232.

<sup>3</sup> See, e.g., AS section 16.05.255(e); State of Alaska Department of Fish and Game Emergency Order on Hunting and Trapping 04-01-11 (Mar. 31, 2011) (*available at* Administrative Record for Alaska v. Jewell et al., No. 3:17-cv-00013-JWS, D. Alaska pp. NPS0164632-35), State of Alaska Department of Fish and Game Agenda Change 11 Request to State Board of Game to increase brown bear harvest in game management unit 22 (2015); Alaska Department of Fish and Game Wildlife Conservation Director Corey

Because NPS Management Policies state that the NPS will manage lands within the National Park System for natural processes (including natural wildlife fluctuations, abundances, and behaviors) and explicitly prohibit predator control, the NPS determined that these harvest methods authorized by the State were in conflict with NPS mandates. NPS Management Policies (4.4.1, 4.4.3) (2006). For these reasons and because the State refused to exempt national preserves from these authorized practices, the NPS prohibited them in the 2015 Rule and adopted a regulatory provision consistent with NPS policy direction on predator control related to harvest. The 2015 Rule further provided that the Regional Director would compile, annually update, and post on the NPS website a list of any State predator control laws or actions prohibited by the NPS on national preserves in Alaska.

As stated above, the 2015 Rule only restricted harvest for “sport purposes.” Although this phrase is used in ANILCA, the statute does not define the term “sport.” In the 2015 Rule, the NPS reasoned that harvest for subsistence is for the purpose of feeding oneself and family and maintaining cultural practices, and that “sport” or recreational hunting invokes Western concepts of fairness which do not necessarily apply to subsistence practices. Therefore, the 2015 Rule prohibited the practices of harvesting swimming caribou and taking caribou from motorboats under power which the NPS concluded were not consistent with generally accepted notions of “sport” hunting. This

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Rossi, “Abundance Based Fish, Game Management Can Benefit All,” ANCHORAGE DAILY NEWS (Feb. 21, 2009); ADFG News Release—Wolf Hunting and Trapping Season extended in Unit 9 and 10 in response to caribou population declines (3/31/2011); Alaska Department of Fish and Game Craig Fleener, Testimony to US Senate Committee on Energy and Natural Resources re: Abundance Based Wildlife Management (Sept. 23, 2013); Alaska Department of Fish and Game, Hunting and Trapping Emergency Order 4-01-11 to Extend Wolf Hunting and Trapping Seasons in GMU [Game Management Unit] 9 and 10 (LACL and KATM) (Nov. 25, 2014); ADFG Presentation Intensive Management of Wolves, Bears, and Ungulates in Alaska (Feb. 2009).

conclusion also supported restrictions in the 2015 Rule on the practices of taking bear cubs and sows with cubs; and using a vehicle to chase, drive, herd, molest, or otherwise disturb wildlife. To illustrate how the 2015 Rule worked in practice, a federally qualified local rural resident could harvest bear cubs and sows with cubs, or could harvest swimming caribou (where authorized under Federal subsistence regulations), but a hunter from Anchorage, Fairbanks, Juneau or other nonrural areas in Alaska, or a hunter from outside Alaska, could not.

In the 2015 Rule, the NPS also concluded that the practice of putting out bait to attract bears for harvest poses an unacceptable safety risk to the visiting public and leads to unnatural wildlife behavior by attracting bears to a food source that would not normally be there. The NPS based this conclusion on the understanding that bears are more likely to attack when defending a food source and therefore visitors who encountered a bait station would be at risk from bear attacks. In addition, the NPS concluded that baiting could cause more bears to become conditioned to human food, creating unacceptable public safety risks. The NPS based this conclusion on the fact that not all bears that visit bait stations are harvested; for example, a hunter may not be present when the bear visits the station, or a hunter may decide not to harvest a particular bear for a variety of reasons. Additionally, other animals are attracted to bait stations. Because bait often includes dog food and human food, including items like bacon grease and pancake syrup, which are not a natural component of animal diets, the NPS was concerned that baiting could lead to bears and other animals associating these foods with people, which would create a variety of risks to people, bears, and property. For these reasons, the 2015 Rule prohibited bear baiting in national preserves in Alaska.

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

*The 2020 Rule.*

The 2020 Rule reconsidered the conclusions in the 2015 Rule regarding predator control, sport hunting, and bear baiting. First, the 2020 Rule reversed the 2015 Rule’s conclusion that the State intended to reduce predator populations through its hunting regulations. As explained above, the NPS’s conclusion in the 2015 Rule was based on BOG proposals, deliberations, and decisions; and Alaska Department of Fish and Game actions, statements, and publications that preceded the 2015 Rule. However, in their written comments on the 2015 and 2020 Rules, the State denied that the harvest practices for predators were part of their predator control or intensive management programs and therefore were not efforts to reduce predators. In its written comments, the State argued that the liberalized predator harvest rules were simply a means to provide new opportunities for hunters to harvest predators, in response to requests received by the BOG. The State argued that it provided these new opportunities under a “sustained yield” management framework, which is distinct from what the State considers “predator control.” The State asserted that it has a separate, formal predator control program which

is not considered “hunting” by the State. According to the State, predator control occurs only through its “intensive management” program.

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

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



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

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

The NPS received 211,780 pieces of correspondence, with a total of 489,101 signatures, during the public comment period for the 2020 Rule. Of the 211,780 pieces of correspondence, approximately 176,000 were form letters and approximately 35,000 were unique comments. More than 99% of the public comments opposed the 2020 Rule. Comments on the 2020 Rule can be viewed on Regulations.gov by searching for “RIN 1024-AE38”.

Several environmental organizations sued NPS challenging the 2020 Rule, and Alaska and several hunting organizations intervened to defend the rule. NPS did not defend the rule on the merits but instead sought a voluntary remand, without vacatur, in light of its ongoing reassessment of the factual, legal, and policy conclusions underlying the rule. The district court denied that motion, and subsequently granted the plaintiffs’ motion for summary judgment in part and denied it in part. See *Alaska Wildlife Alliance v. Haaland*, 632 F. Supp. 3d 974 (D. Alaska 2022). The court held that the 2020 Rule violated the Administrative Procedure Act in three respects, ruling as follows:

- NPS acted contrary to law insofar as it determined that its statutory authority to regulate hunting on the National Preserves of Alaska is restricted to a “limited closure authority” and that ANILCA mandates that NPS defer to State hunting regulations.
- NPS's finding that State of Alaska's and Federal wildlife management requirements are equivalent is arbitrary and capricious.
- NPS's disregard without explanation of its conclusion in 2015 that State regulations fail to address public safety concerns associated with bear baiting is arbitrary and capricious.

The court remanded the 2020 Rule to NPS, without vacatur, for further proceedings consistent with its opinion.

*Final Rule.*

In this rule, the NPS reconsiders the conclusions that supported the 2020 Rule, while taking into account the defects in the Rule identified by the district court. The proposed rule addressed three topics that were considered in the 2015 and 2020 Rules: (1) bear baiting; (2) the meaning and scope of hunting for “sport purposes” under ANILCA; and (3) State law addressing predator harvest. After reconsidering these topics, the NPS has decided to prohibit the practice of taking bears over bait based primarily on public safety concerns and new factual information pertaining to the risk posed to the visiting public. This rule also clarifies the regulatory definition of trapping. Although the district court confirmed in the challenge to the 2020 Rule that the agency possesses the authority to do so, the NPS has decided against addressing the other hunting practices outlined in the proposed rule at this time, though it may re-evaluate whether regulatory action is necessary in the future. The approach NPS takes in this final rule, which focuses on addressing the threat to public safety from bear baiting, is considerably narrower than the 2015 Rule. It is an improvement over the 2020 Rule because it is more consistent with NPS policies to protect wildlife and promote visitor safety.

*Bear Baiting.*

This rule prohibits bear baiting in national preserves in Alaska. Bait that hunters typically use to attract bears includes processed foods like bread, pastries, dog food, and bacon grease. The NPS mission is broad and includes measures to promote the safety of those who visit System units (see 2006 NPS Management Policies, Section 8.2.5) as well

to protect natural wildlife populations (see 2006 NPS Management Policies, Section 4.4.2). This rule will lower the probability of visitors encountering a bait station where bears may attack to defend a food source. Further, this rule will lower the risk that bears will associate food at bait stations with humans and become conditioned to eating human-produced foods, thereby creating a public safety concern. This action to prohibit baiting is supported by these two primary risk factors and other considerations that are discussed below.

*Primary Risk Factor One: Bears Defending a Food Source.*

The risks caused by humans feeding bears (including baiting them with food) are widely recognized.<sup>4</sup> Bears are more likely to attack when defending a food source, putting visitors who encounter a bear at or near a bait station or a kill site at significant risk.<sup>5</sup> Visitors to national preserves in Alaska may inadvertently encounter bears and bait stations while engaging in sightseeing, hiking, boating, hunting, photography, fishing, and a range of other activities. This is because despite the vast, relatively undeveloped

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

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

nature of these national preserves, most visitation occurs near roads, trails, waterways, or other encampments (e.g., cabins, residences, communities). Establishing and maintaining a bait station requires the transport of supplies, including bait, barrels, tree stands, and game cameras. Because of the effort involved, bear baiters typically establish stations close to access points used by other visitors, such as roads, trailheads, and waterways, and are not likely to travel beyond these locations into more remote and less visited areas. As a result, the same roads, trails, and waterways used by visitors are, therefore, also used by those setting up a bait station. Thus, despite the vast landscapes, bear baiting and many other visitor activities are concentrated around the same limited access points. Processed foods are most commonly used for bait because they are convenient to obtain and are attractive to bears. Processed foods do not degrade quickly nor are they rapidly or easily broken down by insects and microbes. As a result, they persist on the landscape along with the public safety risk of bears defending a food source.

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

*Primary Risk Factor Two: Habituated and Food-Conditioned Bears.*

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

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

The 2020 Rule concluded that the State's mitigation measures described above would serve to mitigate risk to public safety. However, as a district court noted in setting aside that finding, the 2020 Rule did not account for the contrary information contained in the 2015 Rule. *See Alaska Wildlife Alliance v. Haaland*, 632 F. Supp. 3d 974 (D. Alaska 2022). The State's mitigation measures, including requirements for buffers and signage, do not adequately address the risk associated with habituated and food-conditioned bears because bears range widely, having home ranges of tens to hundreds of

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

square miles.<sup>7</sup> The buffers around roads, trails, and dwellings are therefore inconsequential for bears that feed at bait stations but are not harvested there. These bears have the potential to become habituated to humans and conditioned to human-produced foods, resulting in increased likelihood of incidents that compromise public safety, result in property damage, and threaten the lives of bears who are killed in defense of human life and property.

In the 2020 Rule, the NPS revisited the issue of whether bear baiting poses safety concerns. In part, the 2020 NPS analysis relied on certain studies, including a study of black bear baiting in Alaska from 1992 to 2010. The 2020 Rule did not accurately describe the conclusions of this study. The study concludes that the practice is not likely to have population level effects on black bears. It explicitly states, however, that the challenge presented by bear baiting is that baiting is contrary to efforts to minimize food conditioning of bears and the goal of promoting public safety.

The NPS also reconsidered other studies of public safety risks associated with bear baiting that were cited in the 2020 Rule and determined that they were inconclusive insofar as they relied solely on observational data and thus lacked experimental rigor. The lack of peer-reviewed data that would support rigorous analysis of these risks is not surprising because rigorous studies specific to this point are neither logistically nor ethically feasible. Further, the 2020 Rule failed to fully consider the vast experience and knowledge of recognized bear experts and professional resource managers. To address this data gap, the NPS undertook an effort to obtain new and additional information in

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

connection with this rulemaking. In April 2022, the NPS queried 14 NPS resource managers and wildlife biologists from 12 different National Park System units in Alaska about bear baiting. These technical experts had an average of more than 20 years of experience as natural resource managers and their unanimous opinion was that bear baiting will increase the likelihood of defense of life and property kills of bears and will alter the natural processes and behaviors of bears and other wildlife. In the winter of 2022-2023, the NPS queried 28 North American bear management and research biologists from state and provincial agencies, universities, and non-NPS Federal agencies. On average, each of these individuals had 25 years of bear expertise at the time of the survey. All 28 agreed that baiting bears as allowed under State law was functionally equivalent to feeding bears. Twenty-six of the biologists thought bears would defend a bait station in a manner equivalent to how that bear would defend a carcass (the remaining two were neutral). Twenty-six of the 28 biologists thought baiting would lead to bears associating food with humans (i.e., food conditioning). Twenty-five of the 28 biologists thought a ¼ mile buffer around trails would be insufficient to resolve the public safety concerns of a bear defending a bait station. Twenty-seven of the 28 biologists thought a one-mile buffer around dwellings would not resolve the public safety concerns of bears associating food with people. All 28 biologists thought that natural bear behavior would be altered by baiting and that the broader ecosystem potentially would be impacted by baiting with non-natural foods.

Considering the potential for significant human injury or even death, these experts considered the overall risk of bear baiting to the visiting public to be moderate to high. These findings generally agree with the universal recognition in the field of bear



management that food conditioned bears result in increased bear mortality and heightened risk to public safety and property, and that baiting, by its very design and intent, alters bear behavior. The findings also are consistent with the State’s management plan for Denali State Park. The management plan expresses concern that bear baiting “teaches bears to associate humans with food sources” and states that bear baiting is in direct conflict with recreational, non-hunting uses of the park. The plan further notes that bear baiting has “the potential for creating serious human-bear conflicts, by encouraging bears to associate campgrounds and other human congregation points with food sources.”<sup>8</sup>

As a result of these more recent factual findings and renewed analysis, the NPS has determined that it has sound reasons based on the collective expertise of recognized bear managers and researchers from across North America to prohibit bear baiting. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 515 (2009). In doing so, the NPS acknowledges this is a change of policy from the 2020 Rule. This change is permissible under the relevant statutes and better advances the statutory goals and NPS duties relating to management of wildlife, and visitor experience and safety. There are good reasons to make this change – the 2020 Rule was not “instantly carved in stone” and NPS maintains, for various reasons, including changed factual circumstances, new information about bear baiting, and a change in policy direction, that prohibiting bear baiting is better for practical reasons and better complies with applicable law. *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005). As discussed above, the

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<sup>8</sup> Denali State Park Management Plan, 69 (2006).

change also fully addresses and responds to the district court’s ruling that the 2020 Rule arbitrarily “disregard[ed] without explanation [our] conclusion in 2015 that State regulations fail to address public safety concerns associated with bear baiting.” *Alaska Wildlife Alliance*, 653 F. Supp. 3d at 1005.

*Another Consideration.*

The two primary risk factors discussed above fully justify the bear-baiting prohibition in National Preserves implemented by this rule. In addition to those two factors explained above, the reasons for the NPS regulatory change are amplified by other considerations that support a prohibition on all bear baiting. The NPS is guided by its mandates under the NPS Organic Act to conserve wildlife and under ANILCA to protect wildlife populations. Food-conditioned bears are more likely to be killed by authorities or by the public in defense of life or property.<sup>9</sup> While the NPS supports wildlife harvest as authorized in ANILCA, it cannot promote activities that increase non-harvest mortalities of bears.

*Feedback from Tribes and ANCSA Corporations on Bear Baiting.*

The NPS received feedback from Tribes and Alaska Native Claims Settlement Act (ANCSA) Corporations before publication of the proposed rule that indicated baiting

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

bears is not a common activity in or near national preserves and not a common action by local rural residents. Many of the entities voiced support for prohibiting baiting altogether, limiting bait to natural items, increasing buffer zones around developments, or requiring a permit. On the other hand, a minority – mostly entities affiliated with the Wrangell-St. Elias area – recommended continuing to allow sport hunters to harvest bears over bait, including with use of processed foods like donuts and dog food. We have thoroughly considered these comments, including the comments in support of bear baiting, and we have decided for the reasons stated above to prohibit the practice in Alaska’s National Preserves.

*The Meaning and Scope of Hunting for “Sport Purposes” under ANILCA.*

Hunting is prohibited in National Park System units except as specifically authorized by Congress. 36 CFR 2.2(b). Title VIII of ANILCA allows local rural residents to harvest wildlife for subsistence in most, but not all, lands administered by the NPS in Alaska. Title VIII also created a priority for Federal subsistence harvest over other consumptive uses of fish and wildlife. *See* 16 U.S.C. §§ 3112(2), 3114. Separate from subsistence harvest, ANILCA authorized anyone to harvest wildlife for “sport purposes” on NPS lands in Alaska designated as national preserves. When first authorized under ANILCA, the State managed subsistence harvest by local rural residents under Title VIII as well as harvest for sport purposes by anyone. After a ruling from the State Supreme Court that the State Constitution barred the State from implementing the rural subsistence priority provisions of ANILCA, *see McDowell v. State*, 785 P.2d 1 (Alaska 1989), the Federal government assumed management of subsistence harvest on federal lands in Alaska under Title VIII. Following this decision, the State only regulates

harvest (concurrently with NPS) for sport purposes under ANILCA on national preserves.<sup>10</sup> Under the State’s current framework, Alaska residents have a priority over nonresidents but there is no prioritization based upon where one resides in Alaska. Accordingly, assuming satisfaction of preliminary requirements like obtaining a tag for any targeted species, all residents of Alaska have an equal opportunity to harvest wildlife for “sport purposes” in national preserves under State law.

The NPS re-evaluated whether it was appropriate for the 2020 Rule to change its interpretation of the term “sport” from the 2015 Rule. A fundamental principle of statutory interpretation is that each word is presumed to have meaning and that words generally carry their ordinary meaning. The 2020 Rule interpreted the term “sport” to merely distinguish sport hunting from harvest under Federal subsistence regulations. If Congress intended the term “sport” to have this meaning, however, it could have more simply and clearly allowed for the taking of fish and wildlife in national preserves for “subsistence uses and other uses” or “subsistence uses and non-subsistence uses.” See 16 U.S.C. § 3201. The NPS believes a more faithful interpretation of this provision is to give a meaning to the term “sport” that recognizes its distinct ordinary definition. This is consistent with how Congress framed the purposes of ANILCA, which includes an intent of Congress “to preserve ... *recreational* opportunities including but not limited to hiking, canoeing, fishing, and sport hunting ....”. See 16 U.S.C. § 3101(b) (emphasis added). The NPS maintains that the best understanding of this term, as explained more

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

fully below, incorporates principles of fairness and, in the context of wildlife harvest, fair chase. Giving "sport" this meaning also is more consistent with the overall intent of Congress to provide a preference for subsistence harvest under title VIII of ANILCA. In contrast to harvest for sport or recreation, harvest for subsistence use is not bound by Western notions of fair chase. Rather, subsistence values an effort in support of sustenance and cultural traditions.

The interpretation of the term “sport” in this rule expands on the NPS interpretation from previous rulemakings. In addition, this expanded interpretation is consistent with the 2015 Rule and NPS statements in the Federal Register concerning a regulatory action that was finalized in 1995 (60 FR 18534) to prohibit same-day-airborne hunting of bear, caribou, Sitka black-tailed deer, elk, coyote, arctic and red fox, mountain goat, moose, Dall sheep, lynx, bison, musk ox, wolf and wolverine (now codified at 36 CFR 13.42(d)). In 1989, when the prohibition was first proposed, the NPS stated that in national preserves, the prohibition of same-day-airborne hunting of wolves would be “consistent with the ‘fair chase’ philosophy of hunting” (54 FR 24853). The proposed rule further stated that the rulemaking action would not unduly restrict aircraft access for sport hunting purposes when the concept of “fair chase” is maintained (54 FR 24853). When the prohibition was proposed again in 1994, the NPS stated it “did not consider the use of aircraft in such proximate relation to the actual taking of wildlife as is the case with same-day-airborne hunting to be a sporting practice” and that “[a]lthough Congress clearly provided for continued sport hunting in national preserves, same-day-airborne hunting does not appear to be intended to be legitimately related to such sport” (59 FR 58806).

The meaning of “sport” is critical given how the NPS has implemented the 1916 Organic Act direction to conserve wildlife. Based upon this conservation mandate, hunting is prohibited in National Park System units except as authorized by Congress. 36 CFR 2.2(b). ANILCA authorizes harvest for Federal subsistence and for “sport purposes” in national preserves in Alaska. The NPS interprets the term “sport” to include the concept of fair chase as articulated by hunting organizations, as not providing an unfair advantage to the hunter and allowing the game to have a reasonable chance of escape. For example, the Boone and Crockett Club, the oldest wildlife conservation group in North America, defines the term “fair chase” as “the ethical, sportsmanlike, and lawful pursuit and taking of any free-ranging wild game animal in a matter that does not give the hunter an improper or unfair advantage over the game animals,” and states that “[t]he fair chase hunter . . . [d]efines ‘unfair advantage’ as when the game does not have reasonable chance of escape”<sup>11</sup> Similarly, the Hunting Heritage Foundation defines “fair chase” as “the balance between the hunter and the hunted animal that occasionally allows the hunter to succeed while animals generally avoid being taken,” and states that “[f]air chase laws, outlawing unfair methods like poison, snares, or bait, ensure that the hunted animal has a reasonable opportunity to elude the hunter.”<sup>12</sup>

The NPS requested comment on this concept of “sport”. Responses to comments received on the topic of “sport” are provided below.

*State Law Addressing Predator Harvest.*

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<sup>11</sup> Boone and Crockett Club, *The Principles of Fair Chase*, <https://www.boone-crockett.org/principles-fair-chase> (last visited July 25, 2022).

<sup>12</sup> The Hunting Heritage Foundation, *Fair Chase*, <https://www.huntingheritagefoundation.com> (last visited July 25, 2022).

The 2020 Rule concluded that the “State's constitutional mandate for sustained yield is consistent with NPS Management Policies, which state that the NPS manages [wildlife] harvest to allow for self-sustaining populations of harvested species.” However, as the district court explained in its 2022 opinion rejecting that conclusion, State and Federal wildlife management objectives are somewhat similar but not equivalent. Therefore, the NPS cannot fully rely on State management to ensure consistency with Federal law and policy. NPS policy interprets and implements the NPS Organic Act. NPS Management Policies require the NPS to manage National Park System units for natural processes, including natural wildlife fluctuations, abundances, and behaviors, and specifically prohibit the NPS from engaging in predator reduction efforts to benefit one harvested species over another or allowing others to do so on NPS lands. (NPS Management Policies 2006, Ch. 4). This policy is supported by the ANILCA’s legislative history. The Report of the Committee on Energy and Natural Resources, U.S. Senate, Report No. 96-413, at page 171, states that “[i]t is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem, and that concept should be maintained.”

In its 2022 opinion, the district court acknowledged that NPS Management Policies prohibit predator reduction efforts. The court nevertheless concluded that the 2020 Rule did not conflict with that policy “because substantial evidence supports NPS's finding that the State hunting regulations at issue . . . do not have the effect of reducing

the natural abundance of predator species in the National Preserves.” That conclusion does not address the conflict with NPS Management Policies, which provide that NPS “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.” (emphasis added). Measures enacted for the purpose of predator control thus are prohibited by policy even if they do not actually reduce predator populations or increase the number of prey species available to hunters. For that reason, the limited data discussed in 2020 Rule and in the district court's opinion suggesting that Alaska's predator control measures may not impact predator population levels within national preserves do not lead to the conclusion that such measures are consistent with NPS policies. The position articulated in the 2020 Rule instead is in tension with these policies based upon the information NPS collected over a period of years before the publication of the 2015 Rule. This information indicates that the State allowed the predator harvest practices for the purpose of benefitting prey species over predators and that the practices are therefore contrary to NPS policy. For this reason, the NPS reaffirms its policy that actions intended to reduce predator species, whether effective or not, are not allowed on lands managed by the NPS. However, for the reasons discussed in the summary of changes to the final rule and in response to specific comments below, the NPS does not believe it is necessary at this time to incorporate this prohibition into the regulatory text of this final rule. The NPS may reconsider whether this policy statement should be incorporated into regulations in the future. Park superintendents in Alaska may also use this clarified policy in support of closures or other measures as appropriate.



### *Trapping Clarification.*

The rule also revises the definition of “trapping” to clarify that trapping only includes activities that use a “trap” as that term is defined in NPS regulations. The definition of “trapping” promulgated in the 2015 Rule inadvertently omitted reference to the use of traps and instead referred only to “taking furbearers under a trapping license.” The revision in this rule resolves any question about whether trapping can include any method of taking furbearers under a trapping license, which could include the use of firearms depending upon the terms of the license. This change more closely aligns the definition of “trapping” for System units in Alaska with the definition that applies to all other System units (see 36 CFR 1.4). This clarification is an improvement over the 2015 Rule and will facilitate better administration of, and participation in, trapping on national preserves in Alaska.

### **Severability**

The NPS intends these regulations to be severable. This final rule amends NPS’s existing regulations, and in general, NPS regulatory provisions related to hunting and trapping in Alaska national preserves can be functionally implemented if each revision in this final rule occurred on its own or in combination with any other subset of revisions. Bear baiting, the meaning of “sport hunting,” predator control, and the definition of trapping are separate and discrete issues, and the provisions related to each of those issues can clearly and effectively be implemented independently of each other. As a result, if a court were to invalidate any particular provision of this final rule, allowing the remainder of the rule to remain in effect would still result in functional regulation of hunting and trapping in Alaska national preserves.

## **Summary and Responses to Comments.**

On January 5, 2023, the NPS sent letters to Tribal entities inviting them to consult on this rule. The NPS followed each of these letters with calls and emails. The NPS met with every Tribal entity that requested a meeting in the venue and format of their choosing to best facilitate meaningful engagement. On January 9, 2023, the NPS published the proposed rule in the Federal Register (88 FR 1176). The proposed rule was open for an initial 60-day public comment period. The NPS extended the comment period on March 10, 2023, in response to requests from the public and the State for more time to review the proposal. In total, the comment period was open for 77 days including the extension. The comment period closed on March 27, 2023. The NPS invited comments through the mail, hand delivery, and through the Federal eRulemaking Portal at <https://www.regulations.gov>.

The NPS received 199,494 pieces of correspondence on the proposed rule, including 196,158 form letters and 3,336 unique pieces of correspondence. Following publication of the proposed rule, the NPS consulted with the State. Meetings were held on February 23, 2023, and March 6, 2023, between NPS Alaska Region staff and Alaska Department of Fish and Game staff specific to the proposed rule, and on March 6, 2023, between the NPS Director and Alaska Department of Fish and Game leadership. Additionally, following publication of the proposed rule, the NPS presented the proposed rule at numerous public meetings, including BOG meetings, Subsistence Resource Commission meetings, and Regional Advisory Council meetings. NPS leadership also met with the Alaska Congressional Delegation several times following publication of the proposed rule.

A summary of the pertinent issues raised in the comments received and NPS responses are provided below. After consultation, considering public comments, revising the EA and issuing the FONSI, the NPS made the following changes in this final rule:

1. The NPS removed the table of 14 prohibited practices and instead only prohibits the use of bait, and specifically the practice of bear baiting, for the reasons stated above. Most of the remaining practices from the table are currently prohibited under state law. To the extent any of the remaining practices are currently allowed under state law, they typically only apply to a limited number of preserves. While the NPS believes the remaining listed practices are generally not appropriate under the NPS management framework for the reasons discussed in the proposed rule, the NPS has decided against taking action at this time for those practices. Information from user groups, including Alaska Native entities, that commonly harvest wildlife in national preserves in Alaska expressed their belief, consistent with NPS management observations, that there is little to no demand to engage in these harvest practices in national preserves (other than limited demand to bait bears primarily in a single preserve). The practice of bear baiting, however, poses significant public safety concerns, which urgently requires regulatory action. Concerns with the other practices do not carry the same degree of urgency. They are either already prohibited by the state or occur on a limited basis.

Additionally, park superintendents have authority to prohibit or restrict these practices if they deem it necessary. For these reasons, NPS has decided not to adopt regulatory prohibitions on these practices at this time. The NPS may re-evaluate regulatory action in the future.

2. The NPS decided not to incorporate the provision from NPS Management Policies regarding predator control into the regulatory text of this final rule. The NPS determined it is not necessary to incorporate this prohibition at this time in the regulatory text of this final rule. NPS may reconsider whether this policy statement should be incorporated into regulatory provisions in the future.

3. Based on public comment that there is confusion on when a firearm can be used under a trapping license, the NPS modified the definition of trapping in section 13.1 to clarify that a firearm can be used to take a furbearer in conjunction with a trapping license when a furbearer is (1) ensnared in an intact trap; (2) ensnared by a trap that is no longer anchored; or (3) mortally wounded by a trap but has broken free from the trap, during an open trapping season for that species. This allows the humane dispatch of a furbearer that has been caught in a trap. Free-ranging furbearers may not be harvested with a firearm under a trapping license. Free-ranging furbearers may be harvested with a firearm under a hunting license during an open hunting season for the harvested species.

4. The NPS added a new paragraph (k) addressing the severability of the regulations in section 13.42.

*Economic Costs and Benefits.*

*1. Comment:* Commenters suggested that the economic benefit of wildlife viewing, outdoor recreation, and tourism to Alaska's state economy are greater than the economic benefit of sport hunting.

*NPS Response:* The NPS agrees that several analyses, including ECONorthwest

(2014), USDOl-USDOC (2018), and The University of Alaska (2019),<sup>13</sup> have estimated that wildlife viewing contributes more to Alaska's state economy in terms of jobs, labor income, and revenue, than hunting. However, the economic analysis for this rule evaluates costs, benefits, and impacts to small businesses relative to baseline conditions (the conditions absent the rule). The NPS does not expect the rule to affect visitation, or the number of days visitors come to national preserves to view wildlife or engage in other non-hunting recreational activities. Further, the NPS expects impacts to hunters to be small. Individuals who choose to hunt wildlife in national preserves would be mostly unaffected by the rule, and hunters that are interested in the specific practices affected by this rule could substitute many other locations in Alaska (or other seasons) in which such hunting practices are still allowed. As a result, the NPS does not expect the rule to impact small businesses or the overall state economy.

2. *Comment:* Commenters suggested that the intrinsic value of protecting wildlife outweighs potential costs to sport hunters.

*NPS Response:* The NPS acknowledges that there are many ways to assess the value of wildlife. In economics, for example, value is measured by consumer surplus, which is calculated as an individual's willingness to trade off money (and thus other goods and services) for a resource or service as a measure of how much that resource or service is "worth" to that individual; how much they value it. While this is an

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<sup>13</sup> ECONorthwest. 2014. The Economic Importance of Alaska's Wildlife in 2011. Summary Report to the Alaska Department of Fish and Game, Division of Wildlife Conservation, contract IHP-12-052. Portland, Oregon. USDOl-USDOC. (U.S. Department of the Interior, U.S. Fish and Wildlife Service, and U.S. Department of Commerce, U.S. Census Bureau). 2018. 2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation. Revised October 2018. The University of Alaska. 2019. Economic Development in Alaska. Outdoor Recreation Impacts and Opportunities. Presented to the Alaska Division of Economic Development <http://npshistory.com/publications/recreation/ak-outdoor-rec.pdf>.

anthropocentric concept of value based on the ways in which a resource or service benefits human well-being, it is a useful measure that allows for the comparison of benefits and costs in a consistent and well-understood metric of dollars. This is also a key component of the measure of value that Federal agencies are directed to use in cost-benefit analyses (OMB Circular A-4; OMB Circular A-94). Importantly, however, such economic values do not have to involve any human use of, or interaction with, a resource. Passive, or nonuse values, capture the values people place on the existence of wildlife or the preservation of wildlife for future generations, independent of any “use” of that wildlife. Intrinsic value, on the other hand, is an eco-centric concept reflecting the perspective that wildlife has value in its own right, regardless of its contribution to human uses or well-being (Rea and Munns, 2017). Passive use value is the most closely related economic concept to intrinsic value, but still focuses on human well-being and human-ascribed values. As noted by Rea and Munns (2017), while passive use values can be quantified monetarily through economic valuation, there are no standard metrics or methods for describing intrinsic values. Methods to quantify intrinsic values are evolving and have not yet reached the same level of acceptance as economic valuation methods.

In the previous version of the cost-benefit analysis for this rule, the NPS included one example of relevant passive use values associated with wildlife in Alaska (bears) that could be affected by this rule. In response to these comments, the NPS has expanded the discussion by including a definition of passive use value, a definition of intrinsic value, and how the two relate. The NPS has also included additional references for passive use

values and intrinsic values.<sup>14</sup>

3. *Comment:* Commenters suggested that the value of a living animal spans time (e.g., through wildlife viewing) and is greater than that of the associated pelt or meat.

*NPS Response:* The NPS is aware of a study by Elbroch et al. (2017)<sup>15</sup> that compared the tourism spending and business revenue generated by one commonly seen and photographed bobcat in Yellowstone National Park to the average price of a bobcat pelt and hunting license. The NPS is also aware of several analyses that have demonstrated the importance of wildlife viewing and the greater overall contributions such tourism makes to Alaska's state economy compared to hunting.

Cost-benefit analyses of Federal regulatory actions, however, evaluate and compare specific measures of economic value referred to as consumer surplus—e.g., the value of recreational opportunities such as hunting and wildlife viewing, and passive use values associated with the preservation and avoided loss of wildlife. This is the appropriate economic measure of societal welfare, allowing for a comparison of costs and benefits in consistent terms (OMB Circular A-4; OMB Circular A-4). Economic analyses of NPS regulatory actions also evaluate impacts to small businesses associated with potential changes in park visitation.

This regulatory action is not expected to affect visitation or the number of days

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<sup>14</sup> Rea, A.W. and Munns Jr, W.R., 2017. The value of nature: Economic, intrinsic, or both? *Integrated environmental assessment and management*, 13(5), p. 953. Richardson, L. and Loomis, J., 2009. The total economic value of threatened, endangered and rare species: an updated meta-analysis. *Ecological economics*, 68(5), pp.1535-1548. Subroy, V., Gunawardena, A., Polyakov, M., Pandit, R. and Pannell, D.J., 2019. The worth of wildlife: A meta-analysis of global non-market values of threatened species. *Ecological Economics*, 164, p.106374.

<sup>15</sup> Elbroch, L.M., Robertson, L., Combs, K. and Fitzgerald, J., 2017. Contrasting bobcat values. *Biodiversity and Conservation*, 26, pp.2987-2992.

visitors come to national preserves to view wildlife, and as a result, is not expected to have any associated economic effects on consumer surplus or impacts to guides and other small businesses. However, this rule could have a small impact on wildlife sightings for those visitors who already come to national preserves. The NPS acknowledges that a single animal has the potential to generate wildlife viewing opportunities for many different people that spans a longer period of time and has discussed this issue in the updated cost-benefit analysis for this rule.

*NPS Legal Authority.*

4. *Comment:* Commenters stated that the rule exceeds the NPS's authority under ANILCA. Commenters stated that ANILCA gives sole discretion to the State to regulate harvest of wildlife for sport purposes under 16 U.S.C. 3202(a) and that 16 U.S.C. 3201 limits NPS authority to implementing temporary closures in specific locations.

*NPS Response:* The NPS recognizes the State has responsibility and authority for management of fish and wildlife on national preserves in Alaska. 16 U.S.C. 3202(a). Similarly, however, the NPS has responsibility and authority over the management of these areas. 16 U.S.C. 3202(b). These principal statements in ANILCA establish a legal framework where authority and responsibility for managing wildlife on national preserves are shared between the State and Federal governments. In a separate section of the statute, ANILCA addresses the management of wildlife on national preserves specifically. 16 U.S.C. 3201. It begins by directing the NPS to administer national preserves as units of the National Park System in the same manner as national parks, provided that hunting and trapping must be allowed in accordance with State and Federal law and regulation. All units of the National Park System are governed by the NPS



Organic Act, which, among other things, establishes a general mandate to conserve wildlife. 54 U.S.C. 100101(a). The NPS therefore must manage wildlife on national preserves to allow sport hunting, but in a manner that is consistent with the NPS Organic Act, and by inference NPS policies implementing the NPS Organic Act related to the taking of wildlife in System units. See NPS Management Policies Section 4.4.3.

ANILCA further states that the Secretary of the Interior (acting through the NPS) may promulgate regulations restricting sport hunting and trapping in national preserves after consultation with the State. 16 U.S.C. 3201. This section states specifically that the NPS may designate zones where and periods when no hunting or trapping may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment. 16 U.S.C. 3201. This provision does not narrow the NPS's general regulatory authority under ANILCA, 16 U.S.C. 3124, or its general authority to manage wildlife in national preserves; rather it provides specific authority for geographic or temporary closures to hunting or trapping, which complements the NPS's broader regulatory authority. ANILCA authorizes the NPS to promulgate reasonable regulations concerning the take of wildlife in national preserves that are consistent with the mandates of the NPS Organic Act. ANILCA does not require that the NPS defer to State hunting regulations in all instances. This rule does not interfere with the State's authority and responsibility to manage wildlife on national preserves. It prohibits one specific harvest practice on national preserves. The vast majority of State regulations are, and are expected to remain, the governing laws concerning sport hunting in national preserves. This rule is consistent with ANILCA by preserving the status quo that the responsibility and authority for managing wildlife on public lands in Alaska is shared between the State and Federal

governments.

*5. Comment:* Several commenters stated that the term "sport," as used in 16 U.S.C. 3201 and elsewhere in ANILCA, only serves to differentiate between subsistence and non-subsistence take of wildlife in national preserves.

*NPS Response:* The NPS explains the basis for its interpretation of the term "sport," and its incorporation of fair chase principles above. In short, this interpretation is more appropriate than the minimal meaning given to the term in the 2020 Rule, because it recognizes the decision by Congress to use the specific term "sport" and is therefore more consistent with principles of statutory interpretation, and it also adheres more closely to the intent of Congress to provide a preference for subsistence harvest under title VIII of ANILCA.

*6. Comment:* Several commenters stated that it is inappropriate to give meaning to the term "sport" in a manner that restricts harvest by individuals for subsistence purposes under state law.

*NPS Response:* These commenters conflate harvest for subsistence under Federal regulations implementing title VIII of ANILCA and harvest for subsistence under state law throughout Alaska, including on national preserves. The NPS acknowledges that some individuals who harvest wildlife in national preserves are doing so primarily for food, and many may have long standing family traditions doing so. Regardless of the hunter's intent or purpose, however, and regardless of how the State of Alaska labels hunting under state law, ANILCA allows individuals to take wildlife in national preserves for two reasons only: (1) for federal subsistence uses under title VIII; or (2) for "sport purposes." 16 U.S.C. § 3201. It would be inappropriate for the NPS to allow

harvest in national preserves for any purpose that is not identified in ANILCA.

*7. Comment:* One commenter stated that the NPS lacks authority to preempt state regulations for managing wildlife because of statements in 43 CFR part 24 about state authority over fish and wildlife, including on Federal lands within a state.

*NPS Response:* The NPS disagrees with this interpretation of 43 CFR part 24. This part recognizes state authority over wildlife in units of the National Park System. The provisions in this part, however, are policy statements that do not state or suggest that states have plenary or exclusive authority over wildlife in System units. To the contrary, they outline a policy recognizing the shared responsibility of states and the Federal government for the management of wildlife, and specifically reaffirm Federal authority.

*8. Comment:* One commenter stated that because national preserve lands were withdrawn after Statehood, that NPS lacks authority to adopt the harvest restrictions in this rule. This commenter further stated that ANILCA removes the NPS's authority to promulgate this rule in 16 U.S.C. §§ 3122 and 3125.

*NPS Response:* These comments fail to acknowledge ANILCA's recognition of the Secretary of the Interior's authority, acting through the NPS, in ANILCA 16 U.S.C. § 3201, to restrict sport hunting and trapping in national preserves. Some of these comments acknowledge that this section allows the NPS to completely close an area to all hunting, but then argue that NPS lacks authority to close an area to a specific type of hunting (e.g., taking bears over bait). The NPS finds this argument without merit under the plain text of § 3201 for two reasons: first, to the extent these comments argue that § 3201 only allows complete closures, the NPS believe that these are complete closures to

these specific forms of hunting, and second, the more logical reading of § 3201 is that if the NPS can prevent a type of hunting by completely closing an area to all harvest, surely it can prevent the same activity through less-restrictive measures that fall short of a complete closure.

*9. Comment:* Several comments argued it is inappropriate for the NPS to manage harvest for federally qualified subsistence differently than harvest by others and specifically questioned the appropriateness of allowing federal subsistence users to bait bears with natural food items and prohibiting others from doing so under state regulations.

*NPS Response:* The importance of subsistence is readily apparent in ANILCA. It is specifically identified as one of the primary purposes of the statute in § 3101(c), and there is an entire title in ANILCA devoted to allowing and managing this practice, recognizing the importance of subsistence not just for food but as a cultural practice. Furthermore, the text of ANILCA requires the NPS to prioritize subsistence take in national preserves.

With respect to bear baiting specifically, there are additional reasons to treat Title VIII subsistence users differently. As mentioned elsewhere, subsistence brings a different set of values than harvest for sport purposes. In addition to valuing an economy of effort (as opposed to fair chase), subsistence values maximized use of resources. To that end, it is contrary to traditional harvest practices to use commercial food products to attract wildlife for harvest. Subsistence users traditionally harvested bears over remains from the kill of an ungulate that could not be harvested or salvaged. The NPS acknowledges that these natural items, which are authorized for federal subsistence users in national

preserves, can similarly attract bears, but would be left behind at the site of harvest. It is reasonable to allow this practice for a priority user group that fundamentally operates under a different set of values because 1) the number of federally qualified subsistence users is much smaller than those that could participate under state regulations, 2) offering a traditional harvest opportunity to subsistence users is more consistent with ANILCA's emphasis on the importance of subsistence, 3) bears are exposed to these items as part of their natural history and far less likely to associate them with humans, and 4) natural foods degrade more quickly. For these reasons, this allowance recognizes rural subsistence priority and reduces the safety risk posed by the authorization for non-subsistence users.

*10. Comment:* Comments were received stating that NPS inappropriately described the subsistence authorization in preserves by referring to "local rural residents."

*NPS Response:* NPS is not proposing to modify the existing statutory and regulatory construct pertaining to harvest of wildlife in national preserves. Under 36 CFR 13.410, subsistence uses are authorized in national preserves in Alaska by "local rural residents."

*11. Comment:* Several commenters stated that this rule is "substantially the same" as a rule promulgated by the U.S. Fish and Wildlife Service (FWS) in 2016 (81 FR 52248, August 5, 2016) (the Refuges Rule), which was disapproved by a joint resolution of the U.S. Congress in 2017 under the Congressional Review Act (CRA). 5 U.S.C. 801(b)(2); *See* Pub. L. No. 115-20, 131 Stat. 86. As a result, these commenters asserted that the CRA prohibits the NPS from promulgating this rule.

*NPS Response:* The NPS considered whether the final rule is “substantially the same” as the Refuges Rule and determines that it is not. As a threshold matter, a rule promulgated by a different bureau regarding different lands that are managed according to different legal standards is not “substantially the same.” The Refuges Rule addressed national wildlife refuge lands in Alaska managed by the FWS according to, among other authorities, ANILCA, the National Wildlife Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, and the 1964 Wilderness Act. The final rule, in contrast, addresses national preserves administered by the NPS according to the NPS Organic Act and ANILCA.

In addition to the fundamentally different legal regimes covering the different lands, they are also very different in scale and geographic scope.. National wildlife refuge lands in Alaska comprise 54 million acres whereas national preserves comprise less than half that acreage (22 million acres). There is zero physical overlap between National wildlife refuge lands and national preserves in Alaska, meaning that nothing in the final rule changes the regulatory landscape, in any way, on a single acre of land that was previously governed by the Refuges Rule. This sort of geographic non-overlap has already been recognized by the Ninth Circuit as support for a conclusion that two rules are not “substantially the same” within the meaning of the Congressional Review Act. *See Safari Club Int’l v. Haaland*, 31 F.4th 1157, 1170 (9th Cir. 2022)

Even setting aside the fact the two rules were issued by different bureaus, under different statutory authorities, on different lands, the two rules also have significant substantive differences. The substantive difference between this rule and the Refuges Rule is evidenced by the fact that the NPS and the FWS have promulgated separate rules

regarding take of wildlife in national preserves and refuges, respectively. In 2015, NPS submitted the 2015 Rule under the CRA months before FWS submitted the Refuges Rule. Only one joint resolution of disapproval was passed and enacted, disapproving of the Refuges Rule.

Additionally, this final rule only prohibits the practice of baiting bears (black and brown) based on primarily on public safety risk to visitors, whereas the Refuges Rule prohibited several practices in addition to the baiting of brown bears, and also allowed the continuance of black bear baiting. The Refuges Rule was based on concerns for maintaining natural diversity, whereas this final rule for national preserves in Alaska is based predominantly on public safety. As discussed above, recent factual information from bear experts led the NPS to determine it is necessary to take action to mitigate public safety concerns that stem from bear baiting. While additional concerns outlined in this rule also support a prohibition on bear baiting, the risk to the visiting public, which could be catastrophic, is the primary justification.

The Refuges Rule included a prohibition on several hunting or predator-control practices that are not addressed by this final rule. These included prohibitions on using snares, nets, or traps to take any species of bear; taking wolves and coyotes during denning season (from May 1 through August 9); and taking bear cubs or sows with cubs. The Refuges Rule included a statement that predator control is prohibited on National Wildlife Refuges in Alaska unless specific determinations are made. None of these provisions are in this final rule.

NPS recognizes that it previously described certain aspects of the 2015 Rule as “nearly identical in substance” to the Refuges Rule. DOI, *Alaska; Hunting and Trapping*

*in National Preserves*, 85 Fed. Reg. 35,181 (June 9, 2020). In doing so, however, NPS did not intend to make any legal or factual determination or conclusion about the meaning of the phrase “substantially the same” in the Congressional Review Act. In addition, that prior statement from NPS failed to account for several of the significant differences between the previous rule and the Refuges Rule, as outlined above. Furthermore, this final rule has several additional substantive differences from both the previous rule and the Refuges Rule, including with respect to the coverage of different sorts of hunting practices and treatment of different bear species. So that prior statement does not change NPS’s current view and determination that the final rule is not “substantially the same” as the Refuges Rule.

Accordingly, the NPS determines that the final rule is not “substantially the same” as the Refuges Rule within the meaning of the Congressional Review Act. 5 U.S.C. 801(b)(2).

*Bear Baiting for Individuals with Disabilities.*

*12. Comment:* Commenters stated that the NPS should allow bear baiting by individuals with disabilities because it is a more efficient and accessible method of harvest.

*NPS Response:* The NPS is primarily concerned in this rule with the risks that bear baiting poses for public safety, which are the same regardless of the abilities of the hunter.

*Definition of Predator Control.*

*13. Comment:* Several commenters stated that predator harvest outside of a BOG-authorized intensive management plan is not predator control, as defined under State law.



*NPS Response:* The NPS acknowledges that the State and the NPS use different terminology for predator management. The State only considers actions implemented by plans authorized under its “intensive management” law as predator control. The term “intensive management” has no meaning under Federal law. The NPS is guided by NPS 2006 Management Policies, Section 4.4.3, which prohibits the NPS from allowing others to engage in activities to reduce the numbers of native species for the purpose of increasing the numbers of harvested species (i.e., predator control) on lands managed by the NPS.

*Predator Control Ban.*

*14. Comment:* Several commenters stated that predator harvest should be managed by the State to provide moose and caribou for harvest. Commenters stated that the purpose of predator harvest should be to meet harvest needs for moose and caribou and to sustain healthy populations.

*NPS Response:* 2006 NPS Management Policies, Section 4.4.3, states that activities to reduce the numbers of native species for the purpose of increasing numbers of harvested species (i.e., predator control) are not allowed on lands managed by the NPS. This policy applies to national preserves in Alaska notwithstanding any competing purposes for such activities, such as providing a sustained yield of ungulates for human use. While NPS is not including this policy language in the text of the final rule, it remains NPS policy that activities (including by the State) to decrease the number of native species for the purpose of increasing numbers of harvested species are not allowed on NPS managed lands.

*Coyotes are not Native to Alaska.*

*15. Comment:* Some commenters stated that coyotes are not native to Alaska and therefore do not deserve the same protection from harvest as other species that historically occupied the lands within the state.

*NPS Response:* Coyotes are native to North America, and while coyotes may not have historically occupied all of their current range, their expansion most likely occurred through natural processes. Consequently, the NPS manages coyotes in the same manner as other native species consistent with NPS Management Policies, Sections 4.1, 4.4.1, 4.4.1.2, and 4.4.2.

*Prohibited Actions – Harvesting Swimming Caribou.*

*16. Comment:* Several commenters stated that harvesting swimming caribou is a traditional activity for people who are not federally qualified subsistence users and therefore should be allowed for those people. Commenters suggested that harvest levels for this activity are typically low and therefore have minimal impacts.

*NPS Response:* The NPS removed this provision from the final rule. As previously noted, the allowance for this practice is limited and this provision would have only applied on waters that are under NPS jurisdiction. See 36 CFR 1.2(f). NPS may reconsider taking action regarding this practice in the future.

*NPS Authority on Navigable Waterways.*

*17. Comment:* Commenters stated that the NPS lacks authority to regulate the harvest of swimming caribou or taking wildlife from motorboats on waters where the NPS lacks jurisdiction.

*NPS Response:* NPS removed this provision from the final rule. As previously noted, this provision would have only applied to waters that are under NPS jurisdiction.

See 36 CFR 1.2(f). NPS may reconsider taking action regarding this practice in the future.

*Exceptions to Prohibited Methods of Harvest.*

*18. Comment:* Commenters suggested that prohibitions on methods of harvest should not apply uniformly across the state, and that there should be exceptions or deviations for specific regions of Alaska where those activities are traditional. One commenter suggested that the superintendents of national preserves should have discretionary authority to authorize these harvest practices where they are traditional.

*NPS Response:* Most of the methods of harvest prohibited by this rule are currently prohibited under state law. To the extent any of the practices are currently allowed under state law, they typically only apply to a limited number of preserves. While the NPS believes these practices are generally not appropriate for the reasons discussed above in the preamble to this rule, the NPS has decided against taking action at this time for all the practices except using bait, specifically to take bears. Additionally, park superintendents do have authority to prohibit or restrict these practices if they deem it necessary. For these reasons, NPS has decided not to adopt regulatory prohibitions on these practices at this time. NPS may consider addressing the other practices included in the proposed rule in the future.

*Prohibition on Bear Baiting.*

*19. Comment:* Several commenters asked the NPS what it considers to be bait, and specifically whether it includes smokehouses and gut piles from legally harvested animals.

*NPS Response:* The NPS considers bait to be any attractant, natural or processed,

that is specifically placed on the landscape with the intent of attracting an animal to facilitate harvest. Neither a smokehouse nor a gut pile unmoved from the location of harvest will be considered bait under this rule.

*20. Comment:* Several commenters stated there is no evidence that identifies a public safety risk associated with bear baiting and/or that any risk that does exist can be mitigated. Commenters stated that the internal NPS query about the risks of bear baiting was insufficient.

*NPS Response:* As discussed in detail above, bear baiting is broadly recognized in the field of bear management to pose a risk to public safety because (1) bears may defend a bait station in the same manner they would defend any other food resource; (2) food conditioning of bears may result in increased bear mortality and heightened risk to public safety and property; and (3) baiting, by its very design and intent, alters bear behavior. Due to these known risks and impacts, avoiding bears defending food resources and preventing bears from associating humans with food are central to the educational messaging of all government agencies that manage areas where bears exist. This is done to promote public safety and reduce the need to kill bears for reasons other than hunting. While mitigations to minimize the potential for negative consequences associated with bear baiting exist under State law, these mitigations do not adequately address safety concerns for the visiting public. The likelihood of a catastrophic consequence, including an injury or death, to a member of the public increases with the presence of a bait station.

*21. Comment:* Several commenters stated that bear baiting is a sporting practice due to the level of effort and skill required to be successful.

*NPS Response:* The public safety considerations associated with bear baiting are

independent of the skill or effort associated with the practice. Bear baiting is not consistent with promoting visitor safety in national preserves.

*Consultation Process.*

*22. Comment:* Several commenters raised concerns with the level of outreach, collaboration, and consultation with the State, Tribal entities, and the public.

*NPS Response:* In addition to extending the public comment period for the proposed rule, the NPS did considerable outreach leading up to publication of the proposed rule and during the public comment period.

In the eight months prior to the publication of the proposed rule, the NPS informed the State, Tribal entities, and potentially affected user groups that the NPS was likely to reconsider the 2020 Rule through a new rulemaking. The NPS shared this information at numerous public meetings, including at BOG meetings, Subsistence Resource Commission meetings, Federal Subsistence Regional Advisory Council meetings, and Federal Subsistence Board meetings. The NPS shared this information at the 2022 Alaska Professional Hunters Association annual meeting that was attended by the State, on monthly coordination calls between the State and the DOI, and in one-on-one meetings between State and NPS leadership in Alaska. Beginning in April 2022, the NPS reached out to Tribes and ANCSA Corporations, and attended meetings with those groups to share information. As mentioned above, the NPS followed those efforts with a letter sent to Tribal entities inviting formal consultation. The NPS met with every Tribal entity that requested a meeting in the venue and format of their choosing to best facilitate meaningful engagement.

Following publication of the proposed rule, the NPS held three consultations

meetings with the State, presented the proposed rule at numerous public meetings, including BOG meetings, Subsistence Resource Commission meetings, and Regional Advisory Council meetings.

*Use of a Firearm Under a Trapping License.*

23. *Comment:* Several commenters asked the NPS to allow the use of a firearm under a trapping license to dispatch a wounded or trapped animal. Some commenters asked the NPS to allow harvest of free-ranging furbearers with a firearm under a trapping license consistent with State regulations.

*NPS Response:* Existing NPS regulations define a trap as “a snare, trap, mesh, or other implement designed to entrap animals other than fish” and trapping as “taking furbearers under a trapping license” (36 CFR 13.1). These definitions create uncertainty about whether an individual can use a firearm to take a furbearer if authorized under a State trapping license, even though the NPS definition of a trap does not include a firearm. This rule addresses this uncertainty and in response to public comment the NPS has added an allowance in the final rule for the use of a firearm to dispatch a furbearer in limited circumstances, as explained above.

**Compliance with Other Laws, Executive Orders and Department Policy.**

**Regulatory Planning and Review (Executive Orders 12866 and 13563 and 14094).**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the OMB will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant. The NPS has assessed the potential costs and benefits of this rule in the report entitled “Cost-Benefit and Regulatory Flexibility Analyses: Alaska Hunting and Trapping Regulations in National

Preserves” which can be viewed online at <https://www.regulations.gov> by searching for “1024-AE70.”

Executive Order 14094 amends Executive Order 12866 and reaffirms the principles of Executive Order 12866 and Executive Order 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with Executive Order 12866, Executive Order 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this rule in a manner consistent with these requirements.

#### **Regulatory Flexibility Act.**

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the

report entitled “Cost-Benefit and Regulatory Flexibility Analyses: Alaska Hunting and Trapping Regulations in National Preserves” which can be viewed online at <https://www.regulations.gov> by searching for “1024-AE70.

### **Congressional Review Act**

This rule is not a major rule under 5 U.S.C. 804(2) of the CRA. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

### **Unfunded Mandates Reform Act.**

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

### **Takings (Executive Order 12630).**

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

### **Federalism (Executive Order 13132).**



Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. As explained above, this rule is consistent with ANILCA by preserving the status quo that the responsibility and authority for managing wildlife on public lands in Alaska, including the harvest of wildlife for sport purposes in national preserves, is shared between the State and Federal governments. In developing the proposed and final rule, NPS sought and considered input from the State. A Federalism summary impact statement is not required.

**Civil Justice Reform (Executive Order 12988).**

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

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

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

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

The DOI strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The proposed rule was informed by feedback from Tribal entities. In January 2023, the NPS invited consultation with Tribes and ANCSA Corporations that would be most affected by this rule. The NPS met with all entities that requested a meeting and their input was considered in the development of this rule. The NPS has evaluated this rule under the criteria in Executive

Order 13175 and under the Department's Tribal consultation and ANCSA Corporation policies. Because the rule does not restrict Title VIII subsistence harvest and feedback from Tribes and ANCSA Corporations indicates these methods of harvest are not common, the rule will not have a substantial direct effect on federally recognized Tribes or ANCSA Corporation lands, water areas, or resources.

**Paperwork Reduction Act.**

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

**National Environmental Policy Act.**

The NPS prepared the EA evaluating the effects of this rule and issued the FONSI concluding that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because of the FONSI. The EA and FONSI considered new information as appropriate and responded to comments received during the public comment period and during consultation by analyzing impacts under a range of alternatives.

**Effects on the Energy Supply (Executive Order 13211).**

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

action. A Statement of Energy Effects is not required.

### List of Subjects in 36 CFR Part 13

Alaska, National Parks.

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

### PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

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

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

2. In § 13.1:

- a. Add in alphabetical order the definition “Furbearer”; and
- b. Revise the definition of “Trapping”.

The additions and revision read as follows:

#### § 13.1 Definitions.

\* \* \* \* \*

*Furbearer* means one of the following species: beaver, coyote, arctic fox, red fox, lynx, marten, mink, least weasel, short-tailed weasel, muskrat, land otter, red squirrel, flying squirrel, ground squirrel, Alaskan marmot, hoary marmot, woodchuck, wolf and wolverine.

\* \* \* \* \*

*Trapping* means taking furbearers under a trapping license with a trap, or with a firearm when a furbearer is (1) ensnared in an intact trap, (2) ensnared in a trap that is no longer anchored, or (3) mortally wounded by a trap but that has broken free from the trap.

\* \* \* \* \*

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

**§ 13.42 Taking of wildlife in national preserves.**

\* \* \* \* \*

(f) Using bait is prohibited except for taking furbearers with a trap under a trapping license. Using bait to attract or take bears is prohibited.

\* \* \* \* \*

(k) The paragraphs of this section are separate and severable from one another. If any paragraph or portion therein is stayed or determined to be invalid, or the applicability of any paragraph to any person or entity is held invalid, it is NPS's intention that the validity of the remainder of those parts shall not be affected, with the remaining sections to continue in effect.

**Signing Authority** On June 28, 2024, Shannon Estenoz, Assistant Secretary for Fish and Wildlife and Parks, approved this action for publication. On June 28, 2024, Shannon Estenoz also authorized the undersigned to sign this document electronically and submit it to the Office of the Federal Register for publication as an official document of the Department of the Interior.

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Maureen Foster,  
Chief of Staff,  
Office of the Assistant Secretary for Fish and Wildlife and Parks.