

Alaska Wilderness League * Alaska Wildlife Alliance * Center for Biological Diversity *
Coalition to Protect America’s National Parks * Defenders of Wildlife * Denali Citizens Council
* National Parks Conservation Association * Wilderness Watch¹

April 24, 2026

National Park Service
Don Striker, Acting Regional Director
Alaska Regional Office
240 West 5th Ave.,
Anchorage, AK 99501

Submitted via regulations.gov

Re: National Park Service Proposed Rule Alaska; Hunting and Trapping in National Preserves, Docket No. (NPS-2026-0034) RIN (1024-AE96)

Dear Acting Director Striker:

On behalf of the above-listed organizations and our many members and supporters, we submit the following comments in response to the National Park Service’s (Service) Proposed Rule, Alaska Hunting and Trapping in National Preserves (Proposed Rule).²

The Service should not adopt the Proposed Rule which removes the current prohibition on bear baiting, fails to protect and prioritize subsistence uses by federally qualified subsistence users (i.e. rural residents of the State), and allows State of Alaska (State)-authorized hunting practices within National Preserves that conflict with the Service’s conservation mandates. Finalizing the Proposed Rule would violate statutory mandates governing wildlife management on National Preserves under the Alaska National Interests Lands Conservation Act (ANILCA), the National Park Service Organic Act (Organic Act), and the Wilderness Act. We therefore urge the Service to repromulgate the 2015 Rule’s prohibition on bear baiting and predator reduction efforts.³

We are particularly concerned that the Proposed Rule fails to inform the public that the Service’s proposed interpretation of “subsistence uses” would substantially degrade protections for federally qualified subsistence users. Alarming, the Proposed Rule allows for so-called “State subsistence hunts” within Preserves that would be open to all residents of the State. This impermissible approach advanced by Safari Club International would allow urban residents of the State to engage in subsistence activities that are statutorily limited to rural residents of the State—substantially increasing competition for rural subsistence users and the wildlife they

¹ Comments prepared by Trustees for Alaska.

² Alaska; Hunting and Trapping in National Preserves, 91 Fed. Reg. 11483 (Mar. 10, 2026) [hereinafter “Proposed Rule”]. All of the documents referenced as attachments in these comments were submitted via regulations.gov with tracking numbers and are incorporated by reference. A list of attachments is included at the end of this letter.

³ See Alaska; Hunting and Trapping in National Preserves, 80 Fed. Reg. 64325, 64336 (Oct. 23, 2015) [hereinafter 2015 Rule]. [attached]

depend on. It should be rejected. However, if the Service proceeds, it must produce an environmental impact statement (EIS) and reissue the Proposed Rule to adequately inform the public of the agency's novel and harmful interpretation of ANILCA.

Thank you for your careful consideration of these comments.

Sincerely,

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Alaska Wilderness League

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Executive Director
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I. OVERVIEW

Our organizations have commented extensively on many of the Service’s previous rulemakings related to hunting and trapping within National Preserves adopted in 2015, 2017,⁴ 2020,⁵ and 2024.⁶ As the Proposed Rule would rescind all of these rulemakings, including the 2020 Rule, which was the subject of a legal challenge brought by many of the above-named groups,⁷ our previous comments are particularly relevant and are attached hereto and incorporated by reference as though fully set forth herein.⁸

We are concerned with the Service’s approach in the Proposed Rule because it fails to comply with applicable conservation mandates and ANILCA’s protection and prioritization of subsistence uses by rural residents. The following comments therefore begin by outlining the various mandates applicable to National Preserves in Alaska. We then address the Service’s proposals regarding bear baiting, subsistence uses, sport hunting, the definition of trapping, the capture of live wildlife, and closures. Finally, we address the need for the Service to prepare an EIS for this deeply impactful rule.

II. LEGAL BACKGROUND

National Preserves in Alaska must be managed primarily for conservation pursuant to the Organic Act, Wilderness Act, and ANILCA. Congress enacted the Organic Act in 1916 “to conserve the scenery, natural and historic objects, and wild life” of the National Park System.⁹ The Organic Act requires the Service to regulate uses of the National Park System, which includes National Preserves, to conserve and protect wildlife populations, “leav[ing] them unimpaired for the enjoyment of future generations.”¹⁰ “The statute has “but a single purpose, namely, conservation.”¹¹ The Service recognizes that “conservation is to be predominant” when

⁴ Alaska; Hunting and Trapping in National Preserves, 82 Fed. Reg. 3626 (Jan. 12, 2017) [hereinafter 2017 Rule] [attached].

⁵ Alaska; Hunting and Trapping in National Preserves, 85 Fed. Reg. 35181, 35187 (June 9, 2020) [hereinafter 2020 Rule]. [attached]

⁶ Alaska; Hunting and Trapping in National Preserves, 89 Fed. Reg. 55059 (July 3, 2024) [hereinafter 2024 Rule]. [attached]

⁷ In 2022, the U.S. District Court of Alaska held that the 2020 Rule was unlawful because it incorrectly conflated State Sustained Yield management with more protective Service management policies and failed to adequately explain the Service’s change in position on bear baiting. *Alaska Wildlife All. v. Haaland*, 632 F. Supp. 3d 974 (D. Alaska 2022). The 2020 rule also incorrectly asserted that the Service lacked the authority to preclude State-authorized hunting. *Id.* However, the Service has broad federal authority over wildlife management on federal lands. *See Safari Club Int’l v. Haaland*, 31 F.4th 1157 (9th Cir. 2022).

⁸ Letter from Katie Strong, Trustees for Alaska, to Herbert Frost, NPS Regional Director, re: Comments on National Park Service Proposed Rule for Hunting and Trapping in National Preserves in Alaska (Regulation Identifier Number 1024-AE21) (Dec. 3, 2014) [attached]; Letter from Katie Strong, Trustees for Alaska, to Herbert Frost, NPS Regional Director, re: Comments on National Park Service Proposed Rule for Hunting and Trapping in National Preserves in Alaska (Regulation Identifier Number 1024-AE38) (Nov. 5, 2018) [attached]; Letter from Rachel Briggs, Trustees for Alaska, to Sarah Creachbaum, NPS Regional Director, re: National Park Service Proposed Rule; RIN 1024-AE70 (Mar. 27, 2023). [attached].

⁹ 54 U.S.C. § 100101.

¹⁰ *Id.* § 100101(a).

¹¹ *Nat’l Rifle Ass’n of America v. Potter*, 628 F. Supp. 903, 909 (D.D.C. 1986); *see also Bicycle Trails of Marin v. Babbitt*, 82 F.3d 1445, 1453 (9th Cir. 1996) (“overarching concern” of the Organic Act is “resource protection.”).

other uses conflict with the goal of conserving park resources and values.¹² Accordingly, the Service’s Management Policies require the protection of natural systems, processes, and wildlife populations, including natural abundances, diversities, distributions, densities, age-class distributions, habitats, genetics, and behaviors of wildlife, and prohibit “activities to reduce . . . native species for the purpose of increasing numbers of harvested species” within the National Park System.¹³

National Preserves in Alaska also contain vast swaths of designated Wilderness that must be “administered for the use and enjoyment of the American people in such manner as will leave [the area] unimpaired for future use and enjoyment as [W]ilderness.”¹⁴ The Service is therefore “responsible for preserving the wilderness character” of Wilderness areas in National Preserves.¹⁵

Similarly, ANILCA requires the Service to protect sound populations of wildlife,¹⁶ manage nearly all of the National Park System units in Alaska to protect wildlife populations and habitat, and to protect natural processes and maintain environmental integrity.¹⁷ Congress enacted ANILCA to preserve nationally significant areas “for the benefit, use, education, and inspiration of present and future generations” and to preserve wildlife, wilderness values, and natural, undisturbed, unaltered ecosystems while allowing for recreational opportunities.¹⁸ Representative Morris Udall said with respect to ANILCA that “[t]he standard to be met in regulating the taking of fish and wildlife and trapping, is that the preeminent natural values of the Park System shall be protected in perpetuity, and shall not be jeopardized by human uses.”¹⁹ The Senate Committee on Energy and Natural Resources explained that “[i]t is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources.”²⁰

Within this conservation framework, ANILCA allows for “the taking of fish and wildlife for sport purposes and subsistence uses, and trapping” within the National Preserves of Alaska.²¹ While Congress allowed for sport hunting within Preserves, ANILCA prioritizes and protects “subsistence uses.”²² Congress distinguished between these uses with the express purpose of providing “the opportunity for rural residents engaged in a subsistence way of life to continue to

¹² U.S. DEP’T OF THE INTERIOR, NAT’L PARK SERV., MANAGEMENT POLICIES §§ 1.4.3 (2006) [hereinafter Service Management Policies][attached]. The Service’s determination that its decision complies with the Management Policies is subject to judicial review. *River Runners v. Martin*, 593 F.3d 1064, 1074–75 (9th Cir. 2010).

¹³ Management Policies §§ 4.1, 4.4.1, 4.4.1.2, 4.4.2, 4.4.3.

¹⁴ *Id.* § 1131(a). Wilderness is “an area of undeveloped federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve *its natural conditions*,” including the essential characteristic that it “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s works substantially unnoticeable.” *Id.* § 1131(c) (emphasis added).

¹⁵ 16 U.S.C. § 1133(b).

¹⁶ 16 U.S.C. § 3101(b).

¹⁷ *Id.* §§ 410hh(1)–(2), (4)(a), (6)–7(a), 8(a), (9)–(10); *id.* § 401hh-1(2), (3)(a).

¹⁸ *Id.* § 3101(a)–(b).

¹⁹ 126 Cong. Rec. H10549 (Nov. 12, 1980) (Statement of Rep. Udall).[attached]

²⁰ S. REP. NO. 96-413, at 171 (1979). [attached]

²¹ 16 U.S.C. § 3201.

²² *Id.* § 3113.

do so.”²³ ANILCA therefore protects “customary and traditional uses by rural Alaska residents”²⁴ and explicitly prioritizes subsistence take of fish and wildlife over sport take within all National Park System units within Alaska.²⁵

Taken together, these various mandates require the Service to carefully administer Preserve lands for conservation while protecting and prioritizing subsistence uses by rural Alaska residents. Sport hunting and trapping practices within Preserves must therefore be consistent with federal conservation mandates and carefully distinguished from the customary and traditional use of subsistence resources by rural Alaska residents.

III. BEAR BAITING IS INCOMPATIBLE WITH THE SERVICE’S MANDATES AND CREATES A RISK TO PUBLIC SAFETY AND THE ENVIRONMENT.

We oppose the Service’s proposal to remove the prohibition on black and brown bear baiting by sport hunters in National Preserves.²⁶ Allowing bear baiting on National Preserves conflicts with the Service’s mandate to maintain natural behaviors, creates risk to public safety and the bears themselves, and is associated with harmful ecological impacts.

A. Permitting bear baiting by sport hunters is contrary to the Service’s mandates under ANILCA and the Organic Act.

Contrary to the Service’s claims,²⁷ ANILCA and the Organic Act do not allow the practice of bear baiting on National Preserves because both statutes require the Service to conserve wildlife. ANILCA directs the Service to protect natural processes and maintain environmental integrity and requires the Service to manage National Park System units in Alaska to protect wildlife populations, explicitly including wolves and bears, and their habitat.²⁸ Moreover, the Organic Act requires the Service “to conserve the scenery, natural and historic objects, and wild life.”²⁹ The Service’s Management Policy 4.4.2 states that “natural processes will be relied upon to maintain native plant and animal species and influence natural fluctuations in populations of these species” and that intervention is permitted as long as it does not cause unacceptable impacts to the species’ populations.³⁰ Further, Management Policy 4.4.3 prohibits

²³ *Id.* § 3101.

²⁴ *Id.* § 3113 (defining subsistence uses as “the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.”).

²⁵ 16 U.S.C.S. § 3114 (“[T]he taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes.”).

²⁶ This section addresses sport hunters rather than the traditional use of bear baiting by federally qualified rural subsistence users. However, we note that the Service’s decision to allow the use of human food for bear baiting by subsistence users raises similar public safety concerns that were ameliorated under the 2017 Rule. *See* 2017 Rule at 3628 (restricting the use of human food for subsistence bear baiting but “allowing the superintendent of Wrangell-St. Elias National Park and Preserve the discretion to allow the use of human produced food as bait” as it is “[t]he only NPS unit where taking bears over bait has traditionally occurred”).

²⁷ Proposed Rule at 11489.

²⁸ 16 U.S.C. §§ 410hh; 401hh, (1) (2), (4)(a), (6), 7(a), 8(a), (9), (10); 401hh-1(2), (3)(a).

²⁹ 54 U.S.C. § 100101(a).

³⁰ Management Policies § 4.4.2.

the hunting of wildlife where the practice “unacceptably impact[s] park resources or natural processes, including the natural distributions, densities, age-class distributions, and behavior of harvested species.”³¹ In other words, Policy 4.4.3 prohibits the manipulation of wildlife populations to increase hunter take.³²

Bear baiting conflicts with these legal mandates because it intentionally alters natural bear behavior to increase hunter take.³³ The State permits bear baiting primarily to reduce bear populations in an effort to boost caribou and moose abundance for increased human harvest.³⁴ Activities designed to reduce the abundance of one species with the objective of providing for higher levels of human harvest of another species is incompatible with the Service’s mandates to maintain natural predator-prey dynamics and ecological processes.³⁵ Because this practice conflicts with the Service’s mandates the Service should not allow bear baiting on National Preserves.

The Service claims that Policy 4.4.2 is not an appropriate justification for banning bear baiting because it estimates that the number of bears taken over bait will be low, thus not presenting a population-level concern.³⁶ However, as described above, after the Board of Game authorized taking brown bears over bait, the take of brown bears skyrocketed, causing the State to close the brown bear season early because there was a risk to the brown bear population.³⁷ Thus, permitting bear baiting leads to increased take of bears which can pose population-level risks that the Service has a duty to avoid. Moreover, should the Service permit bear baiting on National Preserves, it must consider that bear baiting also occurs on nearby State lands. Before finalizing the Proposed Rule, the Service must evaluate the effects to bear populations should bear baiting occur on both State lands and National Preserves. Additionally, the Service previously found it likely that bear baiting would cause impacts in the Preserves that would have the effect of or potential to alter or manipulate predator-prey dynamics.³⁸ Altered predator-prey dynamics may impact both the predator and prey populations as well as the ecosystem. The Service must consider and disclose these impacts in an EIS, as discussed in Part IX below, and it must provide a rational, reasonable, and well-supported explanation for its decision to allow this practice.

³¹ Management Policies § 4.4.3.

³² *Id.*

³³ Lafferty et al., *Bear Baiting Risks and Mitigations: An Assessment Using Expert Opinion Analyses*, 19(11) PLOS ONE e0312192 1 (2024) [attached]; William J. Ripple et. al., *Large carnivores under assault in Alaska*, 17(1) PLOS BIOLOGY e3000090 at 2–3 (2019) [attached]; NAT’L PARK SERV., REVISITING SPORT HUNTING AND TRAPPING ON NATIONAL PARK SYSTEM PRESERVES IN ALASKA – REVISED ENVIRONMENTAL ASSESSMENT 14 (Jul. 2024) [attached]; Sophie Massé et al., *How Artificial Feeding for Tourism-Watching Modifies Black Bear Space Use and Habitat Selection*, 78(7) JOURNAL OF WILDLIFE MGMT. 1228, 1232–33 (2014) [attached].

³⁴ Sterling D. Miller, John W. Schoen & Charles C. Schwartz, *Trends in brown bear reduction efforts in Alaska, 1980-2017*, 28(2) URSUS 135, 136–37 (2017) [attached]. The State first permitted taking black bears over bait in 1982 and taking brown bears over bait in 2012. *Id.* at 139; 2015 Rule at, 64336.

³⁵ Nat’l Park Serv., Comment to the Alaska Bd. of Game and Alaska Dep’t of Fish and Game 3 (Jan. 2014) [attached]; Nat’l Park Serv., Preamble to the Superintendent’s Compendium: Gates of the Arctic Nat’l. Park and Preserve (2014) [attached]; Krista Langlois, *Alaska’s Wildlife War*, HIGH COUNTRY NEWS (May 27, 2014).

³⁶ Proposed Rule at 11490.

³⁷ Center for Biological Diversity, Petition for Emergency Closure of, and Permanent Ban on, Brown Bear Hunting in the Kenai National Wildlife Refuge 5–6 (Aug. 11, 2014). [attached]

³⁸ U.S. DEP’T OF INTERIOR, NAT’L PARK SERV., SPORT HUNTING AND TRAPPING IN NATIONAL PRESERVES IN ALASKA REVISED ENVIRONMENTAL ASSESSMENT 5-6, 10 (2019). [attached]

Regardless, human harvest can cause “marked changes” to natural behavior even when populations remain stable.³⁹ The Service must prohibit bear baiting pursuant to Management Policy 4.4.3 which prohibits hunting of wildlife where the practice “unacceptably impact[s] park resources or natural processes, including the natural distributions, densities, age-class distributions, and behavior of harvested species” and the “artificial manipulation of habitat to increase the numbers of a harvested species above its natural range in population levels.”⁴⁰ Because bear baiting unacceptably impacts natural processes by altering bear behavior to increase the take of bears with the goal of boosting ungulate populations, bear baiting violates Management Policy 4.4.3.

B. Bear baiting poses risks to public safety because it habituates bears to human food, thus reducing their natural survival skills and increasing the likelihood of human-bear conflict.

Bear baiting also presents significant risks to public safety, as the Service has acknowledged.⁴¹ Baiting is functionally equivalent to feeding bears, which conditions the animals to food and increases the likelihood of bear-human conflict.⁴² Such conflicts pose grave risk of serious injury or death to both bears and humans.

Baiting can make bears dependent on bait as a food source because bait usually consists of calorie-rich human foods. A study of black bears in Wisconsin found that bears with access to bait depended on bait for more than 40% of their diet.⁴³ Specifically, bears with access to bait were consuming a higher percentage of their diet as human foods as compared to the most highly food-conditioned bears in Yosemite National Park, who consumed only 35% of their diet from human foods.⁴⁴ Once such a dependency is created, bears become less able to subsist on natural foods in the absence of bait, thus putting their survival at risk.⁴⁵ Creating food-conditioned bears by permitting bear baiting practices on National Preserves does not align with the Service’s mandate to protect wildlife. Bears with repeated human encounters are also labeled “problem bears,” and they have been killed near bait stations.⁴⁶ Once a bear becomes conditioned to human food, even “averse conditioning will likely not deter it from actively seeking human

³⁹ Linda Y. Rutledge et al., *Protection from Harvesting Restores the Natural Social Structure of Eastern Wolf Packs*, 143 *Biological Conservation* 332 (2010) [attached].

⁴⁰ Management Policies § 4.4.3.

⁴¹ Alaska; Hunting and Trapping in National Preserves, 89 Fed. Reg. 55059, 55062–64 (July 3, 2024); Nat’l Park Serv., *Bear Baiting Poses Risks to Visitor Safety* (Dec. 2, 2024), <https://www.nps.gov/articles/000/bear-baiting-risks.htm>. [attached]

⁴² Lafferty et al., *Bear Baiting Risks and Mitigations: An Assessment Using Expert Opinion Analyses*, 19(11) *PLOS ONE* e0312192 1, 6 (2024); Nat’l Park Serv., *Bear Baiting Poses Risks to Visitor Safety* (Dec. 2, 2024), <https://www.nps.gov/articles/000/bear-baiting-risks.htm>.

⁴³ Rebecca Kirby, David MacFarland, and Jonathan Pauli, *Consumption of Intentional Food Subsidies by a Hunted Carnivore*, 81(7) *JOURNAL OF WILDLIFE MANAGEMENT* 1161, 1164–65 (2017). [attached]

⁴⁴ *Id.* at 1166; see also Sierra J Gillman, Erin A McKenney, Diana J R Lafferty, *Human-Provisioned Foods Reduce Gut Microbiome Diversity in American Black Bears (*Ursus americanus*)*, 103(2) *JOURNAL OF MAMMALOGY*, 339, 340 (2022). [attached]

⁴⁵ Nat’l Park Serv., *Bear Baiting Poses Risks to Visitor Safety* (Dec. 2, 2024), <https://www.nps.gov/articles/000/bear-baiting-risks.htm>.

⁴⁶ Letter from Nat’l Parks Conservation Assoc. et al. to Vic Knox (Aug. 22, 2005). [attached]

foods and garbage.”⁴⁷ The Service’s acknowledgment in the Proposed Rule “that food-conditioned bears are most likely to be attracted to bait stations with human food items” supports the conclusion that exposing bears to human foods, whether through bait stations or garbage cans, conditions bears to seek human food.⁴⁸

Bears will defend bait stations from perceived threats, posing danger to human passersby⁴⁹ that can result in serious injury or death.⁵⁰ Access to garbage and human food is a major contributor to aggressive bear behavior toward people.⁵¹ Between 1960 and 1980, “at least 90%” of black bear-inflicted injuries were attributable to bears habituated to people and conditioned to eat human foods.⁵² Most black bear attacks occur in National Park campgrounds where habituated bears seek food.⁵³ In the Kennicott Valley of the Wrangell-St. Elias National Park & Preserve, bears becoming food-conditioned is a particular problem.⁵⁴ A study found that the vast majority of bear-human conflicts there were “caused by the widespread availability of garbage and human food” and that this may be causing a population sink for local bear populations “due to the high quality of its natural food resources . . . and human-induced mortality of bears.”⁵⁵ Once food conditioned, bears “pose a nuisance or threat to visitors in the area for many years.”⁵⁶ Allowing bears to become food-conditioned also limits options for correcting problematic behaviors as food-conditioned bears are “less likely to respond favorably to non-lethal intervention” such as hazing or relocation.⁵⁷

Notably, even the State expresses concern that bear baiting “teaches bears to associate humans with food sources” and explains that bear baiting is in direct conflict with recreational, non-hunting uses of the Denali State Park.⁵⁸ The Denali State Park Management Plan further

⁴⁷ James M. Wilder, QUANTIFYING BEAR POPULATIONS AND BEAR-HUMAN CONFLICTS USING NON-INVASIVE GENETIC SAMPLING IN THE KENNICOTT VALLEY OF WRANGELL-ST. ELIAS NATIONAL PARK & PRESERVE, ALASKA 23 (2003). [attached]

⁴⁸ Proposed 2026 Rule at 11490.

⁴⁹ Lafferty et al., *Bear Baiting Risks and Mitigations: An Assessment Using Expert Opinion Analyses*, 19(11) PLOS ONE e0312192 1, 6 (2024); Nat’l Park Serv., *Bear Baiting Poses Risks to Visitor Safety* (Dec. 2, 2024), <https://www.nps.gov/articles/000/bear-baiting-risks.htm>.

⁵⁰ 2020 Rule at 35187.

⁵¹ See ALASKA DEPARTMENT OF FISH & GAME, BEAR SAFETY FOR HUNTERS, <https://www.adfg.alaska.gov/index.cfm?adfg=hunting.bearsafety> (last visited Mar. 11, 2026) (“Keeping bears away from human food is perhaps the most important thing we can do to prevent conflicts and confrontations between bears and people . . . Feeding bears is dangerous for both people and bears.”). [attached]

⁵² Stephen Herrero, BEAR ATTACKS: THEIR CAUSES AND AVOIDANCE 93 (Winchester Press 1985).

⁵³ *Id.*

⁵⁴ James M. Wilder, QUANTIFYING BEAR POPULATIONS AND BEAR-HUMAN CONFLICTS USING NON-INVASIVE GENETIC SAMPLING IN THE KENNICOTT VALLEY OF WRANGELL-ST. ELIAS NATIONAL PARK & PRESERVE, ALASKA (2003).

⁵⁵ *Id.* at 3.

⁵⁶ NAT’L PARK SERV., WILDLIFE HARVEST N NAT’L PARK SYSTEM PRESERVES IN ALASKA: ENVTL. ASSESSMENT 21–22 (2014) [hereinafter 2014 EA] [attached]; see also U.S. Dep’t of Interior, Nat’l Park Serv., Superintendent’s Compendium: Denali Nat’l. Park 24 (2014) (“Due to the transfer of knowledge from sows to cubs and the long-life span of individual bears, young bears exposed to human foods may display unnatural and unacceptable behavior for decades.”) [attached].

⁵⁷ Torsten Bentzen, Richard Shideler, and Todd O’Hara, *Use of stable isotope analysis to identify food-conditioned grizzly bears on Alaska’s North Slope*, 25(1) URSUS 14, 15, 21 (2014) [attached]; Nat’l Park Serv., *Bear Baiting Poses Risks to Visitor Safety* (Dec. 2, 2024), <https://www.nps.gov/articles/000/bear-baiting-risks.htm>.

⁵⁸ Denali State Park Management Plan 69 (2006). [attached]

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.”⁵⁹ Permitting bear baiting in the adjacent Denali National Preserve would create this same risk on connected lands. The Service downplays this concern, arguing that “inconsistency [between the State park and National Preserve] is appropriate” because “prohibiting bear baiting in [N]ational [P]reserves,” approximately 22 million acres, “has a much more restrictive effect than prohibiting bear baiting in one State park,” approximately 300,000 acres.⁶⁰ This misses the point. The relative size of these public lands and restrictiveness of the rule does not change the fact that the practice of bear baiting increases the risk of serious human-bear conflicts on these public lands.

The Service has recognized that “natural resource agencies throughout North America discourage intentionally feeding bears” because of the risk to public safety and to bears themselves when bears become food-conditioned.⁶¹ The Service emphasizes to all backcountry travelers the importance of bear safety and preventing bears from becoming habituated to food, for the safety of both the bear and person. Indeed, the Service informs visitors through visitor orientations, signs, and brochures of the importance of properly storing food to minimize public safety risks, and it even loans members of the public bear-resistant food containers.⁶² For example, in Denali National Park & Preserve, backcountry travelers are required in many areas of the Park to use bear-resistant food containers ‘to prevent bears and other wildlife from obtaining and habituating to food and garbage, thus protecting wildlife and park visitors alike.’⁶³ It is inconsistent and arbitrary for the Service to instruct visitors not to feed bears due to the risks of food conditioning them while at the same time authorizing bear baiting which it has acknowledged is the functional equivalent.

The Service dismisses public safety concerns, pointing to the State’s lack of evidence showing baited bears become food conditioned.⁶⁴ However, in a survey of bear research and management experts, the vast majority concluded that baiting bears with processed human foods would cause bears to associate humans with food, and the overwhelming majority of Service-employed bear research and management experts concluded that bear baiting creates a public safety risk.⁶⁵ The Service asserts that “there is no reason to expect bear baiting will result in more food conditioned bears and more bears taken in defense of life and property because the practice has not had that effect when authorized in the past.”⁶⁶ Yet, the vast majority of Service-employed experts and other experts concluded that baiting bears with processed foods may

⁵⁹ *Id.*

⁶⁰ Proposed Rule at 11490.

⁶¹ Alaska: Hunting and Trapping in National Preserves, Proposed Rule, 79 Fed. Reg. 52595, 52597 (Sept. 4, 2014). [attached]

⁶² *See, e.g.*, NAT’L PARK SERV., U.S.. DEP’T OF INTERIOR, BEAR SAFETY IN ALASKA’S NATIONAL PARKS 1–2 (date unknown) [attached]; NAT’L PARK SERV., U.S.. DEP’T OF INTERIOR, WRANGELL-ST. ELIANS NATIONAL PARK AND PRESERVE, ALASKA: USER’S GUIDE TO SPORT HUNTING, TRAPPING AND FISHING 16–17 (date unknown). [attached]

⁶³ U.S. Dep’t of Interior, Nat’l Park Serv., Superintendent’s Compendium: Denali Nat’l. Park 6 (2014).

⁶⁴ Proposed Rule at 11490.

⁶⁵ Lafferty et al., *Bear Baiting Risks and Mitigations: An Assessment Using Expert Opinion Analyses*, 19(11) PLOS ONE e0312192 1, 5–6 (2024). Of the Service-employed experts, 14% did not reply to this question.

⁶⁶ Proposed Rule at 11490.

contribute to an increase in the killing of bears in defense of life or property.⁶⁷ The Service conducted this survey because it lacked “peer-reviewed data” regarding public safety risks associated with bear baiting.⁶⁸ It now dismisses its own survey, erroneously concluding that the lack of data on bear baiting’s public safety risks indicates there is no public safety problem. But, as the Service’s expert survey shows, the lack of data doesn’t mean there is no risk. By reducing these risks to a “theoretical” concern, the Service dismisses the very real threat that bear baiting will food condition bears and draw them closer to campgrounds and trails where visitors are, increasing the likelihood of grave injury or death to both the bear and the humans. Dismissing expert opinions indicating bear baiting is a risk to public safety disregards the Service’s obligation to protect its resources and its visitors from threats of harm.

The Service downplays the public safety risk posed by bears defending food sources by pointing to State regulations limiting bear baiting.⁶⁹ However, the Service previously recognized that State regulations governing bear baiting do not ensure the safety of the public.⁷⁰ State regulations preclude bait stations within 0.25 miles of a road or trail, or shorelines of specific rivers, or within one mile of a home, school, business, recreational facility, campground, or permanent dwelling.⁷¹ First, these distances are insufficiently protective of public safety because they lack biological significance.⁷² These buffers are “inconsequential” to bears that have ranges of “tens to hundreds of square miles.”⁷³ Additionally, baited bears can have much smaller ranges than bears without access to bait, increasing the chance of human-bear encounters because they will stay close to bait sources which tend to be located near human developments.⁷⁴ Second, these regulations are routinely violated, as the Service has acknowledged.⁷⁵ The Service noted that, in Wrangell-St. Elias National Park and Preserve, the “majority of bait stations” did not comply with these regulations.⁷⁶ Specifically 73% of the bait stations along the McCarthy Road in Wrangell-St. Elias National Park & Preserve were in violation of State or federal law.⁷⁷ The Service now disregards this because “no public safety issues were reported.”⁷⁸ However, hunting

⁶⁷ Lafferty et al., *Bear Baiting Risks and Mitigations: An Assessment Using Expert Opinion Analyses*, 19(11) PLOS ONE e0312192 1, 5–6 (2024). Of the Service-employed experts, 21% did not reply to this question.

⁶⁸ Proposed Rule at 55063.

⁶⁹ *Id.* at 11489.

⁷⁰ 2015 Rule at 64329, 64335–36.

⁷¹ Alaska Dep’t Fish & Game, *Bear Baiting Season and Requirements*, https://www.adfg.alaska.gov/static/regulations/wildliferegulations/pdfs/2024_2025_bear_baiting_seasons_and_requirements.pdf (last visited Mar. 11, 2026). [attached]

⁷² Massé recommends not establishing feeding stations within 11.5km of “locations where human-bear interactions should be limited (i.e., recreation sites, cabins, etc.).” Sophie Massé et al., *How Artificial Feeding for Tourism-Watching Modifies Black Bear Space Use and Habitat Selection*, 78(7) JOURNAL OF WILDLIFE MGMT. 1236 (2014).

⁷³ 2024 Rule at 55063.

⁷⁴ Sophie Massé et al., *How Artificial Feeding for Tourism-Watching Modifies Black Bear Space Use and Habitat Selection*, 78(7) JOURNAL OF WILDLIFE MGMT. 1232–33 (2014).

⁷⁵ 2024 Rule at 55063.

⁷⁶ *Id.*

⁷⁷ Nat’l Park Serv., E-mails regarding bear baiting in Alaska.[attached] In 2020, the Service ignored this data and instead relied on claims that baited bears do not necessarily associate bait with humans or become food conditioned, habituated, or problem bears. But the article the Service relied on was based on speculation from state managers and did not include any new data or comprehensive analysis of regions in which baiting is permitted. See Hristienko, H., and McDonald, J., *Going into the 21st Century: A Perspective on Trends and Controversies in the Management of the American Black Bear*, 18(1) URSUS 72, 84 (2007). [attached]

⁷⁸ Proposed Rule at 11489.

and non-hunting recreation tend to occur in the same areas, near roads and trails, increasing potential for conflict.⁷⁹ The Service previously found that bait stations “tend to be located in accessible areas due to the infrastructure (typically a 55-gallon drum) and quantity (including weight) of bait used to engage in this activity and the frequency with which the stations must be replenished.”⁸⁰ Baiting stations near a trail can cause dangerous interactions between bears and hikers and other trail users.⁸¹ In other words, the State’s regulations are not protective enough and are routinely violated, greatly increasing the risk of severe injury or death to humans and bears alike.

The Service’s attempt to brush off public safety concerns, stating that it expects few participants in bear baiting, few baiting stations, and only ten bears taken per year, is off base.⁸² Concluding that a few people might be at risk of a deadly bear interaction is not a reasoned justification for failing to protect public safety. Further, it is arbitrary to rely on hunters *not* engaging in an authorized activity to support the conclusion that the authorized activity will not cause issues.⁸³ Moreover, the Service lacks support for this assertion. While claiming that “very few individuals used bait to attract or take bears when this practice was [previously] governed by State of Alaska regulations,” the Service admits it actually does not know how many bears were taken over bait in Alaska’s National Preserves because “neither the [Service] nor the State of Alaska maintain data on the total number of bears taken over bait in [N]ational [P]reserves in Alaska when this practice was allowed in previous years.”⁸⁴ In other words, the Service has no rational basis for its conclusion that that the number of bears taken would be low.

The Service tries to distinguish scientific studies demonstrating that bear baiting results in the increased harvest of bears, but its reasoning is flawed. The first study, Miller et al. (2017), found that liberalized hunting regulations for brown bears, including bear baiting, resulted in an increased harvest of brown bears on Alaska’s Kenai Peninsula.⁸⁵ The Service claims that this study is inapposite because most National Preserves in Alaska are more difficult to access than the Kenai Peninsula.⁸⁶ The fact that some Preserves are easier to access does not negate the fact that allowing bear baiting will increase bear take within Preserves as compared to the current baseline and that the practice is a public safety concern wherever it occurs.⁸⁷ Further, the Service’s assumption that National Preserves without extensive road networks are less accessible

⁷⁹ 2024 Rule at 55062 (“Visitors to [N]ational [P]reserves in Alaska may inadvertently encounter bears and bait stations while engaging in sightseeing, hiking, boating, hunting, photography, fishing, and a range of other activities. This is because despite the vast, relatively undeveloped nature of these [N]ational [P]reserves, most visitation occurs near roads, trails, waterways, or other encampments (e.g., cabins, residences, communities).”); Lafferty et al., *Bear Baiting Risks and Mitigations: An Assessment Using Expert Opinion Analyses*, 19(11) PLoS ONE e0312192 1 (2024).

⁸⁰ 2015 Rule at 64336.

⁸¹ Stephen Stringham, Lynn Rogers, and Ann Bryant, *Semantic vs. Empirical Issues in the Bear Diversionary Baiting Controversy*, 5(6) ENVIRONMENT AND ECOLOGY RESEARCH 436, 439 (2017). [attached]

⁸² Proposed Rule at 11489.

⁸³ See *Greater Yellowstone Coal.*, 577 F. Supp. 2d at 207.

⁸⁴ Proposed Rule at 11489.

⁸⁵ Sterling D. Miller, John W. Schoen & Charles C. Schwartz, *Trends in brown bear reduction efforts in Alaska, 1980-2017*, 28(2) URSUS 135, 136–37 (2017).

⁸⁶ Proposed Rule at 11489.

⁸⁷ See Stephen Stringham, Lynn Rogers, and Ann Bryant, *Semantic vs. Empirical Issues in the Bear Diversionary Baiting Controversy*, 5(6) ENVIRONMENT AND ECOLOGY RESEARCH 436, 439 (2017).

for bear baiting ignores the fact that bait stations are accessed by illegal ATV trails and occur close to other trails and human developments.⁸⁸

The second study, Hilderbrand et al. (2013), estimated that less than 2 black bears per year were harvested over bait in National Preserves in Alaska when this practice was allowed during the period from 1992 to 2010.⁸⁹ Notably, this occurred before the State authorized baiting brown bears and thus is not an accurate representation of the full extent of bear baiting that would be allowed under the Proposed Rule. The Service points to the State’s data showing that, between 2012 and 2016, forty brown bears were taken over bait in areas adjacent to, within, or overlapping National Preserves, and the Service estimates “very few hunters used bait to attract or take bears in National Preserves when this practice was governed by State of Alaska regulations between the 2020 Rule and the 2024 Rule.”⁹⁰ But, again, the Service also admits that “neither the [Service] nor the State of Alaska maintain [such] data.”⁹¹

Overall, the Service fails to grapple with the root of the concern regarding bear baiting: the practice lures bears into proximity with humans and teaches bears to prefer human foods. Even if only a few bears are killed, others are drawn closer to humans, increasing the likelihood of bear-human interactions which can be dangerous, even lethal. This risk is the reason why natural resource agencies throughout North America discourage intentionally feeding bears. The Service claims that it can mitigate public safety concerns related to bear baiting through closures, enforcement actions, and other measures. Closing a bear baiting season after a public safety issue arises is too late, as impacted bears would already be conditioned to associate humans with access to food. Congress intended the Service to prevent impacts in the first place,⁹² and—in the face of uncertainty—to err on the side of protecting wildlife.⁹³ The uncertainty here is great because the Service does not have data regarding how many bears will be taken, how many users will partake in bear baiting, and how many bear baiting stations will be set up and where. Prohibiting bear baiting ensures “bears in [N]ational [P]reserves maintain more natural foraging and feeding behaviors,” and maintain “more natural and unaltered behaviors,” thus preventing public safety risks.⁹⁴ While the Service may make decisions without perfect data, in the face of uncertainty, the Service must err on the side of caution.⁹⁵

C. Bear baiting degrades habitat and disrupts animal behavior.

In addition to safety concerns, baiting poses harmful ecological impacts. Such impacts include: disease transmission, disruption of animal movement patterns and spatial distribution,

⁸⁸ NAT’L. PARK SERV., BEAR BAITING IN WRST (date unknown). [attached]

⁸⁹ Hilderbrand et al., *Wildlife stewardship in National Park Service areas in Alaska: A report to the Alaska Leadership Council Sub-group on Wildlife Harvest on Parklands*, Natural Resource Report, NPS/AKSO/NRR-2013/663, Fort Collins: National Park Service (2013). [attached]

⁹⁰ Proposed Rule at 11489.

⁹¹ *Id.*

⁹² S. REP. NO. 96-413, at 278; H.R. REP. NO. 96-97, pt. 1, at 289 (1979). [attached]

⁹³ S. REP. NO. 96-413, at 233.

⁹⁴ 2014 EA at 21.

⁹⁵ Caution is also warranted due to reports of decreased bear abundance. DOUG VINCENT-LANG, STATUS OF BROWN BEARS AND OTHER NATURAL RESOURCES IN THE MCNEIL RIVER GAME SANCTUARY AND REFUGE IN 2024, ANNUAL REPORT TO THE ALASKA SATE LEGISLATURE, ALASKA DEPT. OF FISH AND GAME (2025) at 2 (indicating the “abundance of bears, and thus viewing opportunities . . . were below average in 2024”). [attached]

alteration of community structure with reduced diversity and abundance, the introduction and invasion of exotic plant species, and general degradation of habitat.⁹⁶ Construction and operation of bait stations lead to “tree cutting, spilled grease, trees stained with grease, spikes in trees from construction of tree stands, trees limbed and scarred from the use of self-climbing tree stands, and digging around the bait barrel by bears to get at spilled grease and food items.”⁹⁷ Non-target species are also attracted to bait sites, affecting their behavior, spatial distribution, diet, and health.⁹⁸

The Service previously succinctly summarized the problems associated with bear baiting:

By design, baiting of bears alters their behavior to increase their predictability and facilitate harvest. This behavioral alteration directly conflicts with [Service] policy to maintain natural processes and wildlife populations, including behaviors. Further, conditioning bears to unnatural food items increases the likelihood that bears will become nuisance bears, and thus be destroyed outside of harvest regulations. Similarly food conditioned bears are more likely to become a public safety risk relative to non-food conditioned bears.⁹⁹

The Service should not permit bear baiting in National Preserves to “maintain natural bear behavior as required by [Service] law and policy,” “avoid public safety issues, to avoid food-conditioning bears and other species,” and to prevent the environmental harms associated with this unethical practice.¹⁰⁰ Rather, the Service must reject the Proposed Rule.

IV. PROPOSED CHANGES RELATED TO SUBSISTENCE ARE INCONSISTENT WITH ANILCA AND THE APA.

The Service misleadingly asserts that “[f]or the most part, this proposed rule does not directly address subsistence harvest by rural residents regulated under Title VIII of ANILCA.”¹⁰¹ Instead, the Service indicates the Proposed Rule merely “helps alleviate the incidental

⁹⁶ See L. Dunkley & M. R. L. Cattet, *A Comprehensive Review of the Ecological and Human Social Effects of Artificial Feeding and Baiting of Wildlife*, CAN. COOP. WILDLIFE HEALTH CENTRE: NEWSLETTERS & PUBL’N 21 (2003) [attached]; R.A. Inslerman, et al., *Baiting and Supplemental Feeding of Game Wildlife Species*, THE WILDLIFE SOC’Y (2006) [attached]; Rebecca Kirby et al., *The Cascading Effects of Human Food on Hibernation and Cellular Aging in Free-Ranging Black Bears*, SCIENTIFIC REPORTS 1 (2019) (“bears that foraged more on human foods hibernated for shorter periods of time.”) [attached];

⁹⁷ NAT’L. PARK SERV., BEAR BAITING IN WRST (date unknown).

⁹⁸ Lafferty et al., *Bear Baiting Risks and Mitigations: An Assessment Using Expert Opinion Analyses*, 19(11) PLOS ONE e0312192 2 (2024); Candler, Ellen M., William J. Severud, and Joseph K. Bump, *Who Takes the Bait? Nontarget Species Use of Bear Hunter Bait Sites*, 13(1) HUMAN-WILDLIFE INTERACTIONS 98 (2019) (indicating “nontarget carnivore visitation increased by 33.0%” at bear baiting stations during hunting season) [attached]; Jose M. Fedriani, Todd K. Fuller, and Raymond M. Sauvajot, *Does Availability of Anthropogenic Foods Enhance Densities of Omnivorous Mammals? An Example with Coyotes in Southern California*, 24 ECOGRAPHY 325 (2001) (“subsidization by anthropogenic foods augments coyote densities and alters their diets”) [attached]; Amanda D. Rodewald, Laura J. Kearns, and Daniel P. Shustack, *Anthropogenic Resource Subsidies Decouple Predator-Prey Relationships*, 21(3) ECOLOGICAL APPLICATIONS 936 (2011). [attached]

⁹⁹ 2014 EA at 19.

¹⁰⁰ 2015 Rule at 64329.

¹⁰¹ Proposed Rule at 11488.

burdens on subsistence imposed by the 2015 and 2017 rules.”¹⁰² These statements obscure what appears to be a drastic and inadequately explained shift in the Service’s interpretation of the term “subsistence uses.” Specifically, the preamble to the Proposed Rule suggests all State residents qualify as subsistence users and that the State should manage subsistence take within National Preserves. This impermissible interpretation conflicts with ANILCA’s plain language and purpose. The Proposed Rule also fails to provide adequate notice regarding the Service’s changed interpretation and must be reissued.

A. The Service’s proposal to allow so-called State “subsistence” hunts open to all residents of the State is contrary to ANILCA.

The Proposed Rule appears to unlawfully expand the definition of subsistence to authorize so-called state “subsistence hunts” for all State residents. The Proposed Rule would remove reference to ANILCA from the definition of “subsistence uses” and reinstate reference to State law within 36 CFR 13.470 and 13.480, which address subsistence fishing and hunting respectively. The preamble to the Proposed Rule indicates that these changes were motivated by a novel interpretation of the term “subsistence” in ANILCA. Specifically, the preamble presumes that ANILCA’s prioritization of subsistence uses within Preserves also includes so-called State “subsistence hunts” open to all State residents, but this interpretation would eviscerate the subsistence protections for rural residents that Congress expressly mandated. The Service reasons that these changes are necessary because the current regulations “unnecessarily preempt State law.”¹⁰³ This interpretation is contrary to the plain language and purpose of ANILCA.

One of ANILCA’s central purposes is “to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.”¹⁰⁴ To achieve this goal, Congress specifically defined subsistence uses as those practiced by rural residents of the State and explicitly prioritized take of fish and wildlife for subsistence uses over take for other purposes within all National Park System units, including National Preserves, within Alaska. Applying this framework within Preserves, Congress authorized sport hunting and subsistence harvest as distinct uses defined by ANILCA.¹⁰⁵

ANILCA defines subsistence uses as “the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.”¹⁰⁶ This definition reflects Congress’ expressed intent to protect rural subsistence users based on Alaska’s “unique” situation in which “no practical alternative means are available to replace the food

¹⁰² Proposed Rule at 11488.

¹⁰³ Proposed 2026 Rule at 11487.

¹⁰⁴ 16 U.S.C.S. § 3101.

¹⁰⁵ 16 U.S.C.S. § 3201 (“A National Preserve in Alaska shall be administered and managed as a unit of the National Park System in the same manner as a national park except as otherwise provided in this Act and except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve under applicable State and Federal law and regulation.”).

¹⁰⁶ 16 U.S.C. § 3113.

supplies and other items gathered from fish and wildlife which supply rural residents.”¹⁰⁷ Congress also recognized the threat competition for subsistence resources poses for federally qualified subsistence users. Specifically, Congress warned that the:

. . . continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened by the increasing population of Alaska, with resultant pressure on subsistence resources, by sudden decline in the populations of some wildlife species which are crucial subsistence resources, by increased accessibility of remote areas containing subsistence resources, and by taking of fish and wildlife in a manner inconsistent with recognized principles of fish and wildlife management.¹⁰⁸

With this in mind, Congress sought “to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents”¹⁰⁹ by requiring “that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.”¹¹⁰ Title VIII of ANILCA “accord[s] priority” to “the taking on public lands of fish and wildlife for nonwasteful subsistence uses” over other purposes.¹¹¹ Congress authorized restricting the “taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses.”¹¹² This preference applies to all conservation system units, including National Preserves, and is limited to “rural residents of Alaska, including both Natives and non-Natives.”¹¹³

In sum, ANILCA allows only two forms of wildlife take within preserves: sport hunting and subsistence uses.¹¹⁴ Subsistence uses are statutorily limited to rural residents of the State.¹¹⁵ By authorizing State subsistence hunts open to all Alaska residents, not just rural residents, the Proposed Rule conflicts with ANILCA’s plain language and Congress’ stated purpose to allow for and protect subsistence uses by rural residents within Preserves. The Service lacks authority to alter the definition of terms specifically defined by statute.¹¹⁶ This is especially true where the interpretation being advanced is directly contrary to Congress’ intent to protect rural subsistence users.

¹⁰⁷ 16 U.S.C.S. § 3111(2).

¹⁰⁸ 16 U.S.C.S. § 3111(2)–(3).

¹⁰⁹ 16 U.S.C.S. § 3111(4).

¹¹⁰ 16 U.S.C.S. § 3121.

¹¹¹ 16 U.S.C. §3114. ANILCA defines *take* or *taking* to mean to “pursue, hunt, shoot, trap, net capture, collect, kill, harm, or attempt to engage in any such conduct” (16 U.S.C. §3102).

¹¹² 16 U.S.C.S. § 3114.

¹¹³ 16 U.S.C. §3111.

¹¹⁴ 16 U.S.C.S. § 3201 (“A National Preserve in Alaska shall be administered and managed as a unit of the National Park System in the same manner as a national park except as otherwise provided in this Act and except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve under applicable State and Federal law and regulation.”).

¹¹⁵ 16 U.S.C. § 3113.

¹¹⁶ *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 325-26 (2014) (“An agency has no power to ‘tailor’ legislation to bureaucratic policy goals by rewriting unambiguous statutory terms. Agencies exercise discretion only in the interstices created by statutory silence or ambiguity; they must always “‘give effect to the unambiguously expressed intent of Congress.’”) (quoting *Nat’l Assn. of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 665 (2007)).

B. The State cannot manage subsistence consistent with ANILCA absent a State constitutional amendment.

The Proposed Rule seeks to reinstate State management of subsistence within Preserves despite State constitutional provisions that render such management contrary to federal law. As addressed above, the Proposed Rule re-includes reference to State law within 36 CFR § 13.470 and 13.480 because, as currently drafted, these provisions supposedly “unnecessarily preempt State law.”¹¹⁷ This reasoning ignores the history of subsistence management within Preserves. The Alaska Constitution precludes State management of subsistence in a manner that prioritizes rural residents, and subsequent edits removing references to State law in 36 CFR § 13.470 and 13.480 merely reflect this fact.

Under ANILCA, the State was given the option of managing subsistence hunting and fishing on federal land, provided that the State enacted laws consistent with federal law, including ANILCA’s rural subsistence preference.¹¹⁸ The State initially managed subsistence uses on federal lands under a newly adopted State law that granted a preference to rural residents for the take fish and game for subsistence purposes.¹¹⁹ However, in 1989 the Alaska Supreme Court held the State’s law unconstitutional in *McDowell v. State*, 785 P.2d 1, 1 (Alaska 1989), reasoning that the Alaska Constitution’s equal access clause prevented the State from enacting laws providing a preference for rural subsistence users over non-rural users.¹²⁰ As the State has acknowledged, the federal government has managed subsistence uses on federal lands in Alaska, including Preserves, ever since.¹²¹

To facilitate federal management, Congress enacted a new administrative structure to ensure rural residents have a “meaningful role in the management of fish and wildlife and of subsistence uses on the public lands in Alaska.”¹²² Congress therefore directed the Secretary to establish resource regions, local advisory committees, and regional advisory councils to accommodate subsistence uses and needs.¹²³ The goal of this administrative structure was to accord “nonwasteful subsistence uses” “priority over the taking on [public] lands of fish and wildlife for other purposes.”¹²⁴ The Secretaries of the Interior and Agriculture delegated the authority to “administer[] the subsistence taking and uses of fish and wildlife on public lands” to the Federal Subsistence Board (FSB).¹²⁵ Consistent with ANILCA, the FSB only allows federally qualified subsistence users, that is permanent residents of a rural area or community in

¹¹⁷ Proposed 2026 Rule at 11487.

¹¹⁸ 16 U.S.C. § 3115(d).

¹¹⁹ Ch. 52, SLA 1986.

¹²⁰ *McDowell v. State of Alaska*, 785 P.2d 1, 1 (Alaska 1989).

¹²¹ STEVEN R. BEHNKE, HOW ALASKA’S SUBSISTENCE LAW IS WORKING: COMPARING ITS IMPLEMENTATION BEFORE AND AFTER 1992, ALASKA DEPT. OF FISH AND GAME (1996) at 5 (explaining the *McDowell* decision “resulted in state subsistence hunts and fisheries open to all Alaska residents (the so called “all Alaskans” approach) and federal subsistence hunts on federal public lands open to qualified rural residents)[hereinafter ADFG Subsistence Report] [attached].

¹²² 16 U.S.C. § 3111(5).

¹²³ 16 U.S.C. § 3115(a)(1)-(3).

¹²⁴ 16 U.S.C. § 3114.

¹²⁵ 50 C.F.R. § 100.10(a); 36 C.F.R. § 242.10(a).

Alaska, to take fish and wildlife on federal public lands for subsistence uses.¹²⁶ Among other management decisions, the FSB considers traditional use patterns, methods, and means of harvesting when providing for harvest seasons and limits applicable to federally qualified subsistence users.¹²⁷

When the Service removed reference to non-conflicting State law in 36 CFR § 13.470 and 13.480 in 2015, it did so in recognition of this history.¹²⁸ The Service therefore provided a straightforward reason for removing these references: “the state no longer manages subsistence harvests under Title VIII of ANILCA.”¹²⁹ The Proposed Rule should be revised to reflect this history and to clarify that the State may not manage subsistence within Preserves absent a constitutional amendment to permit the State to manage lands and resources with a preference for *rural* subsistence users, consistent with ANILCA Title VIII.

C. The Service must explain how the Proposed Rule will impact rural subsistence users.

Allowing all State residents to engage in subsistence hunts within Preserves would substantially increase pressures on wildlife and competition for rural subsistence users. The Service’s statement that the Proposed Rule “does not directly address subsistence harvest by rural residents” is therefore deeply misleading.¹³⁰ In addition, the Service makes several unexplained statements that suggest the Proposed Rule would benefit rural subsistence users. For example, the Service states the Proposed Rule “helps alleviate the incidental burdens on subsistence imposed by the 2015 and 2017 rules,” which the Service claims “unintentionally prevent[ed] federally qualified users from participating in subsistence harvests on over 20 million acres of national preserves.”¹³¹ It is unclear what “burdens” the Proposed Rule would alleviate and which harvests rural subsistence users have been restricted from, as there is no explanation for these statements.

The lack of context or explanation regarding claimed benefits of the Proposed Rule, combined with the Service’s failure to address increased competition, makes it impossible for the public to understand how the Proposed Rule would work and how it would impact wildlife and rural subsistence users. For example, the Proposed Rule removes provisions allowing subsistence users to collect animal parts (36 C.F.R. § 13.482) and plant materials (36 C.F.R. § 13.485) for the creation of handicrafts for customary trade with a permit.¹³² While the Service maintains this change does not mean such uses are no longer authorized,¹³³ it is unclear whether the Service’s expanded interpretation of subsistence users means such activities would be allowable for all residents of the State, which would increase competition and decrease opportunities for rural subsistence users.

¹²⁶ 36 C.F.R. § 242.5.

¹²⁷ 36 C.F.R. Part 242 and 50 C.F.R. Part 100. Regulations require the FSB to consider traditional use patterns when establishing harvest levels, open season dates, and methods and means of harvesting.

¹²⁸ See *infra* Part IV.D.

¹²⁹ 2015 Rule at 64330.

¹³⁰ Proposed Rule at 11488.

¹³¹ Proposed Rule at 11488.

¹³² 2026 Proposed Rule at 11485.

¹³³ Proposed Rule at 11491.

Clarification of the Proposed Rule’s impact on federally qualified subsistence users is vital as, contrary to the Service’s representations, such impacts are likely to be substantial. Allowing “subsistence” hunts that are open to all residents of the State would significantly and negatively impact federally qualified subsistence users. The State has directly acknowledged this fact. In a 1992 Report, for instance, the Alaska Department of Fish and Game (ADF&G) acknowledged that State hunting laws were crafted “primarily with the urban-based majority hunters in mind.”¹³⁴ The State explained that the *McDowell* decision resulted in subsistence hunts and sport hunts being “collapsed into a single category” because “the distinction between subsistence hunts and general sport hunts has been lost.”¹³⁵ Treating all residents as subsistence users, as required under *McDowell*, means “large numbers of urban-based sport hunters or personal use fishers now pass as subsistence users” under State law.¹³⁶ ADF&G recognized the strain the State’s approach puts on rural residents as “urban subsistence users potentially overwhelm accessible customary and traditional subsistence fisheries and hunts, to the detriment of subsistence-dependent rural villages.”¹³⁷

The Proposed Rule’s potential adverse impact on rural subsistence users is even more concerning given what appears to be an organized effort by Safari Club International to expand and liberalize sport hunting on federal lands throughout Alaska to the detriment of rural subsistence users. In May 2025, Safari Club International submitted two petitions for rulemakings related to subsistence uses on federal lands in Alaska. One petition concerned the current rulemaking.¹³⁸ The other petition was a request to review and overhaul the FSB (FSB Petition).¹³⁹ The FSB Petition seeks to require the federal government to defer to the State on wildlife conservation matters, including sport hunting closures. The Alaska Federation of Natives has characterized the Safari Club’s proposal in the FSB Petition as a “serious threat” to rural subsistence users.¹⁴⁰ Among other things, the FSB Petition proposes the removal of Tribally-nominated FSB members and changing the make-up of the Rural Advisory Councils to include sport hunters and fishers.¹⁴¹ Taken together, the current rulemaking and the FSB petition would remove rural subsistence voices from the FSB, limit the FSB’s ability to enact sport hunting closures where necessary to provide for rural subsistence, and simultaneously deem all State residents subsistence users. As discussed above, these changes would violate federal law. Assuming they were lawful, the Service would have to explicitly address these potential changes

¹³⁴ ADFG Subsistence Report at 9.

¹³⁵ ADFG Subsistence Report at 9.

¹³⁶ ADFG Subsistence Report at 7.

¹³⁷ ADFG Subsistence Report at 7.

¹³⁸ See Proposed Rule at 11487.

¹³⁹ Letter from W. Laird Hamberlin, CEO, Safari Club Int’l, to Dept. of Interior and Dept. of Agriculture, re: Petition for Revisions to Federal Subsistence Board Regulations (May 5, 2025) [attached]; Program Review—Subsistence Management for Public Lands in Alaska, 90 Fed. Reg. 57941 (Dec. 15, 2025). [attached]

¹⁴⁰ Alex DeMarban, *Trump Administration Review of Federal Subsistence Program Seen as ‘Serious Threat’ by Alaska Federation of Natives*, ANCHORAGE DAILY NEWS, Dec. 23, 2025, available at: <https://www.adn.com/politics/2025/12/23/trump-administration-review-of-federal-subsistence-program-seen-as-serious-threat-by-alaska-federation-of-natives/>. [attached]

¹⁴¹ Rhonda McBride, *AFN rallies against Safari Club International federal subsistence management proposals*, KNBA, Jan 20, 2026, available at: <https://www.knba.org/news/2026-01-20/afn-rallies-against-safari-club-international-federal-subsistence-management-proposals>. [attached]

and the significant effect they would have on rural subsistence users in a new public notice and provide a meaningful opportunity for public comment.

Overall, the Proposed Rule is written in a manner that fails to inform rural subsistence users of likely impacts and in fact deters such users from closely reviewing and commenting on the rule.

D. The Service must acknowledge and explain its changed interpretation of the term “subsistence uses.”

Even if the Service’s proposed changes to the subsistence regulations were lawful, the Service has not provided the public with adequate notice. The Proposed Rule fails to inform the public that the Service is proposing a novel interpretation of the term “subsistence uses” that would have significant implications for federally qualified subsistence users. The Service must therefore revise and reissue the Proposed Rule for notice and comment. The Administrative Procedure Act’s (APA) notice requirement is designed to give the public an opportunity to meaningfully participate in the rulemaking process.¹⁴² To comply with the APA, agencies must show “awareness that it is changing position,” (2) that “the new policy is permissible under the statute,” (3) that the agency “believes” the new policy is better, and (4) provides “good reasons” for the new policy.¹⁴³ Notice is adequate only if interested parties have been “fairly apprised of the subjects and issues before the agency in a permitting process.”¹⁴⁴ An agency notice that fails to explicitly address substantive changes at issue in a rulemaking violates the APA as “nuance and subtlety are not virtues in agency notice practice.”¹⁴⁵

The Proposed Rule fails to comply with the APA because the Service has not acknowledged that it is proposing to change its interpretation of “subsistence uses.” The Proposed Rule states that “edits to 36 CFR § 13.470 and 13.480 removed the incorporation of State laws by reference and had the *unintended effect* of displacing State laws governing those uses.”¹⁴⁶ This is inaccurate as edits to these provisions were specifically intended to clarify that the State does not manage subsistence within Preserves. As explained above, the U.S. Department of the Interior (Interior) engaged in an extensive process to provide for federal subsistence management on federal lands following the *McDowell* ruling that culminated in the creation of the FSB in 1992.¹⁴⁷ At that time, Interior explained that the “Federal Government was forced to assume the management of subsistence activities on Federal public lands in the State” because the “State was unsuccessful in amending its laws to comply with ANILCA.”¹⁴⁸ The Service removed references to State law within 36 C.F.R. § 13.470 and 13.480 because the State’s legal framework for land management and subsistence uses were incompatible with ANILCA’s requirements. As such, the Service’s reasons for deleting reference to State law

¹⁴² See 5 U.S.C. § 553(c) (“After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making”).

¹⁴³ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009).

¹⁴⁴ *NRDC v. EPA*, 279 F.3d 1180, 1188 (9th Cir. 2002).

¹⁴⁵ *NRDC v. States EPA*, 279 F.3d 1180, 1188 (9th Cir. 2002).

¹⁴⁶ Proposed 2026 Rule at 11488 (emphasis added).

¹⁴⁷ U.S. DEPTS. OF INTERIOR AND AGRICULTURE, SUBSISTENCE MANAGEMENT FOR FEDERAL PUBLIC LANDS IN ALASKA RECORD OF DECISION (1992) [hereinafter 1992 ROD]. [attached]

¹⁴⁸ 1992 ROD at 1.

within those provisions were exceedingly clear and straightforward. The Service explained it was updating its subsistence regulations “to reflect federal assumption of the management of subsistence hunting and fishing under Title VIII of ANILCA from the State in the 1990s.”¹⁴⁹ The Service further explained “the state does not manage subsistence harvests within Preserves”¹⁵⁰ and “non-federally qualified subsistence users (urban) cannot practice specific subsistence practice allowed in Preserves.”¹⁵¹

The Service was operating under these same principles when it added a reference to ANILCA within the regulatory definition of “subsistence uses” in 2017.¹⁵² The Proposed Rule indicates the Service “revised 36 C.F.R. § 13.420 Definitions to, among other things, insert a reference to ANILCA in ‘subsistence uses’ *that had the effect of displacing state authorized subsistence* harvest from parks,” as if the change was unintended.¹⁵³ This statement fails to recognize the Service’s longtime position that State-authorized subsistence harvests were displaced by the 1998 *McDowell* decision, and this was reflected in the 2017 regulatory amendment. We urge the Service to correct this statement because it obscures an important change in the Service’s position on the scope of “subsistence uses” authorized within Preserves. For example, when the Service added the reference to ANILCA as part of the 2017 Rule, it explained “subsistence take of fish and wildlife on (federal) public land is governed by Title VIII of ANILCA.”¹⁵⁴ Based on this position, the Service referenced ANILCA in the regulatory definition of “subsistence uses” as part of edits clarifying that specific activities fall within ANILCA’s statutory definition of “subsistence uses” and are therefore allowable within Preserves.¹⁵⁵ Because the Service is now adopting a new position, it must clearly say so in a new public notice and provide an opportunity for public comment.

These statements make clear that the removal of references to State law and references to ANILCA within the regulatory definition of “subsistence uses” were quite intentional. The Service made those changes based on ANILCA’s unambiguous statutory language limiting the

¹⁴⁹ 2015 Rule at 64327; 64338 (“The existing provision that adopts non-conflicting State laws is not necessary due to the assumption by the Federal Subsistence Board of regulatory authority over Title VIII subsistence harvest of fish and wildlife.”).

¹⁵⁰ 2015 Rule at 64330.

¹⁵¹ 2015 Rule at 64329.

¹⁵² See 36 C.F.R. § 13.420 (defining “Subsistence uses” in part as “the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicrafts out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and for customary trade *pursuant to Title VIII of ANILCA.*”)(emphasis added).

¹⁵³ Proposed Rule at 11485 (emphasis added).

¹⁵⁴ 2017 Rule at 3626.

¹⁵⁵ 2017 Rule at 3630, 3628 (“The [Service] concludes that the harvest of migratory birds (including their eggs) pursuant to the Migratory Bird Treaty Act and implementing regulations in 50 CFR part 92 is an appropriate “subsistence use” as defined in section 803 of ANILCA, 16 U.S.C. 3113. Similarly, the [Service] concludes that the harvest of marine mammals in accordance with the Marine Mammal Protection Act and implementing regulations in 50 CFR part 18 by [] qualified subsistence users is also an appropriate “subsistence use” as defined by section 803 of ANILCA. Thus, in this final rule, the [Service] clarifies the prior definition of “subsistence uses” to explicitly include harvest of migratory birds under the MBTA and the harvest of marine mammals under the MMPA by qualified individuals.”).

term subsistence to rural residents.¹⁵⁶ In fact, the Service specifically ruled out the idea of State subsistence hunts under ANILCA as part of the 2015 Rule. In the response to comments for that rulemaking, the Service explained that, “[u]nder ANILCA and in this rule, the term ‘subsistence’ refers only to subsistence activities authorized by Title VIII of ANILCA, which must comply with the federal subsistence regulations (among other things, they are restricted to rural Alaska residents). ANILCA did not authorize any separate State subsistence activities.”¹⁵⁷

In the Proposed Rule, the Service attempts to justify its new interpretation by stating that the 2015 Rule “concluded the word ‘subsistence’ in ANILCA . . . means subsistence activities by rural residents under Federal laws, *rather than the customary and traditional uses of Alaska’s fish and wildlife that is regulated and prioritized under both State and Federal laws.*”¹⁵⁸ This statement is inadequate. Mentioning a potential alternative interpretation in less than one full sentence is the type of “nuance and subtlety” that is insufficient under the APA.¹⁵⁹ Assuming for the sake of argument that the Service’s reversal of position as to its interpretation of a key statutory term were lawful, which it is not for the reasons discussed above, the Service would have to fully explain it in a new public notice and provide a meaningful opportunity for public comment in order to comply with the APA.

E. The Service’s authority to manage subsistence is not limited to imposing closures.

The Proposed Rule misconceives the Service’s authority to manage subsistence as limited to closure authority. In the Proposed Rule, the Service claims its past actions that placed conditions on subsistence uses or required a permit for such uses “expanded its claim of discretionary authority by redefining the nature of a ‘closure.’”¹⁶⁰ In line with this statement, the Proposed Rule would remove text addressing the Service’s authority to “restrict a subsistence activity” from § 13.490. This narrow conception of the Service’s authority to manage subsistence within Preserves is inaccurate.

The Service has general regulatory authority over wildlife within Preserves, including subsistence take of wildlife. “ANILCA preserves the federal government’s plenary power over public lands in Alaska,” including the power to regulate and protect wildlife.¹⁶¹ The Secretary of the Interior has authority “to protect—if need be, through expansive regulation—the national interest in the scenic, natural, cultural and environmental values on the public lands.”¹⁶² The Service has recognized its plenary management authority over sport hunting and trapping

¹⁵⁶ For example, the Service has previously explained that “ANILCA defines who may engage in subsistence hunting.” 2020 Rule at 35185. This interpretation has been questioned by the State in recent years, which underscores the fact that allowing State management of subsistence on National Preserves would violate federal law. *See e.g.* Letter from Bill Walker, Governor of Alaska to Herbert Frost, NPS Regional Director, re NPS 2018 Proposed Rule for Alaska; Hunting and Trapping in National Preserves at 36 (Nov. 2, 2018) (“ANILCA Title VIII grants rural residents a subsistence priority; however, nothing in ANILCA prohibits the take of fish and wildlife for subsistence purposes on preserves under state regulation.”).[attached]

¹⁵⁷ 2015 Rule at 64333.

¹⁵⁸ Proposed 2026 Rule at 11488 (emphasis added).

¹⁵⁹ *NRDC v. States EPA*, 279 F.3d 1180, 1188 (9th Cir. 2002).

¹⁶⁰ 2026 Proposed Rule at 11485.

¹⁶¹ *Safari Club Int’l*, 31 F.4th at 1165, 1168 (9th Cir. 2022).

¹⁶² *Sturgeon v. Frost*, 139 S. Ct. 1066, 1087 (2019).

following the ruling in *Alaska Wildlife Alliance v. Haaland*, 632 F. Supp. 3d 974 (D. Alaska 2022). Specifically, in the preamble to the 2024 Rule, the Service concluded 16 U.S.C. 3201 (sport hunting and trapping closure authority) “does not narrow” the Service’s “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 [Service’s] broader regulatory authority.”¹⁶³ The Proposed Rule indicates that the Service maintains this position regarding its authority over sport hunting.¹⁶⁴ The same is true for the Service’s management authority over subsistence. The provision of specific authority to close subsistence uses in 16 U.S.C. § 3126, like the sport closure authority outlined in 16 U.S.C. 3201, does not narrow the Service’s plenary regulatory authority—it merely complements it. In the final rule, the Service should therefore maintain the reference to its authority to restrict subsistence activities and eliminate its overly narrow interpretation of its own authority.

The unduly narrow interpretation of federal subsistence management authority contained in the Proposed Rule is particularly concerning given the Service’s newly adopted position that all State residents are eligible to practice subsistence uses within Preserves. By simultaneously asserting that the Service’s subsistence management authority is limited to imposing closures and deeming all residents of the State subsistence hunters, it appears the Service could be relinquishing much of its current management authority.¹⁶⁵ In the final rule, the Service should clarify that subsistence hunting is limited to rural residents and that the federal government has plenary authority over wildlife management on federal lands.

V. THE SERVICE MUST ENSURE THAT SPORT HUNTING ON NATIONAL PRESERVES IS CONSISTENT WITH FEDERAL LAW.

We oppose the Service’s proposal to defer to State regulations relating to predator control and hunting within National Preserves in Alaska. The State of Alaska allows liberalized sport hunting regulations for predator hunting as well as State-sponsored predator control programs for the purpose of manipulating predator populations in an effort to increase the abundance of prey species, like moose and caribou.¹⁶⁶ The State’s regulations conflict with federal statutory mandates governing wildlife management in the National Park System under ANILCA, the Organic Act, and the Wilderness Act. We therefore urge the Service to clearly define hunting for “sport purposes” and readopt the prohibition on predator reduction efforts first promulgated in the 2015 Rule.

¹⁶³ 2024 Rule at 55067–68.

¹⁶⁴ In *Alaska Wildlife Alliance v. Haaland*, 632 F. Supp. 3d 974 (D. Alaska 2022) the court held that the 2020 Rule was arbitrary and capricious in three respects: (1) the Services narrow interpretation of its management authority; (2) the Service’s finding that State law is equivalent to the Services federal conservation mandates; (3) the Services failure to explain its conclusions regarding the safety of bear baiting. In the Proposed Rule, the Service indicates that statements in the preamble to the 2024 Rule addressing points 1 and 2 “are not disturbed by this proposed rule.” Proposed Rule at 11488.

¹⁶⁵ The Service’s authority to close sport hunting and trapping is expansive, allowing the Service to restrict sport hunting for reasons of public safety, administration, protection of wildlife and vegetation, and public use and enjoyment. 16 U.S.C. § 3201. In contrast, the Service may close areas to subsistence “only if necessary for . . . public safety, administration, or to assure the continued viability of such population.” 16 U.S.C. § 3126(b).

¹⁶⁶ Alaska; Hunting and Trapping in National Preserves, 88 Fed. Reg. 1176, 1177 (Jan. 9, 2023). [attached]

A. The Service must explain its interpretation of the meaning and scope of hunting for “sport purposes.”

The Proposed Rule notably fails to address the Service’s interpretation of the meaning of “sport hunting,” which has been at the core of controversy surrounding the 2015, 2020, and 2024 rules. This failing makes it impossible for the public to understand the Proposed Rule’s true impact. As explained above, by unlawfully allowing so-called “State subsistence hunts” within National Preserves that would be open to all State residents, the Proposed Rule would expose subsistence harvesters to increased competition from urban residents of the State, who are only eligible to hunt for sport purposes under federal law.¹⁶⁷ This approach contravenes the Service’s obligation to protect ANILCA’s prioritization of subsistence uses by rural Alaska residents.

In order to meet the Service’s statutory obligations, it must clarify that “sport hunting” involves “fair chase” methods and is distinct from “hunting for subsistence uses,” which is limited to federally qualified subsistence users and involves “traditional and customary methods” on federal lands in Alaska, including Preserves. Under federal law, subsistence hunting is prioritized over sport hunting. Title VIII created a priority for federal subsistence harvest over other consumptive uses of fish and wildlife.¹⁶⁸ Thus, ANILCA requires that sport hunting be restricted before subsistence harvesting when necessary to protect wildlife.¹⁶⁹ By contrast, under the State’s wildlife management framework, there is no distinction between rural and non-rural residents.¹⁷⁰ State hunting regulations allow anyone to use practices that, under federal law, are permitted only for authorized subsistence hunters.¹⁷¹ Specifically, practices that the Federal Subsistence Board authorizes subject to a “customary and traditional use” determination, which limits the pool of users and geographic scope, are made broadly available under State regulations. Thus, competition between federal subsistence harvesters and sport hunters is likely to increase by expanding hunting opportunities to those who are not local rural residents. The Service’s suggestion that State “subsistence” hunts are allowable on Preserves eviscerates the distinction between sport and subsistence hunting and fails to protect the priority for subsistence hunting over other consumptive uses enshrined under ANILCA.

B. The Service should readopt the 2015 Rule’s prohibition on predator reduction efforts because such practices are contrary to the Service’s statutory mandates and policies.

Federal law does not allow predator reduction efforts within the National Park System in Alaska, including Preserves. Under the Organic Act, the Service must “conserve the scenery, natural and historic objects, and wild life” of the National Park System,¹⁷² regulating uses of the National Park System—such as sport hunting in Preserves—to ensure these resources and Park

¹⁶⁷ See *supra* Part IV.

¹⁶⁸ *Id.* § 3114.

¹⁶⁹ *Id.*

¹⁷⁰ *McDowell v. State*, 785 P.2d 1 (Alaska 1989). Alaska residents do have a priority over non-residents, but that is not relevant here.

¹⁷¹ See State of Alaska, Comment Letter on Proposed Rule on Hunting and Trapping in Nat’l. Preserves in Alaska at 19–21 (Nov. 2, 2018) (discussing State’s effort to make traditional, regional, subsistence hunting methods widely available under its general regulations). [attached]

¹⁷² 54 U.S.C. § 100101.

System values are “unimpaired for the enjoyment of future generations.”¹⁷³ The Service recognizes that “conservation is to be predominant” when other uses conflict.¹⁷⁴ Accordingly, the Service’s Management Policies require the Service to protect natural processes and wildlife populations in their natural abundances, diversities, distributions, densities, age-class distributions, habitats, genetics, and behaviors; “activities to reduce . . . native species for the purpose of increasing numbers of harvested species” within the National Park System are prohibited.¹⁷⁵

ANILCA likewise requires the Service to manage National Park System units in Alaska to protect sound populations of wildlife and their habitat,¹⁷⁶ and to protect natural processes and maintain environmental integrity for the benefit and use of present and future generations.¹⁷⁷ In enacting ANILCA, Congress made it clear that, in regulating the taking of wildlife, natural processes should be preserved because manipulation of habitat and wildlife to maximize utilization contravenes the Park System’s values and management objectives.¹⁷⁸ In many of Alaska’s National Preserves, predators like wolves and brown bears are specifically listed as species that the Park Service is obligated to protect.¹⁷⁹ While Congress allowed sport hunting in Preserves, subject to State and federal regulation,¹⁸⁰ Congress made clear that the Service must place the protection of natural and healthy populations of wildlife above hunting.¹⁸¹

Additionally, pursuant to the Wilderness Act, Wilderness areas “shall be administered for the use and enjoyment of the American people in such manner as will leave [the area] unimpaired for future use and enjoyment as [W]ilderness.”¹⁸² National Preserves in Alaska contain approximately 8 million acres of designated Wilderness and approximately 11 million acres of eligible Wilderness.¹⁸³ The Service is “responsible for preserving the [W]ilderness character” of Wilderness areas in National Preserves.¹⁸⁴

These statutory directives, management policies, and congressional intent starkly contrast with the State’s predator hunting liberalizations that are intended to manipulate predator

¹⁷³ *Id.* § 100101(a).

¹⁷⁴ Management Policies §§ 1.4.3 (2006).

¹⁷⁵ *Id.* §§ 4.1, 4.4.1, 4.4.1.2, 4.4.2, 4.4.3. The Service clarified in the preamble to the 2024 Rule that “[m]easures enacted for the purpose of predator control thus are prohibited by [Service] polic[ies] even if they do not actually reduce predator populations or increase the number of prey species available to hunters.”)

¹⁷⁶ *Id.* § 410hh; *id.* § 401hh(1)–(2), (4)(a), (6)–7(a), 8(a), (9)–(10); *id.* § 401hh-1(2), (3)(a).

¹⁷⁷ *Id.* §§ 410hh(1), (8)(a), (10), 3101(a)–(b).

¹⁷⁸ S. REP. NO. 96-413, at 171 (1979).; 126 Cong. Rec. H10549 (Nov. 12, 1980) (Statement of Rep. Udall).

¹⁷⁹ *See* 16 U.S.C. § 410hh.

¹⁸⁰ *Id.* § 3201.

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

¹⁸² *Id.* § 1131(a). Wilderness is “an area of undeveloped federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve *its natural conditions*,” including the essential characteristic that it “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s works substantially unnoticeable.” *Id.* § 1131(c) (emphasis added).

¹⁸³ 2014 EA at 28–29.

¹⁸⁴ 16 U.S.C. § 1133(b).

abundance or behavior for the purpose of increasing the abundance of prey species. The Alaska Constitution mandates that the State “utilize[], develop[], and maintain[]” wildlife “on the sustained yield principle, subject to preferences among beneficial uses.”¹⁸⁵ The sustained yield principle requires State managers to “achieve[] and maintain[]” high levels of human harvest.¹⁸⁶ The State has done this by reducing predator populations through liberalizing sport hunting regulations and implementing predator control programs.

In 1994, the Alaska Legislature enacted the Intensive Management Statute.¹⁸⁷ The explicit goal of that statute is to maintain, restore, or increase the abundance of big game populations for human consumptive use.¹⁸⁸ Where prey, such as moose and caribou, population levels are not considered to be high enough to meet human consumptive needs, the Alaska Board of Game (Board) is prohibited from taking other conservation measures unless it also implements an “intensive management” plan.¹⁸⁹ The statutory definition of “intensive management” makes clear that the State’s wildlife management objective is to increase prey populations for human harvest by, in part, reducing predator populations. “Intensive management” is defined as:

management of an identified big game prey population consistent with sustained yield through active management measures to enhance, extend, and develop the population to maintain high levels or provide for higher levels of human harvest, including control of predation¹⁹⁰

As a result, State wildlife management is almost wholly focused on increasing the number of ungulates available for human harvest.¹⁹¹

Over the last twenty years, the Board has become increasingly aggressive in its efforts to increase ungulates through implementation of State-sponsored predator control programs and liberalization of sport hunting and trapping regulations.¹⁹² The State designated most of Alaska as “important for human consumption of ungulates” and managed with the goal of reducing predator populations to reduce their predation on ungulates.¹⁹³ Indeed, the Board’s adoption of “increasingly liberal, often previously illegal” sport hunting and trapping regulations is explicitly intended “to decrease predator abundance.”¹⁹⁴ In fact, the Board relies heavily on liberalized

¹⁸⁵ Alaska Const. art. VIII, § 4.

¹⁸⁶ AS § 16.05.255(k)(5).

¹⁸⁷ *Id.* § 16.05.255.

¹⁸⁸ *Id.* § 16.05.255(e).

¹⁸⁹ *Id.* § 16.05.255(f).

¹⁹⁰ *Id.* § 16.05.255(l)(4).

¹⁹¹ See, e.g., ALASKA DEP’T FISH & GAME, INTENSIVE MGMT. PROTOCOL 5 (2011) (“This [intensive management] law is intended to achieve or maintain wild ungulate harvests in defined areas at elevated but sustainable levels through some combination of management practices.” (emphasis in original, definition at 21)). [attached]

¹⁹² See Sterling D. Miller, John W. Schoen & Charles C. Schwartz, *Trends in brown bear reduction efforts in Alaska, 1980-2017*, 28(2) *URSUS* 135 (2017).

¹⁹³ William J. Ripple et. al., *Large carnivores under assault in Alaska*, 17(1) *PLOS BIOLOGY* e3000090 at 3–4 (2019).

¹⁹⁴ Information Memorandum for the Secretary: Wildlife Management in the Nat’l. Park Serv. at 2 (date unknown) [attached]; see also Julie Lurman & Sanford P. Rabinowitch, *Preemption of State Wildlife Law in Alaska: Where, When and Why*, 24 *ALASKA L. REV.* 145, *13–14 n. 49 (2007) (examples of Alaska Board of Game liberalizations)

sport hunting regulations to encourage hunter harvest of predators to reduce predator populations.¹⁹⁵ Some examples of these liberalized regulations include aerial shooting of

(citing JUSTIN CRAWFORD & SHERRY WRIGHT [attached]; SUMMARY OF ACTIONS, ALASKA BD. OF GAME, STATEWIDE AND INTERIOR REGION 24, 38 (2004) [attached]; CHARLIE GREGG, SUMMARY OF ACTIONS, ALASKA BD. OF GAME, ARCTIC BD. OF GAME MEETING 9 (2005) [attached]; ALASKA BD. OF GAME, ACTIONS (Jan 27–30, 2006) [attached]; ALASKA BD. OF GAME, FALL 2005 PROPOSAL BOOK 16 (December 2005)) [attached]; Sterling D. Miller, John W. Schoen & Charles C. Schwartz, *Trends in brown bear reduction efforts in Alaska, 1980-2017*, 28(2) *URSUS* 135, 136 (2017) (“Efforts designed to reduce predation by liberalizing hunting regulations for predators is the default mechanism utilized to accomplish the [State] law’s desired outcome of increasing hunter harvests of moose and caribou”); *id.* at 142 (Board has liberalized methods and means for harvest of brown bears across approximately 76% of Alaska, and the remaining areas are places with low moose and caribou populations, or either where wolves are the primary predators (and targeted by the State for reduction), or bears are large and valued as a trophy species).¹⁹⁵ W.L. Regelin, P. Valkenburg, & R.D. Boertje, *Management of Large Predators in Alaska*, *WILDLIFE BIOLOGY IN PRACTICE*, 1(1): 77, 84 (June 2005) [attached]; *see also* ALASKA DEP’T. OF FISH GAME, DIVISION OF WILDLIFE CONSERVATION, ALASKA DEP’T. OF FISH & GAME PREDATION MGMT. SUMMARY, 2007–2009 (February 2010) (State publication noting increased hunter harvest of ungulates is achieved, in part, by “liberalizing harvest of predators”) [attached]; ALASKA DEP’T. OF FISH AND GAME, PREDATOR MGMT. IN ALASKA 2 (November 2007) (State publication explaining that elevating human harvest of prey depends, in part, on “sufficient” hunting and trapping harvests “to limit the growth of those predator populations” that have been reduced by predator control programs) [attached]; *id.* at 3 (noting: “Take of predators by conventional hunting and trapping may be increased through liberalized seasons and bag limits to reduce the effects of predation on prey populations.”); *id.* at 16 (noting: “[H]arvest of wolves and bears—through traditional hunting and trapping or other means—must limit the natural growth of predator populations [following predator control programs] . . . Efforts by the public . . . will sometimes be a necessary part of overall, intensive management programs designed to increase harvests of moose and caribou.”); Alaska Dep’t. of Fish and Game, *Intensive Management in Alaska, Overview of Relationships Between Bears, Wolves, and Moose in Alaska*, <https://www.adfg.alaska.gov/index.cfm?adfg=intensivemanagement.predatorprey> (last visited Mar. 11, 2026) (noting: “[d]uring the last 10 years, the [Board] has made a deliberate effort to reduce numbers of grizzly bears . . . by increasing the bag limit and extending hunting seasons.”) [attached]; ALASKA BD. OF GAME, 2017 PROPOSAL BOOK 96–97 (August 2017) (noting: “[t]he Board . . . liberalized brown bear hunting regulations . . . to increase the harvest”) [attached]; MIKE FLEAGLE, CHAIR, ALASKA BD. OF GAME, FINDINGS OF THE ALASKA BD. OF GAME 2004-147-BOG: GENERAL BEAR MANAGEMENT 7 (Mar 8, 2004) [attached]; MIKE FLEAGLE, CHAIR, ALASKA BD. OF GAME, FINDINGS OF THE ALASKA BD. OF GAME 2006-164-BOG: GENERAL BEAR MANAGEMENT 7 (May 14, 2006) (calling for the “reduc[tion of] bear numbers through general hunting provisions such as liberalized seasons, bag limits, hunting methods and means and tag waivers”) [attached]; CLIFF JUDKINS, CHAIRMAN, ALASKA BD. OF GAME, FINDINGS OF THE ALASKA BD. OF GAME 2011-186-BOG: BD. OF GAME BEAR CONSERVATION, HARVEST, AND MANAGEMENT POLICY 4 (Mar. 25, 2011) [attached]; CLIFF JUDKINS, CHAIRMAN, ALASKA BD. OF GAME, FINDINGS OF THE ALASKA BD. OF GAME 2012-194-BOG: BD. OF GAME BEAR CONSERVATION, HARVEST, AND MANAGEMENT POLICY 4 (Jan. 18, 2012) [attached]; TED SPRAKER, CHAIRMAN, ALASKA BD. OF GAME, FINDINGS OF THE ALASKA BD. OF GAME 2016-214-BOG: BD. OF GAME BEAR CONSERVATION, HARVEST, AND MANAGEMENT POLICY 4 (Mar. 17, 2016) (calling for general hunting provisions to reduce bear numbers, stating a preference for using “conventional hunting seasons and bag limits to manage bear numbers”) [attached]; MIKE FLEAGLE, CHAIR, ALASKA BD. OF GAME, FINDINGS OF THE ALASKA BD. OF GAME 2004-151-BOG: FINDING REGARDING BEAR BAITING ALLOCATION (Mar. 10, 2004) (“Population and harvest objectives for species important for human use, particularly for food, may be attainable without drastic bear control measures if a considerable number of bears are taken by bear baiters.”) [attached]; PATRICIA HARPER & LAURA A. MCCARTHY, EDS., ALASKA DEP’T. OF FISH & GAME, *BROWN BEAR MANAGEMENT REPORT OF SURVEY INVENTORY ACTIVITIES* at 243 (2013) (explaining the State liberalized brown bear sport hunting regulations to “attempt to reduce the brown bear population to decrease predation pressure on moose calves”) [attached]; TED SPRAKER, CHAIRMAN, ALASKA BD. OF GAME, FINDINGS OF THE ALASKA BD. OF GAME 2016-215-BOG: BD. OF GAME WOLF MANAGEMENT POLICY 1–2 (Mar. 17, 2016) (aiming “to greatly reduce wolf numbers to aid recovery of low prey populations or to arrest undesirable reductions in prey populations” with “season and bag limits [set] to . . . allow for participants to directly aid in . . . improving ungulate levels”). [attached]

wolves,¹⁹⁶ same-day airborne tracking,¹⁹⁷ liberalizing or creating unlimited bag limits and seasons,¹⁹⁸ eliminating the need for hunters to obtain or purchase hunting tags or permits for predators (monetarily incentivizing hunting of predators),¹⁹⁹ authorizing the incidental taking of predators,²⁰⁰ bear baiting,²⁰¹ reclassifying black bears as furbearers to allow for trapping,²⁰² and hunting of sows and cubs.²⁰³ As one example, in 2012, the Board first authorized brown bear baiting under its sport hunting regulations in an attempt to decrease brown bear populations, noting that not enough hunters obtained predator control permits.²⁰⁴ The Board has committed to continue “develop[ing] innovative ways of increasing bear harvests if conventional hunting seasons and bag limits are not effective at reducing bear numbers to mitigate predation on ungulates.”²⁰⁵ In addition to liberalizing bear hunting, the Board has modified regulations to reduce wolf abundance. The Board acknowledged that lengthening wolf seasons is partially because “the most effective time to kill wolves is during caribou calving season,” *i.e.*, during wolf denning season.²⁰⁶ Further, the Board does not limit its liberalization of sport hunting methods to areas where it has authorized predator control programs,²⁰⁷ and it has explicitly relied on “incrementally liberalized brown bear and wolf hunting regulations . . . [to] reduc[e] predation on moose and sheep” in areas where predator control is prohibited.²⁰⁸

These liberalizations have been correlated with an increase in hunter harvest of predators.²⁰⁹ For example, in the early 1980s, the four-year running average of brown bear

¹⁹⁶ See AS § 16.05.783 (allowing the Board of Game to authorize airborne shooting or same day airborne shooting as part of game management plans); 5 AAC 92.110 (allowing for the “reduc[tion of] wolf populations . . . by any means.”); *id.* § 92.123(b)(5)(C) (“the commissioner may issue public aerial shooting permits, public lands and shoot permits, or ground-based shooting permits”).

¹⁹⁷ See, e.g., 5 AAC 92.122(b)(4)(D)(iii).

¹⁹⁸ See, e.g., *id.* § 92.122(b)(4)(D)(ii).

¹⁹⁹ ALASKA BD. OF GAME, BEAR CONSERVATION AND MGMT. POLICY at 8 (Mar. 8, 2004). [attached]

²⁰⁰ See, e.g., ALASKA DEP’T. OF FISH & GAME, SUMMARY OF CHANGES FOR 2018–2019 at 1 (2018) (allowing take of brown bears at bait stations during the open black bear baiting season).[attached]

²⁰¹ See, e.g., 5 AAC 92.122(b)(4)(D)(v).

²⁰² See, e.g., *id.* § 92.122(b)(4)(D)(vii).

²⁰³ See e.g., ALASKA DEP’T. OF FISH & GAME, PREDATOR CONTROL IN UNIT 16 at 4 (2009).[attached]

²⁰⁴ E-mail from Sandy Rabinowitch, Subsistence Manager, Nat’l Park Serv., to Debora Cooper, Nat’l Park Serv. (Apr. 4, 2014, 11:41 AKST). [attached]

²⁰⁵ CLIFF JUDKINS, CHAIRMAN, ALASKA BD. OF GAME, FINDINGS OF THE ALASKA BD. OF GAME 2011-186-BOG: BD. OF GAME BEAR CONSERVATION, HARVEST, AND MANAGEMENT POLICY 4 (Mar. 25, 2011).

²⁰⁶ Tracy Ross, *Palin, Politics, and Alaska Predator Control*, HIGH COUNTRY NEWS (Feb. 21, 2011) [attached]; see also W.L. Regelin, P. Valkenburg, & R.D. Boertje, *Management of Large Predators in Alaska*, WILDLIFE BIOLOGY IN PRACTICE, 1(1): 78 (June 2005) (The State uses “[s]eason timing and length, rather than a bag limit . . . to manage the level of harvest” of wolves).

²⁰⁷ PATRICIA HARPER & LAURA A. MCCARTHY, EDs., ALASKA DEP’T. OF FISH & GAME, BROWN BEAR MANAGEMENT REPORT OF SURVEY INVENTORY ACTIVITIES at 221 (2013).

²⁰⁸ ALASKA DEP’T OF FISH AND GAME, WOLF MANAGEMENT REPORT OF SURVEY INVENTORY ACTIVITIES 1 JULY 1999-30 JUNE 2002 at 218 (Dec. 2003) [attached]; see also U.S. DEP’T OF INTERIOR, NAT’L. PARK SERV., ALASKA REG’L. OFFICE, BRIEFING STATEMENT FOR FY 2015 (2015) [attached]; E-mail from Kyle Joly, Nat’l. Park Serv., to Jeff Rasic et al., Nat’l. Park Serv. (Feb. 24, 2014, 10:12 AKST) [attached]; ALASKA DEP’T OF FISH AND GAME, HUNTING AND TRAPPING EMERGENCY ORDER NO. 04-01-11 (Mar. 31, 2011). [attached]

²⁰⁹ Sterling Miller & John Schoen, Comment Letter on Env’t. Assessment for Sport Hunting and Trapping in Nat’l. Preserves in Alaska at 12, 13 (Nov. 3, 2018) [attached]; PATRICIA HARPER & LAURA A. MCCARTHY, EDs., ALASKA DEP’T. OF FISH & GAME, BROWN BEAR MANAGEMENT REPORT OF SURVEY INVENTORY ACTIVITIES at 168 (2013); Sterling D. Miller, Wildlife Biologist, Div. of Wildlife Conservation, Alaska Dep’t of Fish & Game, Brown Bears in

harvest was approximately 400 bears in the 76% of Alaska where brown bear harvest regulations have since been significantly liberalized.²¹⁰ In that same area, since the 2007–2008 regulatory year, that figure more than doubled, consistently exceeding 800 bears, peaking at 910 bears in the 2011–2012 regulatory year.²¹¹ As another example, in 2013, the Board substantially relaxed bear hunting regulations on the Kenai Peninsula by extending the season and increasing the bag limit from one bear every four years to one bear per year.²¹² As a result, the 2013 bear hunting season saw 45 bears killed by sport hunting, up from 32 the previous year and a major increase from the 11 bear average from 1973 to 2011.²¹³ After the Board authorized bear baiting in 2014, 67 bears were killed before the Alaska Department of Fish & Game (ADF&G) closed the season early.²¹⁴ The State made little effort to monitor bear populations following adoption of these regulations or “to estimate sustainable harvest rates.”²¹⁵ The Service has indicated that bear harvest rates in the area may “affect population growth.”²¹⁶

ADF&G has acknowledged that the Board specifically liberalizes hunting regulations as a way to try to achieve increases in prey populations in areas where Service regulations prohibit formal predator control programs:

The predator control component of “intensive management” would probably be ineffective for increasing moose numbers in Unit 23 because >60% of the unit is federal public land [including Bering Land Bridge National Preserve, Noatak National Preserve, and Gates of the Arctic National Preserve]. Therefore, since the early 1990s the state has incrementally liberalized brown bear and wolf hunting regulations to afford the public greater opportunity to harvest these species thereby reducing predation on moose and sheep.²¹⁷

Following ANILCA’s passage, the State maintained “a buffer zone” between National Park System units and predator control areas.²¹⁸ Into the early 2000s, only a few predator control

Alaska: A Statewide Management Overview (1993) (“Widespread liberalizations of bear hunting regulations, especially in interior areas, contributed to increased harvests.”) [attached]; see Center for Biological Diversity, Petition for Emergency Closure of, and Permanent Ban on, Brown Bear Hunting in the Kenai National Wildlife Refuge 5–6 (Aug. 11, 2014).

²¹⁰ Sterling D. Miller, John W. Schoen & Charles C. Schwartz, *Trends in brown bear reduction efforts in Alaska, 1980-2017*, 28(2) URSUS 135, 138, 140 (2017) (over 22 years, the Board liberalized hunting regulations for resident brown bear hunters 222 times).

²¹¹ *Id.* at 140.

²¹² Center for Biological Diversity, Petition for Emergency Closure of, and Permanent Ban on, Brown Bear Hunting in the Kenai National Wildlife Refuge 5–6 (Aug. 11, 2014).

²¹³ Center for Biological Diversity, Petition for Emergency Closure of, and Permanent Ban on, Brown Bear Hunting in the Kenai National Wildlife Refuge 5–6 (Aug. 11, 2014).

²¹⁴ Jeff Selinger, Soldotna Area Biologist Div. of Wildlife Conservation, Alaska Dep’t of Fish & Game, Kenai Peninsula Registration Brown Bear Hunt Closes October 21 (Oct. 20, 2014); Center for Biological Diversity, Petition for Emergency Closure of, and Permanent Ban on, Brown Bear Hunting in the Kenai National Wildlife Refuge 5–6 (Aug. 11, 2014).[attached]

²¹⁵ *Id.* at 142.

²¹⁶ National Park Service, Brown Bear Population Size and Harvest in Northwest Alaska, *available at*: <https://www.nps.gov/articles/000/bbearharvest.htm>. [attached]

²¹⁷ ALASKA DEP’T FISH & GAME, WOLF MGMT. REPORT OF SURVEY AND INVENTORY ACTIVITIES at 218 (2003).

²¹⁸ Roger J. Contor, Reg’l. Dir., Alaska Region, Nat’l. Park Serv., Remarks to the Alaska Bd. of Game 8 (Dec. 2, 1984). [attached]

areas abutted National Park System lands.²¹⁹ But by the mid-2010s, they virtually surrounded many National Park System units.²²⁰ This has impacted wildlife within the National Park System.²²¹ For example, in Yukon-Charley Rivers National Preserve, the Service discontinued long-standing wolf studies because the State’s predator control program adjacent to the Preserve killed so many wolves.²²² In Lake Clark National Park and Preserve, the Service observed: “[p]redator control on two sides of [the unit] impacts the natural predator/prey systems that are a hallmark of the area.”²²³ These population sinks outside of Park System units present an ongoing threat. A study of wolf packs that live primarily within Park Service units “documented high levels of human-caused mortality, most of which occurred outside protected-area boundaries,”²²⁴ and “of greater concern, these mortalities had detrimental effects on gray wolf pack-level biological processes.”²²⁵

Before adopting the 2015 Rule, the Service repeatedly asked the State to exempt National Preserves from such regulations, without success.²²⁶ In making these requests, the Service explained that State law requirements to provide for high levels of human harvest of game “are incompatible with [the Service’s] laws and implementing policies, which require maintaining natural processes, systems, and wildlife populations.”²²⁷ The Service also identified specific measures as “inconsistent with the management of national parks,” including using artificial lights to harvest black bears, taking brown bears over bait, and taking wolves or coyotes with young pups.²²⁸ The State refused to exempt the Preserves, asserting that the Service is

²¹⁹ U.S. DEP’T OF INTERIOR, NAT’L. PARK SERV., ALASKA REGION, STATE OF ALASKA PREDATOR CONTROL AREAS MAPS. [attached]

²²⁰ *Id.*; U.S. DEP’T OF INTERIOR, NAT’L. PARK SERV., ALASKA REGION, WILDLIFE HARVEST ON NAT’L. PARK SYSTEM PRESERVES IN ALASKA ENVIRONMENTAL ASSESSMENT at 13–14 (Sept. 2014).

²²¹ Schmidt, J.H., J.W. Burch, M.C. MacCluskie, *Effects of Control on the Dynamics of an Adjacent Protected Wolf Population in Interior Alaska*, WILDLIFE MONOGRAPHS 198:1–30 (2017). [attached]

²²² Anna V. Smith, *Park Serv. ended a wolf study in Alaska since so many have been killed*, HIGH COUNTRY NEWS, (Aug. 12, 2016) [attached]; Jeff Richardson, *Park Serv., State Clash on Interior Wolf Killings*, FAIRBANKS DAILY NEWS-MINER (Mar. 2, 2014) [attached]; Letter from Greg Dudgeon, Nat’l. Park Serv. to Dr. Richard Steiner (July 29, 2016) [attached]; William J. Ripple et. al., *Large carnivores under assault in Alaska*, 17(1) PLOS BIOLOGY e3000090 at 5 (2019).

²²³ U.S. DEP’T OF INTERIOR, NAT’L. PARK SERV., KEEPING IT WILD IN THE NAT’L. PARK SERV.: A USER GUIDE TO INTEGRATING WILDERNESS CHARACTER INTO PARK PLANNING, MANAGEMENT, AND MONITORING 164, 167 (January 2014). [attached]

²²⁴ Cassidy et. al., *Human-caused mortality triggers pack instability in gray wolves*, FRONTIERS IN ECOLOGY AND THE ENV’T. 6 (2023). [attached]

²²⁵ *Id.*

²²⁶ 2015 Rule at 64331; Memorandum from Sue Masica, Nat’l Park Serv. Reg’l Dir., Alaska, to the Secretary of the Interior (June 20, 2013). [attached]

²²⁷ U.S. Dep’t of Interior, Nat’l Park Serv., Comment to the Alaska Bd. of Game and Alaska Dep’t of Fish and Game 3 (Jan. 2014); *see also* U.S. Dep’t of Interior, Nat’l Park Serv., Alaska Region, Comment Letter to the Alaska Bd. of Game (Feb. 01, 2018) [attached]; Letter from Joel L. Hard, Deputy Reg’l. Dir., Nat’l Park Serv., Alaska Region, to Doug Vincent-Lang, Acting Dir., State of Alaska Dep’t. of Fish and Game (Apr. 3, 2013). [attached]

²²⁸ U.S. Dep’t of Interior, Nat’l Park Serv., Comment to the Alaska Bd. of Game and Alaska Dep’t of Fish and Game 3 (Jan. 2014); *see also* U.S. Dep’t of Interior, Nat’l Park Serv., Preamble to the Superintendent’s Compendium: Gates of the Arctic Nat’l. Park and Preserve (2014) [attached]; Krista Langlois, *Alaska’s Wildlife War*, HIGH COUNTRY NEWS (May 27, 2014); U.S. Dep’t of Interior, Nat’l Park Serv., Preamble to the Superintendent’s Compendium: Denali Nat’l. Park (2014).

responsible for compliance with federal law and that it should use its own authority to do so.²²⁹ The Service began adopting temporary restrictions in 2010 to prevent the liberalized sport hunting regulations from applying to Preserves.²³⁰ By 2013, the Service estimated that—absent its intervention—State sport hunting regulations aimed at reducing predator populations would have applied to ninety-percent of the Preserves.²³¹ The Service then adopted final regulations in 2015 prohibiting predator control in National Preserves and banning certain practices.²³² This Rule protected wildlife and provided for public use and enjoyment consistent with ANILCA, the Organic Act, and the Wilderness Act.

In sum, prior to adopting the 2020 Rule, the Service’s long-standing position was that the State’s “regulatory processes do not substitute for [federal] law, regulation, or policy, nor can they relieve [the Service] of [its] responsibilities.”²³³ Indeed, the Service historically viewed the State’s approach to natural resource management as “dramatically inappropriate for implementation within units of the National Park System,”²³⁴ and the Service interpreted its statutory mandates as precluding State management actions and decisions intended to reduce predator populations.²³⁵ For example, the Service has explicitly found that predator control activities directly conflict with its requirements for managing Wilderness. In a guidance document regarding management of Wilderness, the Service specifically identified that predator

²²⁹ Information Memorandum for the Secretary: Wildlife Management in the Nat’l. Park Serv. 2 (date unknown) (explaining State “encouraged the NPS to use its own authorities,” then “object[ed] strongly and accus[ed] NPS of Federal ‘overreach’” when it did); *see also* Alaska Bd. of Game, Transcript of Proceedings (Excerpt) at 10–11 (Feb. 27, 2010) [attached]; U.S. Dep’t of Interior, Nat’l Park Serv., Preamble to the Superintendent’s Compendium: Denali Nat’l. Park (2014); U.S. Dep’t of Interior, Nat’l Park Serv., Preamble to the Superintendent’s Compendium: Lake Clark Nat’l. Park and Preserve (2014). [attached]

²³⁰ U.S. DEP’T OF INTERIOR, NAT’L PARK SERV., REVISITING SPORT HUNTING & TRAPPING ON NATIONAL PRESERVES, REVISED ENVIRONMENTAL ASSESSMENT 11 (Jan. 2023); U.S. DEP’T OF INTERIOR, NAT’L. PARK SERV., AGENDA CHANGE REQUEST FORM SUBMITTED TO ALASKA BD. OF GAME (Nov. 6, 2013) [attached]; U.S. Dep’t of Interior, Nat’l Park Serv., Determination of Need for a Restriction, Condition, Public Use Limit, or Closure: Temporary closures or restrictions to taking wildlife (black bears). [attached]

²³¹ Memorandum from Geoff Haskett, Fish & Wildlife Serv. Alaska Reg’l. Dir. and Sue Masica, Nat’l Park Serv. Alaska Reg’l. Dir., Overview of USFWS and NPS Wildlife Management Issues in Alaska (Nov. 11, 2013). [attached]

²³² 2015 Rule at 64331.

²³³ Letter from Joel Hard, Deputy Reg’l. Dir., Nat’l. Park Serv., Alaska Region, to Doug Vincent-Lang, Acting Dir., Alaska Dep’t. of Fish and Game (Dec. 14, 2012). [attached]

²³⁴ Nat’l. Park Serv., Alaska Region, Comments to the Alaska Bd. of Game 6–8 (Aug. 22, 1984) [attached]; *see also* Michael Finley, Associate Reg’l. Dir. for Operations for the Nat’l. Park Serv., Statement to the Alaska Bd. of Game (Mar. 26, 1985) [attached]; Letter from Joel L. Hard, Deputy Reg’l. Dir., Nat’l. Park Serv., Alaska Region, to Doug Vincent-Lang, Acting Dir., State of Alaska Dep’t. of Fish and Game (Dec. 14, 2012); Master Memorandum of Understanding between the State of Alaska Dep’t. of Fish and Game and the U.S. Nat’l. Park Serv. (Oct. 1982) [hereinafter Master Memorandum of Understanding] [attached]; Nat’l Park Serv., Collected Comments to the Alaska Bd. of Game and Alaska Dep’t of Fish and Game [attached]; Letter from Sue Masica, Reg’l. Dir., Nat’l. Park Serv., Alaska Region to Cora Campbell, Comm’r., Alaska Dep’t. of Fish and Game (June 03, 2013) [attached]; BRIEFING FOR THE US DEP’T. OF THE INTERIOR: WILDLIFE MANAGEMENT – NAVIGATING THE DIFFERENT MANDATES OF THE NPS/FWS AND STATE OF ALASKA (July 2014). [attached]

²³⁵ *See, e.g.*, Roger J. Contor, Reg’l. Dir., Alaska Region, Nat’l. Park Serv., Remarks to the Alaska Bd. of Game 8 (Dec. 2, 1984); NAT’L. PARK SERV., NPS-ALASKA PROPOSES HUNTING REGULATIONS FOR NAT’L. PRESERVES (Sept. 4, 2014) [attached]; U.S. DEP’T OF INTERIOR, NAT’L PARK SERV., COMPENDIUM PREAMBLE: SUMMARY OF COMMENTS AND NPS RESPONSE TO WILDLIFE PROVISIONS (2013) [attached]; U.S. DEP’T OF INTERIOR, NAT’L PARK SERV., OVERVIEW OF PROPOSED RULE AND PROPOSED COMPENDIUMS (2015). [attached]

control impairs the “untrammled” Wilderness character.²³⁶ In 2014, the Service concluded that policies intended to decrease predator populations to increase ungulates available for harvest would result in “long-term negative impacts” by “degrad[ing] the natural quality of the [W]ilderness areas from the reduction in populations of indigenous predators and the concomitant increase in prey species and by altering natural wildlife behavior.”²³⁷ More generally, the Service recognized that it would need to preempt State sport hunting regulations from applying on Preserves where incompatible with “Preserve goals, objectives or management plans.”²³⁸ Indeed, the Service promulgated the 2015 Rule to address these conflicts between State and federal law.²³⁹

C. The Service cannot allow State wildlife regulations that conflict with federal law within National Preserves.

State law must yield where it conflicts with federal law.²⁴⁰ The Supremacy Clause of the Constitution mandates that state laws that interfere with, or are contrary to, federal law are preempted.²⁴¹ Congress enacted ANILCA, the Organic Act, and the Wilderness Act under the Property Clause of the U.S. Constitution.²⁴² In *Kleppe v. New Mexico*, the U.S. Supreme Court recognized that Congress has the power to enact legislation respecting federal lands pursuant to the Property Clause and — when Congress does enact such legislation — it “necessarily overrides conflicting state laws under the Supremacy Clause.”²⁴³ The Ninth Circuit has held that “ANILCA preserves the federal government’s plenary power over public lands in Alaska.”²⁴⁴ Thus, these federal statutes preempt conflicting State laws and regulations on federal property, in this case Alaska’s National Preserves.

²³⁶ See U.S. DEP’T OF INTERIOR, NAT’L PARK SERV., KEEPING IT WILD IN THE NAT’L PARK SERV., A USER GUIDE TO INTEGRATING WILDERNESS CHARACTER INTO PARK PLANNING, MGMT., AND MONITORING 172, 177 (2014).

²³⁷ 2014 EA at 28–32.

²³⁸ Master Memorandum of Understanding at 3. See also U.S. DEP’T OF INTERIOR, NAT’L PARK SERV., DENALI NAT’L PARK AND PRESERVE COMPENDIUM 52 (2015) (“The State of Alaska is the primary entity responsible for managing wildlife in accordance with State mandates. At the same time, the [Service] is charged with the responsibility for assuring that the take of fish and wildlife is consistent with the fundamental purposes of the park system and individual park units.”) [attached]; U.S. DEP’T OF INTERIOR, NAT’L PARK SERV., ALASKA REGION, COMPILATION OF CLOSURE AUTHORITY BACKGROUND MATERIAL 4 (Dec. 11, 2012) (“when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation [is] predominant. ANILCA[‘s] mandates for sport hunting do not insulate the [Service] from that overarching obligation. Manipulating wildlife populations to meet greater hunter demands is not an appropriate use of any park area.”). [attached]

²³⁹ 2015 Rule at 64325. (“This rule provides that the [Service] does not adopt State of Alaska management actions or laws or regulations that authorize taking of wildlife, which are related to predator reduction efforts.”).

²⁴⁰ See, e.g., *Kleppe v. New Mexico*, 426 U.S. 529 (1976).

²⁴¹ U.S. Const. art. VI, cl. 2; see also *Nat’l Audubon Soc’y v. Davis*, 307 F.3d 835, 851 (9th Cir. 2002) (explaining state laws are invalidated by the Supremacy Clause of the U.S. Constitution where they conflict with federal law).

²⁴² U.S. Const. art. IV, § 3, cl. 2 (“Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”).

²⁴³ 426 U.S. at 543.

²⁴⁴ *Safari Club Int’l v. Haaland*, 31 F.4th 1157, 1165 (9th Cir. 2022).

Courts have consistently found state wildlife laws to be preempted when those laws conflict with the Service’s mission or regulations.²⁴⁵ In *United States v. Brown*, for example, the State of Minnesota wanted to implement state hunting laws on water adjacent to and surrounded by Voyageurs National Park.²⁴⁶ The court explained that, “[w]here the State’s laws conflict with the . . . regulations of the National Park Service . . . the local laws must recede.”²⁴⁷ Similarly, the Ninth Circuit has held that “ANILCA vests the [federal government] with plenary authority ‘to protect-if need be, through expansive regulation-’ the national interest in the . . . environmental values on the public lands” which, in Alaska, includes “maintaining ‘sound populations of [] wildlife species of inestimable value.’”²⁴⁸ In the 2020 Rule, the Service erroneously described its authority to regulate hunting on federal lands in Alaska as limited and deferential to the State.²⁴⁹ It is well established that the federal government maintains plenary power over these lands and the authority to preempt conflicting State law.²⁵⁰

The State’s intensive management statute—and the Board’s implementation of it through predator control programs and liberalization of hunting and trapping—operate as an obstacle to achieving Congress’s objectives set out in ANILCA, the Organic Act, and the Wilderness Act. Consistent with these statutes, longstanding Service Management Policies seek to sustain and protect natural populations and processes while avoiding artificial manipulation of species.²⁵¹ The Board, on the other hand, is charged with maintaining consistently high numbers of prey populations.²⁵² This does not allow for the natural populations and predator-prey processes the Service must protect. Thus, on its face, Alaska’s intensive management statute conflicts with federal laws that specifically promote conservation of natural processes and natural and healthy populations, rather than the “achieve[ment of] human consumptive use goals.”²⁵³

The Service previously recognized that the State’s sustained yield requirements are not equivalent to the Service’s Management Policies, nor is the State’s definition of “sustainable levels” equivalent to federal requirements for wildlife management on federal lands. Following the ruling in *Alaska Wildlife Alliance v. Haaland*, 632 F. Supp. 3d 974 (D. Alaska 2022), the Service determined it “cannot fully rely on State management to ensure consistency with Federal law and policy.”²⁵⁴ In the Proposed Rule, the Service appears to be reversing this position, and

²⁴⁵ ROBERT L. GLICKMAN & GEORGE CAMERON COGGINS, *MODERN PUBLIC LAND LAW* 260 (2001) (“Because the NPS Organic Act does not defer to state wildlife law, the Park Service is not constrained by that law.”); *see also* R. Gerald Wright, *Wildlife Management in National Parks: Questions in Search of Answers*, 9 *ECOLOGICAL APPLICATIONS* 30, 32 (1999) (“From its beginning, the [Service] has maintained exclusive jurisdiction over the management of wildlife in parks. And, although legally contested by individual state game departments, court decisions have uniformly supported the right of the [Service] to own and manage wildlife on its lands.”). [attached]

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

²⁴⁷ *Id.* at 63; *see also Kleppe*, 426 U.S. at 541 (holding that the argument that Congress lacks power to administer public lands contrary to state law without state consent is “without merit”).

²⁴⁸ *Safari Club Int’l*, 31 F.4th at 1169 (second alteration in original).

²⁴⁹ 2020 Rule at 35182 (explaining “the statutory scheme [] requires the management of hunting and trapping in preserves under State law and reserves limited closure authority to NPS for enumerated purposes.”).

²⁵⁰ *Id.* at 1168.

²⁵¹ Management Policies at 65.

²⁵² AS § 16.05.255(e).

²⁵³ *Id.*

²⁵⁴ Proposed Rule at 55065.

we urge the Service to further clarify this important point.²⁵⁵ For the reasons discussed above, the State’s wildlife management scheme is incompatible with federal statutes and the Service’s Management Policies, and it would be unlawful for the Service to adopt a Final Rule allowing State regulations governing predator control and hunting to apply to National Preserves in Alaska. We therefore urge the Service to repromulgate the 2015 Rule’s prohibition on predator reduction efforts.

VI. THE CURRENT DEFINITION OF TRAPPING PROVIDES NECESSARY CLARIFICATION.

The Service must clarify that only those activities that involve use of a trap constitute trapping. The Service proposes amending the definition of trapping as applicable in National Preserves in Alaska to remove the explicit requirement that individuals use a trap.²⁵⁶ Without such a requirement, individuals with a trapping license may shoot and kill free-ranging furbearers that have not been trapped. Only individuals with a hunting license should be able to shoot free-ranging furbearers.²⁵⁷ This revision reduces clarity by creating ambiguity about when a firearm may be used and creates conflict with other Service regulations.

The Service proposes to remove language from the definition of trapping because the Service thinks it does not add clarity and is therefore unnecessary.²⁵⁸ The Service attempts to rationalize this removal by stating that “State of Alaska regulations address the circumstances in which furbearers may be taken by firearm.”²⁵⁹ The Service therefore concludes that the current definition does not “contribute to clarity and is unnecessary and, therefore, is inconsistent with E.O. 14192 to reduce unnecessary regulations.”²⁶⁰ However, the Service’s reasoning for changing the definition of trapping is misguided. The Service is incorrect that State regulations address when furbearers may be taken by firearm. The State allows the take of furbearers “by any method, unless prohibited in 5 AAC 92.080 or 5 AAC 92.095.”²⁶¹ Neither referenced provision clarifies that take under a trapping license is limited to killing methods directly associated with a trap.²⁶² Thus, it is not clear when a State trapping license holder may use a firearm to kill an animal, and the license holder could be confused about whether shooting a free-ranging furbearer without using a trap is authorized.

²⁵⁵ In *Alaska Wildlife Alliance v. Haaland*, 632 F. Supp. 3d 974 (D. Alaska 2022) the court held that the 2020 Rule was arbitrary and capricious in three respects: (1) the Services narrow interpretation of its management authority; (2) the Service’s finding that State law is equivalent to the Services federal conservation mandates; (3) the Services failure to explain its conclusions regarding the safety of bear baiting. In the Proposed Rule, the Service indicates that statements in the preamble to the 2024 Rule addressing points 1 and 2 “are not disturbed by this proposed rule.” Proposed Rule at 11488.

²⁵⁶ Proposed Rule at 11493.

²⁵⁷ 2024 Rule at 55066.

²⁵⁸ *Id.* at 11491 (citing Exec. Order No. 14192, 90 Fed. Reg. 9065 (Jan. 31, 2025)).

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ 5 AAC 92.075(d).

²⁶² See 5 AAC 92.080(7)(P-Q) (prohibiting the use of traps of a certain size); 5 AAC 92.095 (listing specific methods and means of taking furbearers under a trapping license without defining what constitutes take under a trapping license).

In promulgating the 2024 Rule, the Service recognized that greater clarity was needed.²⁶³ The Service explained that the 2015 Rule had “inadvertently omitted reference to the use of traps,” raising questions about what methods of harvest are permissible under a trapping license.²⁶⁴ Public comments indicated there was “confusion on when a firearm can be used under a trapping license.”²⁶⁵ To resolve these questions, the Service amended the definition, currently in effect at 36 C.F.R. § 13.1. The Service is now inexplicably reversing course. In arguing that this added language did not actually contribute to clarity, the Service ignores the history behind this language: it was added in direct response to confusion about when a firearm may be used to kill a furbearer under a trapping license. The language the Service proposes to delete is direct and clear: under a trapping license, a firearm may only be used to kill an animal that has already been trapped.

Further, the Service’s proposed change to 36 C.F.R. § 13.1’s definition of trapping is inconsistent with the Service’s definition of trapping applicable to Park System units other than National Preserves in Alaska. Under 36 C.F.R. § 1.4, “trapping” is defined as “taking or attempting to take wildlife *with a trap*.” The Service has not sufficiently explained why treating trapping in Alaska’s National Preserves differently than trapping in other Park System units is necessary or appropriate. Such inconsistency is likely to be a source of confusion.

Because the proposed change removes necessary clarifying language and creates confusion and inconsistency with other Service regulations, the Service should reject the proposed change. The definition of trapping should remain as currently stated in 36 C.F.R. § 13.1, explaining that the take of furbearers under a trapping license requires that the animal be captured with a trap.

VII. THE SERVICE MUST EXPLAIN ITS POSITION ON CAPTURING LIVE WILDLIFE.

The Service seeks to permit the live capture of wildlife in National Preserves in Alaska, but it must first explain how capturing live wildlife falls within an allowable use under ANILCA, and it appears unlikely that such activities are lawful. ANILCA requires the Service to protect sound populations of wildlife.²⁶⁶ More specifically, the Service must manage nearly all of the National Park System units in Alaska to protect wildlife populations and habitat,²⁶⁷ and it must protect natural processes and maintain environmental integrity.²⁶⁸ Congress allowed sport hunting and trapping in Alaska’s National Preserves, subject to federal regulation and non-conflicting State laws and regulations.²⁶⁹ In the 2017 Rule, the Service acknowledged that hunting and trapping in Alaska’s National Preserves is permitted under ANILCA, but it prohibited the live capture of raptors, reasoning that the capture or collection of live raptors is neither hunting nor trapping.²⁷⁰ Now, without explaining how this practice is a form of hunting or trapping, the Service proposes to allow the capture of live raptors in Alaska’s National

²⁶³ 2024 Rule at 55065–66.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ 16 U.S.C. § 3101(b).

²⁶⁷ *Id.* § 410hh; *id.* § 401hh(1)–(2), (4)(a), (6)–7(a), 8(a), (9)–(10); *id.* § 401hh-1(2), (3)(a).

²⁶⁸ *Id.* §§ 410hh(1), (8)(a), (10).

²⁶⁹ *Id.* § 3201.

²⁷⁰ Alaska; Subsistence Collections, 82 Fed. Reg. 3626, 3628 (Jan. 12, 2017).

Preserves.²⁷¹ This change without justification is arbitrary. The Service must provide a rational and well-supported explanation as to why capturing live wildlife in National Preserve's in Alaska is permissible under ANILCA or else reject this proposal.

VIII. CLOSURES SHOULD BE POSTED ONLINE AND PUBLIC HEARINGS SHOULD NOT BE REQUIRED PRIOR TO EMERGENCY CLOSURES.

The Service's proposed changes to its closure procedures should be rejected because they are unreasonable and arbitrary. First, the Service proposes limiting the means of communication to provide public notice of closures and restrictions. Second, the Service suggests that, in the face of an emergency, the Service should hold a public hearing before it can close or restrict Park System units. These proposed changes are unreasonable and contrary to the Service's role as protector of Park System resources.

The Service should continue its practice of providing public notice of closures and restrictions by posting on its website. Currently, the Service is required to notify the public of closures and restrictions by preparing a list of such actions, posting the list online, and having it available at Park headquarters, as well as through other means "reasonably likely to inform residents in the affected vicinity," such as publishing in newspapers, announcing on the radio, or posting on signs in the local vicinity.²⁷² This is a reasonable approach because it ensures wide distribution of notice and uses methods reasonably likely to inform affected users. Now, the Service proposes limiting the methods of notice. Specifically, asserting that the internet "is not always a reliable means of notifying people . . . in Alaska's remote parklands," the Service proposes abandoning internet notice altogether.²⁷³ In this technological age, removing internet posting as a method of notice is simply illogical. Internet connectivity continues to expand, and use continues to become more important, even in remote reaches of Alaska. In 2016, 86.7% of Alaska's households had internet access.²⁷⁴ In 2021, 90.7% of all households in Alaska had a broadband internet subscription, and 86.8% of rural households had such a subscription.²⁷⁵ Recently, the State received approval for a federally-funded grant program, awarding nearly \$630 million to more than a dozen companies to extend high-speed internet to more than 46,000 homes and businesses across Alaska.²⁷⁶ The Service has been using the internet to post closures for many years,²⁷⁷ and the State has recognized the need to include online notice.²⁷⁸ Indeed,

²⁷¹ Proposed Rule at 11491.

²⁷² 36 C.F.R. § 13.50(f).

²⁷³ Proposed Rule at 11491, 11494.

²⁷⁴ Nat'l Ctr. for Educ. Statistics, Table 702.60.: Number and percentage of households with computer and internet access, by state (2016). [attached]

²⁷⁵ Daniela Mejía, U.S. CENSUS BUREAU, *Computer and Internet Use in the United States: 2021* at 12 (June 2024). [attached]

²⁷⁶ Alex DeMarban, *Federal Program Poised to Provide \$629M to Boost Internet Access Across Alaska*, ANCHORAGE DAILY NEWS (Mar. 17, 2026), <https://www.adn.com/business-economy/2026/03/17/federal-program-poised-to-provide-629m-to-boost-internet-access-across-alaska/>. [attached]

²⁷⁷ 2015 Rule at 64339 ("The methods of providing notice in the rule are consistent with [Service] practices in place in Alaska for more than a decade. The primary method of notifying the public of closures or restrictions has been posting notice online.").

²⁷⁸ Letter from Bill Walker, Governor of Alaska to Herbert Frost, NPS Regional Director, re NPS 2018 Proposed Rule for Alaska; Hunting and Trapping in National Preserves at 34 (Nov. 2, 2018) (Requesting restoration of the pre-2015 closure process but "understand[ing] the need for some updates (e.g. adding the internet as an additional method of notice)").

reducing the number of ways of noticing a closure or restriction is counterproductive because this change will result in less accessible notice generally. Rather than limiting the appropriate methods of notice, the Service should seek to ensure it provides notice using all methods reasonably likely to inform affected users, including by posting online.

The Service should also allow emergency closures prior to public hearings to facilitate prompt protection of resources. The Service proposes to require notice and a hearing before the Service may close Park System units or restrict an activity on an emergency basis.²⁷⁹ Currently, prior to adopting a closure or restriction related to taking fish or wildlife, the Service is required to provide an opportunity for public comment, including holding at least one public meeting near the affected Park System unit.²⁸⁰ However, there is an exception to this requirement for emergencies.²⁸¹ The Service allowed for an emergency exception because “in certain circumstances action may be necessary to protect wildlife or public safety before there is an opportunity for public comment or a hearing.”²⁸² In these instances, the Service provides “notice of emergency closures and restrictions in accordance with the provisions of 36 CFR 13.50.”²⁸³ This procedure is reasonable to ensure that when there is an emergency threatening Park System resources and values, the Service can act promptly to protect those resources. To fulfill this goal in the face of an emergency, the Service should be permitted to act immediately to protect Park System resources and values.

In sum, the Service should not change its closure procedures related to online public notice and emergency closures. The Service should continue its practice of posting closures on the internet, as this is generally an effective means of reaching a wide swath of the public, and it can and should be used in combination with other methods. The Service should be permitted to promptly close Park System units during an emergency rather than delaying to hold a public hearing. The proposed changes are unreasonable and arbitrary and should be rejected.

IX. THE SERVICE MUST PREPARE AN EIS TO COMPLY WITH NEPA.

The Service must prepare a comprehensive EIS evaluating the Proposed Rule before taking further action. Congress enacted NEPA to ensure the federal government protects and enhances the natural environment and engages with the public in doing so.²⁸⁴ NEPA’s twin aims are to ensure that federal agencies take a hard look at the environmental impacts of their proposed actions before taking an action and to ensure that agencies provide relevant information to the public so the public can play a role in both the decision-making process and the implementation of the decision.²⁸⁵

The Service must comply with NEPA before it can adopt the Proposed Rule. An EA is insufficient. NEPA requires federal agencies to prepare a detailed EIS for every proposed major

²⁷⁹ Proposed Rule at 11491, 11494.

²⁸⁰ 36 C.F.R. § 13.50(e)(1).

²⁸¹ *Id.*

²⁸² 2015 Rule at 64339.

²⁸³ 2015 Rule at 64339.

²⁸⁴ 42 U.S.C. § 4331.

²⁸⁵ *See generally Id.* U.S.C. §§ 4331, 4332(1).

federal action where it is reasonably foreseeable that the project will have a significant impact on the quality of the human environment.²⁸⁶ The Proposed Rule would significantly increase pressures on subsistence users and the wildlife and resources they depend on by allowing urban residents of the State to engage in subsistence activities that are currently limited to rural residents of the State. Allowing more than 400,000 urban residents of the State to participate in subsistence activities would clearly violate federal law, but even assuming it were lawful, this is a significant impact that the Service must analyze and allow the public to evaluate.²⁸⁷ The Proposed Rule would also result in significant adverse impacts on natural ecosystems and processes, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife within National Preserves in Alaska. In 2014, the Service found that these impacts would be “substantial.”²⁸⁸ The Service also observed that such impacts “would be incompatible with [Service] mandates to maintain natural ecosystems, processes, and behavior of affected wildlife, especially bears.”²⁸⁹ Because the impacts from the Proposed Rule are likely to be significant, the Service must prepare an EIS.

In an EIS, the Service must engage in a comprehensive discussion of the reasonably foreseeable effects of the Proposed Rule and alternatives to the Proposed Rule. The Service must consider (1) “reasonably foreseeable environmental effects of the proposed agency action,” (2) “any reasonably foreseeable adverse environmental effects which cannot be avoided,” (3) “a reasonable range of alternatives to the proposed action,” (4) “the relationship between local short-term uses . . . and the maintenance and enhancement of long-term productivity,” and (5) “any irreversible and irretrievable commitments of Federal resources.”²⁹⁰ For example, bear baiting is likely to have negative impacts on bear behavior, upsetting the ecosystem dynamics as bears are habituated to human food, leading to increased bear-human conflict, and contributing to additional environmental harms.²⁹¹ The Service must evaluate such impacts in an EIS. The Service must also evaluate the effect of permitting State predator control programs to occur on National Preserves. It is reasonably foreseeable that the State will undertake additional intensive management and predator control actions and continue to liberalize hunting practices. The impacts from the State’s intensive management programs have already been significant. As noted above, for example, the wolves in the Yukon Charley Rivers National Preserve were so impacted by State efforts under intensive management programs that the Service discontinued studies because so many wolves were killed that it was “no longer feasible to conduct research.”²⁹²

²⁸⁶ *Id.* §§ 4332(2)(C), 4336(b)(1).

²⁸⁷ See U.S. Dept. of the Interior, Non-Rural Areas-Statewide Map, *available at* https://www.doi.gov/sites/default/files/documents/2025-08/statewidennonruralareas508_0.pdf (defining Anchorage, Fairbanks, Wasilla/Palmer, Kenai, Homer, Seward, Valdez, and Juneau as non-rural). [attached] The State of Alaska reports there are approximately 250,000 people in Anchorage, 71,000 in Fairbanks, 53,000 in Wasilla, 24,000 in Juneau, and 8,000 in Kenia alone. Alaska Dept. of Transportation, Urban Boundaries Census, *available at* <https://dot.alaska.gov/dmio/tarp/urbanboundary.shtml>. [attached]

²⁸⁸ 2014 EA at 15; *see also id.* at 17 (“Localized effects on individual animals, family groups, and packs are expected to be substantial.”).

²⁸⁹ *Id.* at 17.

²⁹⁰ *Id.* § 4332(2)(C).

²⁹¹ *Supra* Part III.

²⁹² Anna V. Smith, *Park Serv. Ended a Wolf Study in Alaska, Since so Many Have Been Killed*, HIGH COUNTRY NEWS (Aug. 12, 2016) (noting that according to Yukon Charley Rivers National Preserve Superintendent Dudgeon,

It is also vital that the Service provide a robust opportunity for public review and comment as part of the NEPA review. As has been demonstrated over the years, there is significant public interest in wildlife management in Alaska's National Preserves. The intense controversy surrounding wildlife management in the National Preserves is illustrated by the 2015 Rule, which resulted in three lawsuits. Sport hunting and guiding interests and the State challenged the 2015 Rule, and fifteen conservation organizations intervened on the side of the Park Service in each lawsuit to defend the 2015 Rule. Given the controversy surrounding this issue, the public should be afforded meaningful opportunities to provide input on the Service's NEPA analysis. Public engagement could also identify weaknesses and gaps in the Service's analysis and the Proposed Rule that could lead to significant improvements to the proposal.

In sum, to ensure compliance with NEPA, the Service must undertake an EIS to evaluate the significant effects of this Proposed Rule, consider a reasonable array of alternatives, and provide meaningful opportunities for public participation.

90 wolves with ranges in the Preserve have been killed since 2005); E-mail from Bruce Dale, Alaska Dep't of Fish & Game, to Dr. Richard Steiner (July 7, 2016) (noting that 30% of wolves killed by ADF&G between 2011 and 2015 were in the Upper Yukon-Tanana wolf control area) [attached]; Letter from Greg Dudgeon, Nat'l Park Serv., to Dr. Richard Steiner (July 29, 2016) (identifying that the State's intensive management program killed 90 wolves and impacted nine wolf packs with home ranges in the Yukon Charley Rivers National Preserve); Jeff Richardson, *Park Serv., State Clash on Interior Wolf Killings*, FAIRBANKS DAILY NEWS-MINER (Mar. 2, 2014) at 1 (Superintendent Dudgeon noting that state predator control efforts killed 36 wolves in the spring season, reducing the population by more than half).

List of Attachments	
1	Alaska; Hunting and Trapping in National Preserves, 80 Fed. Reg. 64325, 64336 (Oct. 23, 2015)
2	Alaska; Hunting and Trapping in National Preserves, 82 Fed. Reg. 3626 (Jan. 12, 2017)
3	Alaska; Hunting and Trapping in National Preserves, 85 Fed. Reg. 35181, 35187 (June 9, 2020)
4	Alaska; Hunting and Trapping in National Preserves, 89 Fed. Reg. 55059 (July 3, 2024)
5	Letter from Katie Strong, Trustees for Alaska, to Herbert Frost, NPS Regional Director, re: Comments on National Park Service Proposed Rule for Hunting and Trapping in National Preserves in Alaska (Regulation Identifier Number 1024-AE21) (Dec. 3, 2014)
6	Letter from Katie Strong, Trustees for Alaska, to Herbert Frost, NPS Regional Director, re: Comments on National Park Service Proposed Rule for Hunting and Trapping in National Preserves in Alaska (Regulation Identifier Number 1024-AE38) (Nov. 5, 2018)
7	2023 Letter from Rachel Briggs, Trustees for Alaska, to Sarah Creachbaum, NPS Regional Director, re: National Park Service Proposed Rule; RIN 1024-AE70 (Mar. 27, 2023)
8	U.S. DEP'T OF THE INTERIOR, NAT'L PARK SERV., MANAGEMENT POLICIES §§ 1.4.3 (2006)
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12	William J. Ripple et. al., <i>Large carnivores under assault in Alaska</i> , 17(1) PLOS BIOLOGY e3000090 (2019)
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14	Sophie Massé et al., <i>How Artificial Feeding for Tourism-Watching Modifies Black Bear Space Use and Habitat Selection</i> , 78(7) JOURNAL OF WILDLIFE MGMT. 1228 (2014)
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17	Nat'l Park Serv., Preamble to the Superintendent's Compendium: Gates of the Arctic Nat'l. Park and Preserve (2014)
18	Krista Langlois, <i>Alaska's Wildlife War</i> , HIGH COUNTRY NEWS (May 27, 2014)
19	Center for Biological Diversity, Petition for Emergency Closure of, and Permanent Ban on, Brown Bear Hunting in the Kenai National Wildlife Refuge (Aug. 11, 2014)

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23	Rebecca Kirby, David MacFarland, and Jonathan Pauli, <i>Consumption of Intentional Food Subsidies by a Hunted Carnivore</i> , 81(7) <i>JOURNAL OF WILDLIFE MANAGEMENT</i> 1161 (2017)
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