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*Submitted via:* <https://www.regulations.gov/commenton/NPS-2026-0034-0001>

April 9, 2026

Donald Striker, Acting Regional Director  
Alaska Regional Office  
240 West 5th Avenue  
Anchorage, AK 99501

**Subject: National Park Service Proposed Rule: Hunting and Trapping in National Preserves in Alaska – Regulation Identifier Number (RIN) 1024-AE96**

Dear Acting Regional Director Striker:

I am writing on behalf of the Coalition to Protect America's National Parks (Coalition), which represents over 5,000 current, former, and retired employees and volunteers of the National Park Service. Collectively, our membership represents over 60,000 years of national park management and stewardship experience. Our members include former National Park Service directors, deputy directors, regional directors, and park superintendents, as well as a variety of program specialists and field staff. Recognized as the Voices of Experience, the Coalition educates, speaks, and acts for the preservation and protection of the National Park System, and mission-related programs of the National Park Service (NPS). We also count among our members many former NPS employees of national parks and preserves in Alaska, as well as NPS retirees who served on the Alaska Task Forces in 1979 and 1980 just prior to the passage of the Alaska National Interest Lands Conservation Act (ANILCA)<sup>1</sup>.

We are writing to express our strong concerns about the proposed rule to amend the NPS regulations for sport hunting and trapping in national preserves in Alaska; and offer the following comments for your consideration.

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<sup>1</sup> <https://www.nps.gov/locations/alaska/upload/ANILCA-Electronic-Version.PDF>

## SUMMARY

As described in the Federal Register Notice<sup>2</sup> for the proposed rule, the National Park Service proposes to amend its regulations for hunting, fishing, trapping, and other natural resource harvest in national preserves in Alaska and for the procedures used to restrict public use and access in Alaska park areas. These changes restore National Park Service interpretations of law, policies, and regulations adopted to implement the Alaska National Interest Lands Conservation Act of 1980 that were in effect for over three decades. (*Emphasis added*) Rulemaking in 2015, 2017, and 2024 preempted methods of State-authorized fish and wildlife harvests, revised codified and established procedures for restricting public access and activities in Alaska park areas, and added severability provision, among other changes. The revisions in this proposed rule are consistent with Executive Order (E.O.) 14153, E.O. 14192, and Secretary of the Interior's Order (S.O.) 3422 titled “Unleashing Alaska's Extraordinary Resource Potential.”

## INTRODUCTION

In general, the Coalition supports sport and subsistence hunting and trapping in Alaska’s national preserves as long as such activities are conducted in accordance with applicable Federal laws, regulations, and policies, including the NPS Organic Act, as amended<sup>3</sup>, and ANILCA<sup>4</sup>, and related NPS *Management Policies 2006*<sup>5</sup>. However, these statutes and policies do NOT allow unconstrained NPS adoption of ALL State hunting regulations. NPS can only adopt State hunting regulations that are “non-conflicting” with applicable NPS laws, regulations, and policies.

In Alaska, there is a lengthy administrative history documenting first Congress’s concerns and thereafter longstanding NPS concerns about certain State-authorized predator harvest methods that conflict with NPS wildlife management mandates and policies. These conflicts have led to a series of NPS rulemakings dating back to 2014. The rule changes that have occurred after the 2015 final rule have typically occurred after changes in administration; and appear to be based, in part, on politically driven changes in NPS interpretations of its own wildlife management mandates and policies, which have not changed under the Organic Act and ANILCA. The most recent proposed rule is posted at: <https://www.regulations.gov/document/NPS-2026-0034-0001>

We have significant concerns about the NPS proposed rule, which include the following:

- The preamble of the proposed rule largely fails to acknowledge or summarize the extensive administrative history documenting these longstanding concerns about certain State-authorized predator hunting practices that conflict with NPS wildlife management mandates and policies.
- The Supplementary Information section of the preamble contains numerous errors and omissions and confusing use of terminology which makes its meaning and application unclear at best.
- The proposed rule overly defers to state hunting and trapping regulations in national preserves, when it is well established that NPS has the plenary authority to manage and regulate such use.
- Section 13.400(e) of the proposed rule inappropriately attempts to elevate the State of Alaska’s authority to regulate subsistence uses in park areas in Alaska, when it is well known that the State Constitution prohibits the State from giving preference to rural residents as required under ANILCA. This will likely cause adverse impacts to federally qualified subsistence users.
- The proposed rule would remove the NPS prohibition on bear baiting in national preserves.

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<sup>2</sup> <https://www.federalregister.gov/documents/2026/03/10/2026-04606/alaska-hunting-and-trapping-in-national-preserves>

<sup>3</sup> <https://uscode.house.gov/view.xhtml?path=/prelim@title54/subtitle1&edition=prelim>

<sup>4</sup> <https://www.nps.gov/locations/alaska/upload/ANILCA-Electronic-Version.PDF>

<sup>5</sup> <https://www.nps.gov/orgs/1548/upload/ManagementPolicies2006.pdf>

- The proposed rule will likely have adverse impacts on national preserve resources and values; yet NPS has NOT issued an environmental assessment (EA) to disclose, analyze, and allow public comment on such impacts.
- Similarly, the proposed rule will likely have adverse impacts on federally qualified subsistence uses and users; yet NPS has NOT issued an ANILCA 810 analysis to disclose, analyze, and allow public comment on such impacts.
- The NPS appears to have NOT provided all of the ANILCA established Regional Advisory Councils (RACs) or the Subsistence Resource Commissions (SRCs) with a meaningful opportunity to review and comment on this proposed rule. See ANILCA sections 805 and 808.

We will discuss these and other concerns in more detail in the Comments below. We begin with a summary of the administrative history of hunting in Alaska’s national preserves.

## BACKGROUND

**1. Legislative Overview of ANILCA** – In enacting the Alaska National Interest Lands Conservation Act (ANILCA)<sup>6</sup> in 1980, Congress's stated purpose was to establish in Alaska various conservation system units that contain nationally significant values, including units (Parks, Monuments and Preserves) of the National Park System, in order to preserve them “for the benefit, use, education, and inspiration of present and future generations[.]” [16 U.S.C. 3101](#)(a). Included among the express purposes in ANILCA are preservation of wildlife, wilderness values, and natural undisturbed, unaltered ecosystems while allowing for recreational opportunities, including sport hunting; and to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so. [16 U.S.C. 3101](#)(a)-(c) [ANILCA §101 (a-c) and ANILCA Title VIII].

Title II<sup>7</sup> of ANILCA established new units of the National Park System (park areas) and added land(s) to existing park areas. Title II also provided guidance for the administration of such park areas, which included provisions in Section 203 “[t]hat hunting shall be permitted in areas designated as national preserves under the provisions of this Act. Subsistence uses by local residents shall be allowed in national preserves and, where specifically permitted by this Act, in national monuments and parks.” Title VIII<sup>8</sup> provides guidance on Subsistence Management and Use. Title XIII<sup>9</sup> provides Administrative Provisions for the management of conservation system units established under ANILCA. Section 1313, which relates to the Administration of National Preserves, states:

§1313. A National Preserve in Alaska shall be administered and managed as a unit of the National Park System in the same manner as a national park except as otherwise provided in this Act and except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve under applicable State and Federal law and regulation. Consistent with the provisions of §816, within national preserves the Secretary may designate zones where and periods when no hunting, fishing, trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment. Except in emergencies, any regulations prescribing such restrictions relating to hunting, fishing, or trapping shall be put into effect only after consultation with the appropriate State agency having responsibility over hunting, fishing, and trapping activities. (*Emphasis added*)

<sup>6</sup> <https://www.nps.gov/locations/alaska/upload/ANILCA-Electronic-Version.PDF>

<sup>7</sup> <https://www.web-ak.com/nilca/title02.html>

<sup>8</sup> <https://www.doi.gov/sites/doi.gov/files/13-anilca-title-8-508.pdf>

<sup>9</sup> <https://www.web-ak.com/nilca/title13.html#1314>

Section 1314, which relates to the Taking of Fish and Wildlife, states:

§ 1314. (a) Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in Title VIII of this Act, or to amend the Alaska constitution. (*Emphasis added*)

(b) Except as specifically provided otherwise by this Act, nothing in this Act is intended to enlarge or diminish the responsibility and authority of the Secretary over the management of the public lands. (*Emphasis added*)

(c) The taking of fish and wildlife in all conservation system units; and in national conservation areas, national recreation areas, and national forests, shall be carried out in accordance with the provisions of this Act and other applicable State and Federal law. (*Emphasis added*) Those areas designated as national parks or national park system monuments in the State shall be closed to the taking of fish and wildlife, except that--

(1) notwithstanding any other provision of this Act, the Secretary shall administer those units of the National Park System and those additions to existing units, established by this Act and which permit subsistence uses, to provide an opportunity for the continuance of such uses by local rural residents; and

(2) fishing shall be permitted by the Secretary in accordance with the provisions of this Act and other applicable State and Federal law.

It is worth noting that only two years prior to the passage of ANILCA, Congress amended the NPS's responsibilities with the Redwood National Park Expansion Act of 1978, which states, in part:

Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System . . . shall be consistent with and founded in the purpose established by the first section of the Act of August 25, 1916, to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. 92 Stat 166 (1978). (*Emphasis added*)

As described by Julie Lurman & Sanford P. Rabinowitch in "Preemption of State Wildlife Law in Alaska: Where, When, and Why," *Alaska Law Review* 145-172 (2007)<sup>10</sup> (p. 148), "This statement [*in the Redwoods Act*] reaffirms and strengthens Congress's earlier direction on NPS's duties because it requires that the agency's actions be consistent with the conservation purpose of the parks."

The legislative history of ANILCA reinforces the purpose of the National Park System units in Alaska to maintain natural, undisturbed ecosystems. "Certain units have been selected because they provide undisturbed natural laboratories—among them the Noatak, Charley . . . watersheds." Alaska National Interest Lands, Report of the Committee on Energy and Natural Resources, United States Senate, Report No. 96-413 at page 137 [hereafter Senate Report]. Further, the congressional designation of "national preserves" in Alaska is for the specific and sole purpose of allowing sport hunting and commercial trapping, unlike areas designated as national parks or monuments. 126 Cong. Rec. H10549 (Nov. 12, 1980) (Statement of Rep. Udall). [16 U.S.C. 3201](#) (ANILCA 1313) directs that national preserves shall be managed "in the same

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<sup>10</sup> <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1063&context=alr>. See p. 148.

manner as a national park... except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve[.]”

Importantly, the legislative history of ANILCA reflects that Congress did NOT intend to modify the NPS Organic Act or its implementing policies. “[T]he Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population's dynamics, and manipulations of the components of the ecosystem.” Senate Report, at pages 232-331. As described in NPS *Management Policies 2006* § 1.4.1, the key management-related provision of the NPS Organic Act of 1916 is as follows:

[The National Park Service] shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified... by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. (16 USC 1) (*Emphasis added*)

In addressing wildlife harvest, ANILCA’s legislative history provided “the Secretary shall manage National Park System units in Alaska to assure the optimum functioning of entire ecological systems in undisturbed natural habitats. The standard to be met in regulating the taking of fish and wildlife and trapping, is that the preeminent natural values of the Park System shall be protected in perpetuity, and shall not be jeopardized by human uses.” 126 Cong. Rec. H10549 (Nov. 12, 1980) (Statement of Rep. Udall). This is reflected in the statutory purposes of various national preserves that were established by ANILCA, which include the protection of populations of fish and wildlife, including specific references to predators such as brown/grizzly bears and wolves and to prey such as moose and caribou.

More specifically, ANILCA Title II<sup>11</sup> clearly describes the congressional intent for these Preserve units:

ANILCA § 201 (1) Aniakchak National Preserve (ANIA) “shall be managed for the following purposes ... and assure continuation of the natural process of biological succession; to protect habitat for and populations of fish and wildlife, including but not limited to brown/grizzly bears, moose, caribou...”

ANILCA § 201 (2) Bering Land Bridge National Preserve (BELA) “shall be managed for the following purposes...to protect habitat for and populations of fish and wildlife, including... but not limited to brown/grizzly bears, moose, and wolves...”

ANILCA § 201 (4) Gates of the Arctic National Park and Preserve (GAAR) “Shall be managed... and the natural environmental integrity... and to protect habitat for and populations of, fish and wildlife, including but not limited to caribou, grizzly bears...moose, wolves ...”

ANILCA § 201 (7) Lake Clark National Park and Preserve (LACL) “Shall be managed...to protect the watershed necessary for perpetuation of the red salmon fishery in Bristol Bay, to maintain unimpaired the scenic beauty and quality of portions of the Alaska Range and the Aleutian Range...; and to protect habitat for and populations of fish and wildlife including but not limited to caribou, Dall sheep, brown/grizzly bears...”

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<sup>11</sup> <https://www.web-ak.com/nilca/title02.html>

ANILCA § 201 (8) Noatak National Preserve (NOAT) “Shall be managed...To maintain the environmental integrity of the Noatak River and adjacent uplands...to assure the continuation of ...biological processes unimpaired by adverse human activity, to protect habitat for and populations of wildlife...caribou, grizzly bears, Dall sheep, moose, wolves...and in a manner consistent with the foregoing, to provide opportunities for scientific research.”

ANILCA § 201 (9) Wrangell-St. Elias National Park and Preserve (WRST) “Shall be managed to maintain ... lakes, streams, valleys, and coastal landscapes in their natural state; to protect habitat for and populations of fish and wildlife...caribou, brown/grizzly bears, Dall sheep, moose, wolves...”

ANILCA § 201 (10) Yukon-Charley Rivers National Preserve (YUCH) “Shall be managed...To maintain the environmental integrity of the entire Charley River basin, including streams, lakes...in its undeveloped natural condition...to protect habitat for and populations of fish and wildlife, including but not limited to peregrine falcons...caribou, Dall sheep, grizzly bears, and wolves...”

ANILCA § 202 (1) Glacier Bay Park and Preserve - (GLBA) “Shall be managed ...to protect a segment of the Alsek River, fish and wildlife habitats and migration routes...”

ANILCA § 202 (2) Katmai National Park and Preserve (KATM) “Shall be managed...to protect habitat for and populations of fish and wildlife...high concentrations of brown/grizzly bears and their denning areas...”

ANILCA § 202 (3) Denali National Park and Preserve (DENA) “Shall be managed...to protect habitat for and populations of fish and wildlife...brown /grizzly bears, moose, caribou, Dall sheep, wolves...”

In addition, ANILCA Title VIII §804<sup>12</sup> established what is referred to as the “Preference for Subsistence Use” in stating the following:

Except as otherwise provided in this Act and other Federal laws, the 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. (*Emphasis added*) Whenever it is necessary to restrict 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, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

- (1) customary and direct dependence upon the populations as the mainstay of livelihood;
- (2) local residency; and
- (3) the availability of alternative resources.

The clear implication of ANILCA’s “subsistence preference” is that in national preserves NPS must give priority to subsistence uses of wildlife by federally qualified “Alaska rural residents” over the taking of wildlife by non-rural Alaska residents and by non-residents of the State for other purposes, such as for sport hunting under State regulations. The federal subsistence regulations are described in 43 CFR Part 51<sup>13</sup>. Whereas 36 CFR §13.42(a)<sup>14</sup> that allows hunting and trapping in national preserves “in accordance with applicable Federal and non-conflicting State law and regulation”; 43 CFR §51.14(a)<sup>15</sup> adopts State hunting

<sup>12</sup> <https://www.doi.gov/sites/doi.gov/files/13-anilca-title-8-508.pdf>

<sup>13</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51>

<sup>14</sup> <https://www.ecfr.gov/current/title-36/chapter-1/part-13/subpart-B/section-13.42>

<sup>15</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51/subpart-B/section-51.14>

regulations but only “to the extent they are not inconsistent with, or superseded by, the regulations in this part.” Despite obvious, ongoing conflicts between the federal subsistence regulations in 43 CFR Part 51<sup>16</sup> and the State’s hunting regulations<sup>17</sup>, there is little to no discussion of this concern in the preamble for the current proposed rule or in the respective preambles for the 2015, 2017, 2020, and 2024 rule. We will further discuss the administrative history of the management of subsistence uses later in this section.

**2. Laws and Policies Governing NPS Management of Park Areas** – As described in *NPS Management Policies 2006*<sup>18</sup>, Section 1.4.1, which states in part:

The most important statutory directive for the National Park Service is provided by interrelated provisions of the NPS Organic Act of 1916 and the NPS General Authorities Act of 1970, including amendments to the latter law enacted in 1978. The key management-related provision of the Organic Act is as follows:

[The National Park Service] shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified... by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. (16 USC 1)

Congress supplemented and clarified these provisions through enactment of the General Authorities Act in 1970, and again through enactment of a 1978 amendment to that act (the “Redwood amendment,” contained in a bill expanding Redwood National Park), which added the last two sentences in the following provision. The key part of that act, as amended, is as follows:

Congress declares that the national park system, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States, its territories and island possessions... it is the purpose of this Act to include all such areas in the System and to clarify the authorities applicable to the system... The authorization of activities [in parks] shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. (16 USC 1a-1) (*Emphasis added*)

Both the General Authorities Act of 1970 and the 1978 Redwoods amendment predate the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); and, therefore, certainly apply to NPS’s legal mandate for the management of Preserves in Alaska. In addition, the term “park” is used generically in the Management Policies to refer to any/all National Park System “units,” which includes “park areas” and “national preserves” in Alaska.

Prior to the passage of ANILCA, the potential for conflict between federal and State regulations and policies was anticipated by the Senate Committee when the Committee stated, “It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources.”

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<sup>16</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51>

<sup>17</sup> [https://www.adfg.alaska.gov/static/applications/web/nocache/regulations/wildliferegulations/pdfs/regulations\\_complete.pdf6694CD70D88F5D6218300D1668AE3E9A/regulations\\_complete.pdf](https://www.adfg.alaska.gov/static/applications/web/nocache/regulations/wildliferegulations/pdfs/regulations_complete.pdf6694CD70D88F5D6218300D1668AE3E9A/regulations_complete.pdf)

<sup>18</sup> <https://www.nps.gov/orgs/1548/upload/ManagementPolicies2006.pdf>

Rather, the National Park System concept requires implementation of management policies which strive to maintain natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem, and that concept should be maintained.” Senate Report at page 171.

Specific references in ANILCA<sup>19</sup> to the NPS Organic Act and to the Secretary’s authority to regulate hunting in and management of Alaska’s national preserves are significant and support that the NPS has the plenary authority under the U.S. Constitution to prohibit and/or restrict State hunting regulations that NPS determines are in “apparent conflict” with NPS management policies. The Organic Act provides the basis for many of the management policies, which were last updated in *NPS Management Policies 2006*.<sup>20</sup> The following sections of those policies are particularly relevant to NPS management of hunting and trapping in Alaska’s national preserves:

Section 1.4.3 - The NPS Obligation to Conserve and Provide for Enjoyment of Park Resources and Values, which states in part: “...when there is a conflict between conserving resources and values providing for enjoyment of them, conservation is to be predominant.” (*Emphasis added*)

Section 1.4.3.1 - Park Purposes and Legislatively Authorized Uses, which states in part: “In addition to park purposes, in the many cases the enabling legislation or proclamation for a park unit may also identify uses that are either mandated or authorized (*e.g., ANILCA authorizes and mandates hunting in national preserves*). In the administration of mandated uses, park managers must allow the use; however, they do have the authority to and must manage and regulate the use to ensure, to the extent possible, that impacts on park resources from that use are acceptable.” (*Emphasis added*)

Section 4.4.1 - General Principles for Managing Biological Resources, which states in part: “The National Park Service will maintain as parts of the natural ecosystems of parks all plants and animals native to park ecosystems...The Service will successfully maintain native plants and animals by: preserving and maintaining the natural abundances, diversities, dynamics, distribution, habitat, and behaviors of native plant and animal populations and the communities and ecosystems in which they occur.” (*Emphasis added*)

Section 4.4.3 - Harvest of Plants and Animals by the Public, which states in part: “Public harvest of designated species of plants and animals, or their components, may be allowed in park units when hunting, trapping, subsistence use, or other harvesting is specifically authorized by statute or regulation and not subsequently prohibited by regulations. (*e.g., ANILCA authorizes and mandates hunting in national preserves*.)...The Service does NOT engage in activities to reduce the numbers of native species for the purpose of increasing the numbers of harvested species (i.e., predator control), nor does the Service permit others to do so on lands managed by the National Park Service.” (*Emphasis added*)

After ANILCA’s passage, activities related to taking wildlife remain subject to other federal laws, including the mandate of the NPS Organic Act ([54 U.S.C. 100101](#)), which is “to conserve the scenery, natural and historic objects, and wild life” in units of the National Park System and to provide for visitor enjoyment of the same for this and future generations.” In a 2013 article titled *The Requirement to Leave Park Resources and Values “Unimpaired”*,<sup>21</sup> former DOI Solicitor Molly Ross wrote:

National park resources and values are a public trust created by compelling statutory language and intent. The core administrative principles of the Organic Act provide that the Park Service must

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<sup>19</sup> See ANILCA §§ 203, 1313, and 1304(b) and 1304(c).

<sup>20</sup> <https://www.nps.gov/orgs/1548/upload/ManagementPolicies2006.pdf>

<sup>21</sup> <https://www.jstor.org/stable/43598270?seq=1>. See p.74.

manage park resources and values so as to prevent or, if necessary, remedy impairment.” The term “resources and values” is used repeatedly in NPS Management Policies 2006. For example, Section 1.4 sets forth the authoritative agency interpretation of this duty, which includes the following highlights:

- Section 1.4.2 concludes that both the term “unimpaired” in the 1916 Organic Act and the term “derogation” in the 1978 Redwoods Amendment are used to describe a “single standard” of “what the National Park Service must avoid” in managing park resources and values.
- Section 1.4.3 explains how the Park Service should both conserve resources and values and provide for their enjoyment, but also declares that “when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant.”
- Section 1.4.4 identifies the impairment prohibition—separate from the above conservation mandate—as the “cornerstone of the Organic Act.”
- Section 1.4.6 defines “what constitutes park resources and values” with a comprehensive list, including tangible resources and values of every kind from individual to landscape in scope: “the park’s scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it;... native plants and animals; appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them; the park’s contribution to the values of the National Park System; and any additional specific attributes of the particular park. (*Emphasis added to underlined sections*)

Other sections of NPS *Management Policies 2006*<sup>22</sup> (e.g., §§ 4.1, 4.4.1, 4.4.1.2, 4.4.2) implementing the NPS Organic Act require the NPS to protect natural ecosystems and processes, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife. In essence, these are the core principles or “values” underlying NPS’s traditional approach to conserving and managing wildlife. The legislative history of ANILCA reflects that Congress did NOT intend to modify the NPS Organic Act or its implementing policies in this respect: “the Committee recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population’s dynamics, and manipulations of the components of the ecosystem.” Senate Report, at pages 232-331. NPS policy states that “activities to reduce . . . native species for the purpose of increasing numbers of harvested species (*i.e.*, predator control)” are not allowed on lands managed by the NPS. NPS *Management Policies 2006* § 4.4.3<sup>23</sup>.

Under the NPS Organic Act, as amended, and related management policies, the terms “resources” and “values” represent separate but related concepts; and both are to be conserved unimpaired. NPS *Management Policies 2006* §1.4.6<sup>24</sup> “What Constitutes Park Resources and Values” states, in part:

The “park resources and values” that are subject to the no-impairment standard include the park’s scenery, natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants

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<sup>22</sup> <https://www.nps.gov/orgs/1548/upload/ManagementPolicies2006.pdf>, pp. 36-44.

<sup>23</sup> *Ibid.*, pp. 46-47.

<sup>24</sup> *Ibid.*, pp. 11-12.

and animals; appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them; the park’s role in contributing to the national dignity, the high public value and integrity, and the superlative environmental quality of the national park system, and the benefit and inspiration provided to the American people by the national park system; and any additional attributes encompassed by the specific values and purposes for which the park was established. (*Emphasis added*)

In the context of the hunting rule, park “resources” are essentially commodities or raw materials such as wildlife that satisfy needs; while “values” are the principles, worth, or significance assigned to them. In this case, park “resources” could reasonably be interpreted to include individuals and/or populations of wildlife species that could be adversely impacted by the State’s “liberalized” sport hunting practices in national preserves. In effect, the “body count” or numbers of wildlife species harvested would be indicative of the relative level of impact(s) to park “resources.” Park “values” could reasonably be interpreted to include intact ecosystems that protect the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of Alaska native wildlife, as well as the opportunity for the public to enjoy observing said wildlife in its natural setting. “Values” would also include NPS core principles of wildlife management that are spelled out in the various sections of management policies identified in the paragraph above. Impacts to park “values” would be indicated, in part, by the degree to which NPS makes exceptions to its core wildlife management principles, regardless of body count, in order to adopt any of the State’s liberalized hunting regulations that conflict with NPS core principles. Simply because certain liberalized, State-authorized hunting methods, such as bear baiting or taking bears and their cubs in their dens, may result in a low body count does NOT justify NPS adopting such regulations that would adversely impact park “values” and violate NPS core principles of wildlife management. We will discuss this concern further in the General Comment section below.

**3. Early Concerns about Potential Conflicts Between State Hunting Regulations and NPS Wildlife Management Mandates** – Apparent conflicts between State of Alaska hunting regulations and NPS wildlife management policies have been a longstanding NPS concern that is well documented throughout the administrative history of park areas in Alaska since the passage of ANILCA in 1980. The potential for conflict between federal and State regulations and policies was anticipated by the Senate Committee when the Committee stated, “It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem, and that concept should be maintained.” Senate Report at page 171.

The NPS first articulated in writing its concerns about State wildlife management actions as early as 1982 with the development of the Master Memorandum of Understanding (MMOU)<sup>25</sup> between the NPS and the Alaska Department of Fish & Game. A key section of the MMOU is found on p. 3, which states, in part: “The Department of Fish and Game and the National Park Service Mutually Agree: 1. To coordinate planning for management of fish and wildlife resources on Service lands so that conflicts arising from differing legal mandates, objectives, and policies either do not arise or are minimized.” (*Emphasis added*) In other words, it was recognized from the beginning that there would be conflicts between State and NPS wildlife management policies; and, at least initially, both parties agreed to resolving or at least minimizing such conflicts.

In 1984 Alaska Regional Director Contor expressed similar concerns in testimony<sup>26</sup> to the Alaska Board of Game (BOG) on related wildlife management issues when he spoke about NPS legal authorities and

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<sup>25</sup> See Attachment 1: 1982 NPS & ADFG MMOU, p 3.

<sup>26</sup> See Attachment 2: 1984 RD Contor Remarks to BOG, pp. 3 & 5.

management policies and stated, in part: “[W]ildlife within units of the National Park System must be managed in a manner consistent with Federal law and policy... Together we must provide for the subsistence use of wildlife resources by eligible local, rural residents; provide the opportunity for sport hunting in the National Preserves; but at the same time protect the **non-consumptive values** for which the parks, monuments, preserves were created.” (*Emphasis added*) Regional Director Contor’s concerns were reinforced by NPS Associate Regional Director Michael Finley’s testimony<sup>27</sup> to the BOG in March 1985. Finley stated in part:

Senate Report 96-413 is instructive. “It is the intent of the Committee that certain traditional National Park Service management **values** be maintained. It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity, and ecological integrity of native animals as part of their ecosystem.” These various [NPS] legislative requirements should be recognized and incorporated into any wildlife management decisions made by the Board of Game for park system units whether for subsistence or sport hunting purposes. Any actions taken within a GMU that applies to a unit of the National Park System must be consistent with the Federal purposes and policies.” (*Emphasis added*)

**4. Enactment of the Alaska Intensive Management Statute and Related BOG Policies** – In 1994, the State enacted its “Intensive Management” (IM) statute and thereafter related implementing regulations. This action significantly changed the goals of State management of wildlife and sharpened the conflict between the respective State agency and NPS legal mandates. In significant contrast to NPS management policies summarized above, the State’s legal framework for managing wildlife in Alaska is based on sustained yield, which is defined by the IM statute to mean “the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game[.]” AS § 16.05.255(k)(5). To that end, the law requires the Alaska Board of Game (BOG) to “adopt regulations to provide for intensive management programs to restore the abundance or productivity of identified big game prey populations as necessary to achieve human consumptive use goals”<sup>28</sup> (AS § 16.05.255(e)) in areas that they have determined to be Intensive Management areas under 5 AAC 92.108. (*Emphasis added*)

It is important to understand what the State’s Intensive Management program entails. As described in the ADFG *Understanding Intensive Management and Predator Control in Alaska*<sup>29</sup> booklet:

In 1994, the Alaska State Legislature enacted the “Intensive Management Law,” requiring the Board to designate areas where human consumptive use is the highest priority use of wildlife, and then set prey population and harvest objectives for these areas. If management objectives are not met, the Board must consider intensive management actions, including: 1) reducing or eliminating non-resident hunting; 2) reducing or eliminating resident hunting; 3) liberalizing hunting and trapping regulations for wolves and bears; and 4) implementing habitat improvement projects (primarily prescribed fires). If these actions do not or are unlikely to result in higher levels of prey for food for people, and predation is the key limiting factor, the Board may consider predator control. (*Emphasis added*) (p. 4)

Regarding “predator control,” the booklet states, in part:

Predator control is not hunting. Predator control is a specific type of management action intended to reduce predator numbers to lower but sustainable levels. It often employs methods not available for

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<sup>27</sup> See Attachment 3: 1985 ARD Finley Testimony to BOG, p. 3.

<sup>28</sup> [https://www.adfg.alaska.gov/static/research/programs/intensivemanagement/pdfs/predator\\_booklet.pdf](https://www.adfg.alaska.gov/static/research/programs/intensivemanagement/pdfs/predator_booklet.pdf)

<sup>29</sup> [https://www.adfg.alaska.gov/static/research/programs/intensivemanagement/pdfs/predator\\_brochure.pdf](https://www.adfg.alaska.gov/static/research/programs/intensivemanagement/pdfs/predator_brochure.pdf)

hunters, such as aerial shooting. Fair chase standards do not apply. Members of the public involved in predator control are issued special permits authorizing them to employ these methods in specific areas. Techniques used in predator control programs depend on what can be effective. For example, in some control areas, the most effective method of reducing numbers of wolves is through the use of aircraft, using either land-and-shoot or aerial shooting techniques. (*Emphasis added*) (pp. 7-8)

In essence, the IM statute requires the BOG to designate areas where human consumption is the highest priority use of wildlife prey populations such as caribou, moose, and deer. If wildlife harvest objectives are not met, the BOG must consider intensive management actions to sustain the availability of prey species for human harvest. Such actions could include, among other things, liberalizing hunting and trapping regulations that target predator species such as bears and wolves. If predation is determined by the State to be a key limiting factor of prey populations for harvest by people, the BOG may even consider a more active form of intensive management, which is predator control.

It is also important to understand the difference between “predator control” and “predator regulation” (or “predator reduction”) under the IM program. As described in the ADF&G *Intensive Management Protocol*<sup>30</sup> (see p. 17), “predator control” is intended to “reduce predation effects...and allow ungulate population growth in a relatively short period. For wolves this is recognized as at least 55% [reduction] below pre-control levels.” In contrast, “predator regulation” (i.e., “predator reduction”) is intended to reduce the abundance of predators “below their theoretical food-based carrying capacity. Regulation for wolves typically requires reductions of at least 30% below pre-treatment levels.” In other words, the distinction between “control” and “regulation” (or “reduction”) is a matter of degree under the State’s IM protocol. Both are intended to reduce predator numbers in order to increase ungulate numbers to allow for increased harvest by hunters; and “predator control” is simply the most aggressive form of IM.

In other words, “predator control” involves state-authorized efforts to heavily reduce wolf and bear populations, sometimes including aerial shooting by agency staff, trapping, or shooting bears over bait in specific areas. “Predator reduction” refers to increasing the number of wolves or bears that can be taken through standard hunting and trapping seasons by liberalizing regulations, such as increasing bag limits, extending seasons, expanding the use of bait, or allowing the take of wolf or bear adult females with young during the denning season. Regardless of who conducts them, such practices are clearly intended to reduce predator populations in order to increase the availability of ungulates for human harvest. To the extent such practices are intended or reasonably likely to manipulate wildlife populations for harvest purposes or alter natural wildlife behavior, they conflict with NPS management policies implementing the NPS Organic Act and sections of ANILCA that established the national preserves in Alaska. Additional “liberalizations” by the State that conflict with NPS management directives, policies, and federal law are anticipated in the future.

The State may disavow that their liberalized predator hunting regulations under the IM program are “predator control” because of their distinction without a difference that “predator control” programs only involve predator removal by agents of the State using techniques not available to regular hunters. However, the State’s claim is disingenuous because the BOG’s own management policies clearly indicate the intent of the ADFG predator hunting regulations includes predator reduction. For example, consider the State Board of Game’s (BOG’s) two recent “Bear Conservation, Harvest, and Management Policies” (2023-227-BOG<sup>31</sup>, expiration date July, 2028; and its predecessor policy 2016-214-BOG<sup>32</sup>. As described in these policies, the intent and effect of the AK predator hunting regulations includes “reducing predator numbers to mitigate predation on ungulates.”

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<sup>30</sup>[https://www.adfg.alaska.gov/static/research/programs/intensivemanagement/pdfs/intensive\\_management\\_protocol.pdf](https://www.adfg.alaska.gov/static/research/programs/intensivemanagement/pdfs/intensive_management_protocol.pdf)

<sup>31</sup><https://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/2025-2026/se/findings.pdf>

<sup>32</sup><http://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/findings/16214.pdf>

Under Guiding Principles, states, in part, that the BOG and ADFG will strive to:

#1 Manage bear populations to provide for continuing sustained yield, while allowing a wide range of human uses in all areas of the state.

#8 Employ more efficient harvest strategies, if necessary, when bear populations need to be substantially reduced to mitigate conflicts between bears and people.

#9 Work with the Department to develop innovative ways of increasing bear harvests if conventional hunting seasons and bag limits are not effective at reducing bear numbers to mitigate predation on ungulates or to deal with problem bears. (*Emphasis added*)

The BOG bear management policies go on to say (*emphasis added to underlined sections*):

In order to comply with the AS 16.05.255 the Board and Department may implement management actions to reduce bear predation on ungulate populations... The Board and the Department may also need to reduce bear predation on ungulates to provide for continued sustained yield management or conservation of ungulates. In some cases the Board may direct the Department to prepare a Predation Control Areas Implementation Plan (5 AAC 92.106 - 127) or in other cases the Board may authorize extensions of conventional hunting seasons, or implement trapping seasons to aid in managing predation on ungulates. .. the Board may selectively consider changes to regulations allowing the public to take bears, including allowing the following:

- Baiting of bears.
- Trapping, using foot-snares, for bears under bear management or predator control programs.
- Incidental takes of brown or grizzly bears during black bear management or predator control programs.
- Use of communications equipment between hunters or trappers.
- Sale of hides and skulls as incentives for taking bears.
- Diversionary feeding of bears during ungulate calving seasons.
- Use of black bears for handicraft items for sale, except gall bladders.
- Use of grizzly bears for handicraft items for sale, except gall bladders.
- Taking of sows accompanied by cubs and cubs.
- Same-day-airborne taking.
- Aerial shooting of bears by Department staff
- Suspension or repeal of bear tag fees.
- Use of helicopters.

The Board intends that with the exception of baiting, the above-listed methods and means will be authorized primarily in situations that require “active control” of bear populations, and only for the minimum amount of time necessary to accomplish management objectives. The Board allows baiting of black bears as a normal method of take in broad areas of the state, and will consider allowing brown bear baiting as a normal method of take in select areas.

BOG wolf management policies also make it clear that the questionable wolf hunting practice of “taking wolves and coyotes, including pups, during the denning season” (that was properly prohibited by NPS in national preserves in the 2015 rule) is, in fact, part of the State’s “wolf control program” and required under the Intensive Management statute. Again, a review of the two most recent BOG Wolf Management Policies

is revealing. The policies are 2023-228-BOG<sup>33</sup>, policy duration through July 2028; and its predecessor policy 2016-215-BOG<sup>34</sup>. The BOG policies state, in part (*emphasis added to underlined sections*):

The Board... recognizes that when conflicts arise between humans and wolves over the use of prey, wolf populations may have to be managed more intensively to minimize such conflicts and comply with existing statutes (e.g. AS 16.05.255). Under some conditions, it may be necessary to greatly reduce wolf numbers to aid recovery of low prey populations or to arrest undesirable reductions in prey populations.

In some other areas, including national park lands, the Board also recognizes that non-consumptive uses of wolves may be considered a priority use.

Wolf Management and Wolf Control: The Board and the Department have always distinguished between wolf management and wolf control. “Wolf management” involves managing seasons and bag limits to provide for general public hunting and trapping opportunities. These seasons provide for both subsistence and other traditional economic harvest opportunities and, as a side benefit, allow for participants to directly aid in mitigating conflicts between wolves and humans or improving ungulate harvest levels. In most cases trapping seasons will be kept to times when wolf hides are prime. However, some hunters are satisfied to take wolves during off-prime months including August, September, April, and May. Opportunity may be allowed for such harvest.

“Wolf control” is the planned, systematic regulation of wolf numbers to achieve a temporarily lowered population level using aerial shooting, hiring trappers, denning, helicopter support, or other methods which may not normally be allowed in conventional public hunting and trapping.

Decisions by the Board to Undertake Wolf Control: Generally, there are two situations under which the Board will consider undertaking wolf control (implementing extraordinary measures outside normal hunting and trapping). In rare cases, control may be implemented where sustained yield harvests of ungulates cannot be maintained or where extirpation of ungulate populations may be expected. More commonly, the Board may implement wolf control to comply with Alaska Statutes (AS 16.05.255) where ungulate populations are declared “depleted” or where ungulate harvests must be significantly reduced and these populations have been found by the Board to be important for “high levels of human harvest.” **In most cases when “wolf control” is implemented, the Board will favor and promote an effective control effort by the public.** Experience has shown that often a joint effort by the public and the Department has been most effective.

Methods the Board Will Consider When Implementing Wolf Control Programs (*emphasis added to underlined sections*):

1. Expanding public hunting and trapping into seasons when wolf hides are not prime.
2. Use of baiting for hunting wolves.
3. Allowing same-day-airborne hunting of wolves when 300 ft from aircraft.
4. Allowing land-and-shoot by the public.
5. Allowing aerial shooting by the public.
6. Allowing use of Department staff and helicopters for aerial shooting.
7. Encouraging the Department to hire or contract with wolf trappers and other agents who may use one or more of the methods listed here.

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<sup>33</sup> <https://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/findings/2023-228-BOG.pdf>

<sup>34</sup> <http://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/findings/16215.pdf>

8. Allowing denning by Department staff and use of gas for euthanasia of sub-adults in dens.

Considering both the BOG bear and wolf management policies together, the State's claim that the liberalized predator hunting methods and seasons (allowed by the State but in conflict with NPS management policies) are NOT a form of "predator control" or "predator reduction" program does NOT withstand scrutiny or the common sense test. The BOG's assertion is explicitly contradicted by its own current bear and wolf management policies. Again, we remind NPS of your words from the preamble to the 2015 Final Rule:

Activities or management actions involving predator reduction efforts with the intent or potential to alter or manipulate natural ecosystems or processes... are inconsistent with the laws and policies applicable to NPS areas. The rule clarifies in regulation that these activities are not allowed on NPS lands in Alaska. (Emphasis added)

As summarized in the Background sections above, there have been numerous occasions in the past in which State-authorized liberalized predator hunting "allowances" have crossed the line and conflicted with NPS wildlife management mandates and policies. History has shown that such conflicts are likely to occur again in the future. When that occurs NPS is obligated under the NPS Organic Act, ANILCA, and related NPS management policies to reject adopting the conflicting State regulations.

**5. Era of Increasing Conflicts Between the State's Intensive Management Allowances and NPS Management Policies** – Since the passage of the IM statute in 1994, it has not been uncommon for the State's so-called hunting "allowances" (such as the "liberalized" predator hunting practices) to directly conflict with applicable federal laws and with the previously mentioned NPS *Management Policies 2006* (e.g., see §§ 4.1 and 4.4.3). This has been especially true of State allowances that attempt to manipulate natural systems and processes by increasing the harvest of bears and wolves in order to increase ungulate populations for human harvest. Assistant Secretary of the Interior for Fish and Wildlife and Parks unambiguously stated this perspective in a 2006 letter<sup>35</sup> to Gerald Nicole, Chairman Eastern Interior Regional Advisory Council (advisory to the Federal Subsistence Board):

[NPS Management Policies] Section 4.4.3, *Harvest of Plants and Wildlife by the Public*, directly deals with the issues. Among other things the section states: **The [National Park] Service does not engage in activities to reduce the numbers of native species for the purpose of increasing the number of harvest species (i.e., predator control), nor does the [National Park] Service allow others to do so on land managed by the National Park Service. To summarize, undertaking intensive management practices, including predator control activities as conducted by the State of Alaska, is not allowed on NPS lands. (Emphasis added)**

In the past few decades the State of Alaska has authorized an increasing number of "liberalized" methods of hunting and trapping wildlife and extended hunting seasons in an attempt to increase the harvest of bears and wolves. For example, retired ADFG employees Sterling D. Miller, John W. Schoen, and Charles C. Shultz evaluated "Trends in brown bear reduction efforts in Alaska, 1980–2017." Their findings were published in *Ursus*, a publication of the International Association for Bear Research and Management (November 2017)<sup>36</sup>. The Abstract for the article summarizes their findings (*emphasis added to underlined sections*):

For >35 years Alaska, USA, has attempted to reduce brown bear (*Ursus arctos*) abundance through adoption of progressively more liberal hunting regulations. We document these changes in a portion of Alaska we term the Liberal [brown bear] Hunting Area (LHA) constituting 76% of Alaska's area. In

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<sup>35</sup> See Attachment 4: 2006 ASFWP Letter to EIASRAC Chair, p. 4.

<sup>36</sup> <http://www.bioone.org/doi/10.2192/URSU-D-17-00002.1>

most instances, regulation liberalizations were intended to reduce brown bear abundance in the expectation this would reduce predation by bears on wild ungulates and thereby increase hunter harvests of these ungulates... We also document the expansion of regulations pertaining to brown bear population reduction to the small and isolated population on Alaska's Kenai Peninsula (outside the LHA) that resulted in a 25-fold harvest increase in the year of regulation liberalization...In the LHA during 1995–2017, we tabulated 222 regulatory changes in Game Management Subunits making brown bear hunting regulations more liberal and 4 changes making regulations more conservative. Since 2000, the State of Alaska has reported no research in the LHA that would permit evaluation of the impacts of these regulatory changes and correlated harvest increases on bear abundance or demographics.

The supremacy of Federal authority over State authority to manage wildlife in Alaska's national preserves if/when conflicts occur between Federal and State regulations and policies has been the subject of several law review articles. A detailed analysis of the preemption of Federal wildlife law over State law in Alaska is provided by Julie Lurman and Sanford P. Rabinowitch, in "Preemption of State Wildlife Law in Alaska: Where, When, and Why," 24 *Alaska Law Review* 145-172 (2007)<sup>37</sup>. As stated in their analysis:

It is not surprising that conflict should arise between the State and the NPS over the State's game management activities. This is generally considered a likely point of contention. NPS policy seeks to sustain and protect natural populations and processes while avoiding artificial manipulation that increases the numbers of certain species above natural levels. The Alaska Board of Game, like most state game authorities, is charged with maintaining high, continuously predictable numbers of prey populations, rather than with maintaining the naturally fluctuating populations and processes that the NPS is charged with protecting (p. 162)... It has been clear for some time that NPS regulations may preempt state wildlife management laws that conflict with the NPS's own mandates at any time under the Organic Act. What is now also clear is that the Alaska's Intensive Management statute meets the criteria for direct conflict with federal laws specifically the Organic Act and the ANILCA, as well as derivative regulations and policies, and must be preempted in favor of wildlife management goals and techniques that are in line with the mandates established by Congress. (p. 170) (*Emphasis added*)

An article by Zellmer, Sandra B.; Nie, Martin; Barnes, Christopher; Haber, Jonathan; Joly, Julie; and Pitt, Kenneth, "Fish and Wildlife Management on Federal Lands: Debunking State Supremacy,"<sup>38</sup> *Environmental Law*, Vol. 47, No. 4 (2017) provides the following analysis regarding the supremacy of Federal over State authority when conflicts occur between State hunting regulations and NPS management policies:

Sport hunting (non-subsistence hunting) is permitted on most non-Park lands in Alaska<sup>39</sup> and is managed largely through the state regulatory process, as it is elsewhere in the U.S. However, ANILCA creates a new category of Park lands called Preserves where sport hunting and commercial trapping are permitted.<sup>40</sup> The State of Alaska regulates sport hunting state-wide, including on federal lands. However, conflicts have arisen between the state's hunting regulations, which express the state's wildlife laws and goals, and the wildlife management goals expressed by several federal statutes. For instance, the State of Alaska is required to intensively manage wildlife populations in order to maximize a sustained yield of desirable prey (moose, caribou, and deer).<sup>41</sup> This intensive management

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<sup>37</sup> <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1063&context=alr>, pp. 162 & 170.

<sup>38</sup> [https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1186&context=faculty\\_lawreviews](https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1186&context=faculty_lawreviews), p.77.

<sup>39</sup> ANILCA § 1314(c).

<sup>40</sup> ANILCA § 203 and § 1313; 16 U.S.C. § 3201. *See* 80 Fed. Reg. 64,325, 64,325 (2015).

<sup>41</sup> ALASKA STAT. § 16.05.255.

requirement often leads to predator reduction efforts.<sup>42</sup> The NPS on the other hand is required to maintain natural and healthy populations of all species according to ANILCA and “to conserve the scenery, natural and historic objects, and the wild life” according to the National Park Service Organic Act.<sup>43</sup> NPS policies implementing the Organic Act require the agency to “protect natural ecosystems and processes, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife.”<sup>44</sup> These state and federal goals are mutually exclusive.<sup>45</sup> *(Emphasis added)*

For a historical perspective on the number and extent of national preserves affected by the State’s allowance(s) of “liberalized” predator hunting methods, a review of a 2014 NPS map<sup>46</sup> of BOG-declared Intensive Management (IM) areas prior to promulgation of the 2015 hunting rule shows that most of the lands in the national preserves were included in the designated IM areas. An update of the map would show little to no change based upon our review of the State IM statute. Since then, the State has authorized additional “liberalized” predator harvest practices that should be or should have been of significant concern to the NPS and park advocates alike. These practices have included:

- Taking any black bear, including cubs and sows with cubs, with artificial light at den sites;
- Adding black bears to the list of animals that are furbearers so they could, if further authorized, be taken under trapping regulations;
- Harvesting brown bears over bait (which may include dog food, bacon/meat grease, donuts, and other human foods); and
- Taking wolves and coyotes (including pups) during the denning season when their pelts have little trophy, economic, or subsistence value

Given that the objectives of the State IM statute includes “the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game” AS § 16.05.255(k)(5), the above practices are obviously intended or reasonably likely to manipulate wildlife populations for harvest purposes. It is a well-established biological fact that manipulating predators and prey can alter populations, population dynamics, behaviors, and often their habitat. These practices are in clear conflict with the NPS’s implementation of ANILCA’s authorization of sport hunting and trapping in national preserves; and they are clear conflict with NPS *Management Policies 2006* § 4.4.3, which states, in part: “**The Service does not engage in activities to reduce the numbers of native species for the purpose of increasing the numbers of harvested species (i.e., predator control), nor does the Service permit others to do so on lands managed by the National Park Service.**” *(Emphasis added)* In other words, the above State-authorized predator hunting methods are clearly in conflict with NPS management policies.

The issue of conflicts between State hunting regulations and NPS management polices is addressed in the existing national preserve hunting regulations at CFR §13.42(a)<sup>47</sup> Taking of wildlife in national preserves, which provides that:

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<sup>42</sup> Alaska; Hunting and Trapping in National Preserves, 80 Fed. Reg. 64,325, 64,326 (Nov. 23, 2015) (codified at 36 C.F.R. pt. 13).

<sup>43</sup> 16 U.S.C. § 1.

<sup>44</sup> NPS Management Policies 2006 §§4.1, 4.4.1, 4.4.1.2, and 4.4.2; 80 Fed. Reg. 64,325, 64,326.

<sup>45</sup> Kyle Joly, Sanford P. Rabinowitch, and Julie Lurman Joly, *Dual Management of Wildlife in Alaska: Making Federal Practice Align with Federal Mandates*, 32 GEORGE WRIGHT FORUM 18 (2015).

<sup>46</sup> State of Alaska Intensive Management Areas, Moose (5 AAC 92.108) Alaska Region GIS Team 1/05/2013, *Wildlife Harvest in National Park Service Preserves In Alaska, Environmental Assessment*, September, 2014 page 13.

<sup>47</sup> <https://www.ecfr.gov/current/title-36/chapter-I/part-13/subpart-B/section-13.42>

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

The plain language of this rule is clear: NPS can only adopt **non-conflicting** State hunting regulations. However, under the proposed rule NPS would, in effect, adopt a variety of **conflicting** liberalized hunting methods, such as those listed on the previous page, based on the questionable rationale alleging that allowing such hunting methods would not have significant impacts on wildlife population levels (i.e., based on the argument that there would be a low “body count” of harvested animals). There is no provision in applicable NPS laws, regulations, and policies that would allow NPS to adopt conflicting State hunting regulations based on the rationale that the particular regulation(s) would have limited impact in terms of the body count of the targeted species that would be harvested, which is the flawed rationale that NPS uses now to attempt to justify opening national preserves to bear baiting again. To be clear, §13.42(a) does NOT authorize adopting conflicting State regulations even if/when impacts are expected to be limited; it only allows the adoption of **non-conflicting** State regulations, period.

**6. Subsistence Hunting under ANILCA Title VIII** – As discussed previously, ANILCA Title VIII §804<sup>48</sup> established what is referred to as the “Preference for Subsistence Use” in stating the following:

Except as otherwise provided in this Act and other Federal laws, the 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. (*Emphasis added*) Whenever it is necessary to restrict 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, such priority shall be implemented through appropriate limitations based on the application of the following criteria:

- (1) customary and direct dependence upon the populations as the mainstay of livelihood;
- (2) local residency; and
- (3) the availability of alternative resources.

The clear implication of ANILCA’s “subsistence preference” is that in national preserves NPS must give priority to subsistence uses of wildlife by federally qualified “Alaska rural residents” over the taking of wildlife by non-rural Alaska residents and by non-residents of the State for other purposes, such as for sport hunting under State regulations. The current federal subsistence regulations are described in 43 CFR Part 51<sup>49</sup>. Whereas 36 CFR §13.42(a)<sup>50</sup> allows hunting and trapping in national preserves “in accordance with applicable Federal and **non-conflicting** State law and regulation”; 43 CFR §51.14(a)<sup>51</sup> adopts State hunting regulations but only “to the extent they are not **inconsistent** with, or superseded by, the regulations in this part.” While the words of these two regulations differ, the meaning is essentially the same. NPS can only adopt State hunting regulations that do not conflict with and are consistent with NPS wildlife management mandates and policies.

Since the enactment of ANILCA, regulation and management of subsistence uses on federal lands in Alaska has shifted from the State to the Federal agencies. As described in CRS Report #R47511<sup>52</sup>, titled “Subsistence Uses of Resources in Alaska: An Overview of Federal Management,” April 20, 2023:

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<sup>48</sup> <https://www.doi.gov/sites/doi.gov/files/13-anilca-title-8-508.pdf>

<sup>49</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51>

<sup>50</sup> <https://www.ecfr.gov/current/title-36/chapter-I/part-13/subpart-B/section-13.42>

<sup>51</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51/subpart-B/section-51.14>

<sup>52</sup> <https://www.everycrsreport.com/reports/R47511.html>

Title VIII of ANILCA provides the opportunity to manage subsistence hunting and fishing on Alaskan federal lands to the State of Alaska in lieu of the federal government.<sup>53</sup> Under ANILCA, such management is contingent upon the state legislature enacting laws consistent with certain provisions and terms of the legislation. This includes ANILCA’s requirements for establishing a priority for subsistence hunting and fishing for rural Alaskans. Following the enactment of ANILCA, the State of Alaska enacted a law that limited the definition of *subsistence uses* to residents of “rural areas,” thereby complying with Title VIII of ANILCA.<sup>54</sup> Pursuant to Title VIII, the State of Alaska, through the state Board of Fisheries and Board of Game, managed subsistence uses on federal lands for the first decade following ANILCA’s enactment. Then in 1989, the Alaska Supreme Court held that the rural residency preference established by state law (and required under ANILCA) violated the equal access clause of the Alaska state constitution.<sup>55</sup> Pursuant to the ruling, the state removed the rural preference from its subsistence use law, which caused the law to no longer comply with the requirements of Title VIII of ANILCA for state management on federal lands. Because the Alaska state constitution prevents the state from enacting a law to manage subsistence uses that is consistent with Title VIII of ANILCA, the federal government has managed subsistence uses on federal lands in Alaska since Alaska changed its state law in 1990.

The practical effect of *McDowell vs. the State of Alaska*<sup>56</sup> is that it led to Federal agencies, not the State, assuming primary responsibility for managing subsistence uses on federal lands under Title VIII of ANILCA. This in turn led to creation of the Federal Subsistence Board, which first promulgated interim Federal subsistence regulations; then ultimately promulgated the Federal subsistence regulations originally found in 50 CFR Part 100<sup>57</sup>, but currently found in 43 CFR Part 51<sup>58</sup>. In other words, both the Federal subsistence and NPS regulations preempt State hunting regulations on federal land.

In addition to longstanding NPS concerns about certain State-authorized “liberalized” predator hunting practices conflicting with NPS wildlife mandates and policies, some the same harvest methods also conflict directly with some of the Federal subsistence hunting regulations at 43 CFR §51.28.<sup>59</sup> For example, §51.26(b)(17) Prohibits “Taking a bear cub or a sow accompanied by cub(s).” In contrast, current Alaska bear hunting regulations<sup>60</sup>, p. 19, provide that: 1) “Black bear cubs and sows accompanied by cubs, may be taken by resident hunters Oct. 15-Apr. 30 under customary and traditional use activities at a den site in GMU 24. (Emphasis added) Similarly, 43 CFR §51.26(b)(10) prohibits “Using a trap to take ungulates or bear” under the Federal Subsistence program. In contrast, current Alaska bear hunting regulations<sup>61</sup>, p. 32, include “black bear” in the definition of “furbearer,” which is “a classification of animals subject to taking with a trapping license.” In other words, whereas Federal Subsistence regulations prohibit trapping black bears, State regulations allow it.

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<sup>53</sup> 16 U.S.C. §3115(d) ANILCA does not impact the state’s ability to exercise its own jurisdiction over state and private lands.

<sup>54</sup> Act of May 30, 1986, ch. 52, 1986 Alaska Sess. Laws 1.

<sup>55</sup> *McDowell v. State of Alaska*, 785 P.2d 1, 1 (Alaska 1989).

<sup>56</sup> <https://npshistory.com/publications/alaska/subsistence/chap7.htm>

<sup>57</sup> <https://www.govinfo.gov/content/pkg/CFR-2009-title50-vol6/pdf/CFR-2009-title50-vol6-part100.pdf>

<sup>58</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51?toc=1>

<sup>59</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51/subpart-D/section-51.26>

<sup>60</sup> [https://www.adfg.alaska.gov/static/applications/web/nocache/regulations/wildliferegulations/pdfs/regulations\\_complete.pdf6694CD70D88F5D6218300D1668AE3E9A/regulations\\_complete.pdf](https://www.adfg.alaska.gov/static/applications/web/nocache/regulations/wildliferegulations/pdfs/regulations_complete.pdf6694CD70D88F5D6218300D1668AE3E9A/regulations_complete.pdf)

<sup>61</sup> *Ibid.*

A particular concern with the proposed rule is that NPS would rescind its own definition of “*furbearer*” in 36 CFR §13.1<sup>62</sup>, which does NOT include **black bears** as a *furbearer*; and presumably adopt the State definition, which does include “**black bears.**” In other words, the proposed rule would open national preserves to trapping of black bears under State regulations by redefining black bears as a *furbearer* subject to trapping, which is effectively prohibited under the existing NPS definition of *furbearer*. We will explain this concern in greater detail in the Comment section below.

It is also concerning that the preamble for current proposed rule, as well as preambles for previous NPS hunting rulemakings since 2015, neither acknowledge nor consider these apparent conflicts between the State’s liberalized predator hunting regulations and the Federal subsistence hunting regulations. Potential adverse impacts of NPS adopting such conflicting State regulations on federally qualified subsistence hunters have not been adequately disclosed or evaluated. In addition, none of the rulemakings have provided a meaningful discussion of the respective Federal and State agency roles in managing subsistence hunting on Federal lands in Alaska under ANILCA, which is summarized in the paragraphs above.

**7. NPS Authority to Address State Regulations that Conflict with NPS Statutory Mandates and Management Policies** – It is well established that NPS has the plenary authority to prohibit State-authorized hunting practices that are conflict with NPS policies. Under the Property and Supremacy Clauses of the U.S. Constitution, State wildlife laws that conflict with NPS's efforts to carry out its statutory wildlife management mandate are preempted. *See, e.g. Kleppe v. New Mexico*, 426 U.S. 529 (1976); *Hunt v. United States*, 278 U.S. 96 (1928); *New Mexico State Game Comm'n v. Udall*, 410 F.2d 1197 (10th Cir.), *cert. denied*, *New Mexico State Game Comm'n v. Hickel*, 396 U.S. 961 (1969); *United States v. Brown*, 552 F.2d 817 (8th Cir. 1977). Similarly, in *Safari Club International v. Haaland*, No. 21-35030 (9th Cir. 2022), the Ninth Circuit affirmed that the U.S. Fish and Wildlife Service (FWS) can limit or prohibit hunting practices on national wildlife refuges in Alaska, even if those practices are approved by the state. The court upheld the “Kenai Rule,” reinforcing that federal regulations take precedence on federal lands. In addition, 16 U.S.C. 3201 of ANILCA provides that “within national preserves the Secretary may designate zones where and periods when no hunting, fishing, trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment.” Last but not least, in 2004, the Department of the Interior (DOI) updated its regulations at 43 CFR §24<sup>63</sup> regarding state-federal relationships. Specifically, section 24.4(f) applies to units of the National Park System. It states, in part:

Units of the National Park System contain natural, recreation, historic, and cultural **values** of national significance as designated by Executive and Congressional action. Specific enabling legislation has authorized limited hunting, trapping or fishing activity within certain areas of the system. As a general rule, consumptive resource utilization is prohibited. Those areas which do legislatively allow hunting, trapping, or fishing, do so in conformance with applicable Federal and State laws. The Superintendent may, in consultation with the appropriate State agency, fix times and locations where such activities will be prohibited. (*Emphasis added*)

In order to comply with the requirement that it only adopt non-conflicting State hunting regulations, in the past NPS has exercised its plenary authority by adopting temporary restrictions in Alaska under its 36 CFR Part 13 closure authority, currently found at 36 CFR §13.50<sup>64</sup>, to prevent the application of the above listed predator harvest practices to national preserves in Alaska. For example, between 1994 and 2009, NPS wrote at least 15 letters to the BOG regarding proposed State hunting regulations that conflicted with NPS policies.

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<sup>62</sup> <https://www.ecfr.gov/current/title-36/chapter-I/part-13/subpart-A/section-13.1>

<sup>63</sup> [https://www.ecfr.gov/cgi-bin/text-idx?SID=04e8f9d29bcda9b77ab7c8d9cea96a58&tpl=/ecfrbrowse/Title43/43cfr24\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?SID=04e8f9d29bcda9b77ab7c8d9cea96a58&tpl=/ecfrbrowse/Title43/43cfr24_main_02.tpl)

<sup>64</sup> <https://www.ecfr.gov/current/title-36/chapter-I/part-13/subpart-B/section-13.50>

When that did not resolve the conflicts, NPS started with limited restrictions to conflicting State regulations in various Superintendent Compendiums.

The ongoing conflict between the State's liberalized predator harvest regulations and NPS management policies led some superintendents to use their authority under 36 CFR §1.5(a) and 36 CFR §13.40(e) to temporarily close Alaska national preserves on a year-to-year basis to many of the same predator hunting practices that were permanently prohibited in the 2015 rule. Such prohibitions were specified in the respective national preserve Superintendent's Compendiums. Examples of such closures are briefly summarized below:

a. 2010 Gates of the Arctic National Park & Preserve (GAAR) Final Compendium<sup>65</sup> – Under section 13.40(e), Temporary closures or restrictions to the taking of fish and wildlife, the NPS prohibited the following: From October 15 through April 30, artificial light may not be used to take a black bear at a den site except to retrieve a dead bear or dispatch a wounded bear as authorized by state law. From October 15 through April 30, a person may not take a cub bear or a female bear accompanied by a cub bear at a den site. As explained, in part, by NPS in Comment/Response # 7 of the Compendium (*emphasis added to underlined sections below*):

**ADFG has stated that they generally do not take positions or actions based on user conflicts or values.** Rather, they say the actions or positions they take are based on wildlife populations. **Consequently, when an NPS concern is based on user conflicts or public use and enjoyment, ADFG has been reluctant to address these concerns,** suggesting those issues should be addressed through consultation with the BOG. However, at the BOG meeting that concluded March 6, 2010, **the BOG clearly stated that implementing Federal land management objectives should be handled by the Federal agencies, not the BOG.** This action [i.e., the compendium restriction] is consistent with the BOG's stated position.

b. 2010 Yukon Charlie National Park & Preserve (YUCH) Final Compendium<sup>66</sup> – Under section 13.40(e), Temporary closures or restrictions to the taking of fish and wildlife, the NPS prohibited the following: From April 14, 2010 through May 31, 2010, the taking of wolves is prohibited except in accordance with Federal Subsistence Regulations located at 50 CFR Part 100. As explained, in part, in the “YUCH Wolf Closure Determination of Need” dated 4-12-2010 (*emphasis added to underlined sections below*):

**On NPS lands, natural processes are expected to maintain native animal species including natural fluctuations in those populations.** Consistent with NPS Management Policies, **if the impact of an activity is not fully understood, the NPS must err on the side of protecting resources.** **Predator/wolf control activities intended to decrease wolf populations below normal levels are in direct conflict with NPS policy.** While predator/wolf control activities are occurring outside NPS lands, they have potential implications for wolves with home ranges in the Preserve. The robustness of the wolf population that uses the Preserve is inextricably linked to what is happening to the wolf population outside the Preserve.

c. 2012 Lake Clark National Park & Preserve (LACL) Final Compendium<sup>67</sup> – Under section 13.40(e) Temporary closures or restrictions to the taking of fish and wildlife, the NPS prohibited the following hunting practices within Aniakchak, Katmai, and Lake Clark National Preserves: “Within these NPS Preserves, a person may not take a wolf by hunting between May 1 and Aug 9. Within these NPS Preserves, a person may not take a wolf by trapping between May 1 and Sep 30.” As explained, in part, by NPS in the

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<sup>65</sup> Attachment #5: 2010 GAAR Final Compendium

<sup>66</sup> Attachment #6 : 2010 YUCH Final Compendium

<sup>67</sup> Attachment #7: 2012 LACL Final Compendium

response to comments section of the final Compendium (*emphasis added to underlined sections below*):

Under federal law and policy applicable in NPS units, conservation, the underlying objective in managing park lands, means more than maintaining a viable population. NPS Management Policies call for the conservation of natural abundance, behavior, distribution, and ecological integrity of native wildlife species. We recognize this differs from state regulations developed to implement intensive management objectives under state law. The NPS disagrees that these actions are inconsistent with the MMOU provisions cited above. In the proposed compendium, the NPS determined that State authorized practices as described in this proposal are not compatible with the purposes of NPS units, and the policy framework that guides NPS management.

NPS consistently comments on BOG proposals that affect NPS units in writing and occasionally testifies in person and both attends and tracks (through livestreaming) BOG meetings. During a public meeting, the BOG expanded a proposal to include park lands. Upon notification, the NPS sent a letter to the BOG and ADF&G to explain the revised proposal is not consistent with NPS wildlife management objectives. The BOG declined to modify the proposal or exempt the NPS, which is why this restriction was proposed.

d. 2013 Denali National Park & Preserve (DENA) Final Compendium<sup>68</sup> – Under section 13.40(e) Temporary closures or restrictions to the taking of fish and wildlife, the NPS prohibited the following hunting practices within the national preserve:

1. Black Bears – From October 15 through April 30, artificial light may not be used to take a black bear at a den site except to retrieve a dead bear or dispatch a wounded bear as authorized by state law. From October 15 through April 30, a person may not take a cub bear or a female bear accompanied by a cub bear at a den site.
2. Brown Bears – A person may not take a brown bear at a bait station from April 15 through June 30 in the Preserve.
3. Wolves and Coyotes – The take of wolves or coyotes under state regulations is prohibited from May 1 through August 9 in the Preserve. This provision does not affect season start dates after August 9; the latter start date will apply. For example, if the state season is September 1, taking wolves under the state regulations would be authorized on September 1. If the state season starts on August 1, then the taking of wolves is not authorized in Preserves until August 10. See applicable State of Alaska harvest regulations. Hunting is prohibited in the former Mt. McKinley National Park.

As explained, in part, in the response to comments section of DENA’s final Compendium (*emphasis added to underlined sections below*):

The NPS remains committed to managing park resources and values in a way that avoids unnecessary interference with State management of wildlife resources. The vast majority of State general hunting regulations remain applicable in the preserves. The NPS has consulted with the State of Alaska, including through the Board of Game (BOG) process, and requested the State to exempt NPS Preserves from these authorizations [i.e., the specific hunting practices that target predator species]. The NPS prefers a State regulatory solution to this conflict rather than annual restrictions or permanent closure or restrictions. Using the temporary closure process affords the State the opportunity to resolve the conflict in lieu of a Federal rulemaking. If that were to happen, the NPS would not need to act.

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<sup>68</sup> Attachment #8: 2013 DENA Final Compendium

It is well documented that the BOG and Federal Subsistence Board (FSB) processes are used for nearly all wildlife harvest regulation in NPS areas. The wildlife provisions listed in the compendium are a tiny fraction of – and a last resort – for actions relating to NPS areas. Disagreement is not the same as failing to listen to or respect other’s views. The NPS is following the legal and policy framework applicable to NPS areas.

While ANILCA authorizes the take of wildlife for sport and for subsistence uses by rural residents, it does not follow that ALL means, methods, seasons, or bag limits adopted by the State are appropriate in all portions of NPS Preserves. Such hunting and trapping activities must be consistent with the legal and policy framework for NPS areas.

The state manages wildlife for “sustained yield” under the state constitution (Alaska Constitution, Article VIII, §4), which is further defined by state statute as “the ability to support a high level of human harvest of game” (A.S. 16.05.255(k)(5)). State management is further guided by state statutes to restore the abundance or productivity of identified big game prey populations as necessary to achieve human consumptive use goals (A.S. 16.05.255(e)). Further, according to the state’s written comments, state wildlife management actions are designed to influence the reproduction and survival of [wildlife] populations. The NPS manages neither for abundance nor sustained yield. Management actions designed to support a high level of human harvest are inconsistent with the legal and policy framework for NPS areas. Wildlife stewardship on National Park Service managed lands in Alaska is to maintain natural processes, provide for subsistence opportunity by rural residents, and allow taking of wildlife for sport in preserves as provided by ANILCA. The NPS must balance consumptive uses of wildlife with other uses and values.

The State claims that the allowances [i.e., the specific hunting practices] at issue here do not constitute “predator control” or are not likely to have that effect. Transcripts from BOG meetings reflect frequent and consistent discussions as to whether the take of brown bears over bait, longer seasons on coyotes or longer seasons on wolves would help elevate the survival rate of moose or caribou calves. As acknowledged by the state, such actions are designed to influence populations. Whether labeled predator control, intensive management, abundance-based management or another term, the practical effects of manipulating one population to affect another are contrary to the NPS legal and policy framework.

e. 2015 Denali National Park & Preserve (DENA) Final Compendium<sup>69</sup> – Under Section 13.40(e) Temporary closures or restrictions to the taking of fish and wildlife (wolves/coyotes), the NPS prohibited the following:

(Black bears) From October 15 through April 30, artificial light may not be used to take a black bear at a den site except to retrieve a dead bear or dispatch a wounded bear as authorized by state law in Denali and Gates of the Arctic National Preserves. From October 15 through April 30, a person may not take a cub bear or a female bear accompanied by a cub bear at a den site Denali and Gates of the Arctic National Preserves. The reasons for these restrictions are: During the 2008 Southeast Region Board of Game (BOG) meeting, the BOG made an exception to two long standing general prohibitions regarding the take of black bears. The BOG authorized all state residents to use artificial light to take black bears at den sites and to take black bear cubs and sows with cubs at den sites under customary and traditional use activities from October 15 to April 30 in Unit 19A, portions of Unit 19D, and in Units 21B, 21C, 21D, 24, and 25D. The NPS did not immediately recognize that two NPS preserves were included and consequently did not comment on these proposals. When the regulation was

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<sup>69</sup> Attachment #9: 2015 DENA Final Compendium

promulgated, the NPS identified small portions of two national preserves in Units 19D and 24 that were included in these authorizations.

(Wolves and coyotes) The take of wolves or coyotes under state regulations is prohibited from May 1 through August 9 in Alagnak Wild River and Aniakchak, Bering Land Bridge, Denali, Gates of the Arctic, Katmai, Lake Clark, Noatak, Wrangell-St. Elias, and Yukon-Charley Rivers National Preserves.”

As explained, in part, in the response to comments section of DENA’s final Compendium (*emphasis added to underlined sections below*):

The State of Alaska is the primary entity responsible for managing wildlife in accordance with State mandates. At the same time, the NPS is charged with the responsibility for assuring that the take of fish and wildlife is consistent with the fundamental purposes of the park system and individual park units. The NPS Organic Act is a Federal law that provides the fundamental purpose of national park areas is conservation of park resources and values, including the scenery, the natural and historic objects, and wild life therein, and prohibits impairment of park resources or values. Policies implementing this mandate require the NPS to protect natural systems, processes, and wildlife populations, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife.

ANILCA, the Federal law specifically applicable to Alaska NPS areas, does not alter these expectations. ANILCA directs the Secretary of the Interior to administer Alaska NPS units in accordance with the NPS Organic Act. ANILCA provides that national preserves are to be managed in the same manner as national parks with the exception that sport hunting and trapping are allowed. (ANILCA, sec. 1313).

The legislative history of ANILCA reaffirms that Congress did not absolve the National Park Service from operating within the legal, regulatory, and policy framework applicable across the National Park System. The Senate Energy and Natural Resources Committee (S. Rpt. 96-413) stated “It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources.” A further statement in the Congressional Record on ANILCA provides 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. These are very special lands and this standard must be set very high[.]”

The State’s general hunting program applies in NPS preserves to the extent that it is consistent with NPS laws, regulations and policies. The NPS may close or restrict the take of wildlife for sport purposes in preserves pursuant to ANILCA section 1313 and federal regulations at 36 CFR 13.40 and 13.50.

We could go on listing examples. Our point is that under applicable authorities and policies, NPS wildlife management objectives, which are intended to preserve and maintain the natural abundances, diversities, dynamics, distribution, habitat, and behaviors of native plant and animal populations and the communities and ecosystems in which they occur, differ considerably from the State’s Intensive Management program, which is intended to sustain and increase ungulate populations for human harvest. While the vast majority of ADFG hunting regulations are, in fact, compatible (i.e., do not conflict) with NPS wildlife management objectives and thus are applicable within the national preserves, NPS has had longstanding concerns with a limited number of specific hunting practices allowed by ADFG (e.g., those identified in the 2015 final rule), primarily those targeting predator species. These practices are in direct conflict, in principle and effect, with NPS wildlife management mandates under the Organic Act, ANILCA, and related NPS management policies.

In addition to the various NPS closures implemented through the respective Superintendent's Compendiums, by 2015 an additional 15 letters had been sent to the BOG about proposals before that body. All told, between 2005-2015, the NPS "objected to more than fifty proposals to liberalize predator harvest in areas that included national preserves, and each time the BOG has been unwilling to exclude national preserves from State regulations designed to manipulate predator/prey dynamics for human consumptive use goals."<sup>70</sup>

The various NPS restrictions imposed via the respective compendiums were established to protect fauna and provide for public use and enjoyment consistent with ANILCA, basic NPS legal authorities, and NPS management policies. While the NPS has stated numerous times that it prefers a State solution to these conflicts, which would be for the State to simply "exclude NPS lands" from the particular rule change, the State has been mostly unwilling to accommodate the requests and thus has created, repeatedly, the conflicting regulations between State and federal laws.

As discussed previously, as early as 1984<sup>71</sup> NPS Alaska Regional Director Contor spoke directly to the BOG about NPS concerns. Deputy Regional Director Finley expressed similar concerns in testimony to the BOG in 1985.<sup>72</sup> The Acting Assistant Secretary for Fish and Wildlife and Parks expressed similar concerns in a letter to the Chair of the Eastern Interior Alaska Regional Subsistence Advisory Council in 2006.<sup>73</sup> In addition, in 2013 NPS Alaska Associate Regional Director Deb Cooper filed an Agenda Change Request<sup>74</sup> and testified to the BOG (in effect, requesting reconsideration) to again ask the State to exclude NPS lands from the subject hunting allowances and offered NPS staff time to assist the State in working out the details. This request was also denied. For more than a decade (approximately 2005-2015), NPS voiced numerous concerns to the BOG about proposed predator harvest "allowances" in areas that included national preserves; and each time the BOG was unwilling to exclude national preserves from State regulations designed to manipulate predator/prey dynamics for human consumptive use goals.

Objectively, the BOG has the clear authority to treat NPS lands differently from State lands under state law (AS 16.05.255 (f) (1) (B)) if such actions (i.e., harvest regulations) are "inappropriate due to land ownership patterns." However, the BOG suggested that the NPS, not the BOG, was responsible for ensuring that taking wildlife complies with federal laws and policies applicable to NPS areas; and the NPS could use its own authority to ensure national preserves are managed in a manner consistent with federal law and NPS policy. See statement of BOG Chairman Judkins to Superintendent Dudgeon, BOG Public Meeting in Fairbanks, Alaska (February 27, 2010)<sup>75</sup> where NPS was testifying in opposition to allowing the take of black bear cubs and sows with cubs with artificial light in national preserves. In the absence of State action to exclude national preserves from such hunting methods, the 2015 rulemaking was necessary to make the temporary restrictions permanent under [36 CFR 13.50\(c\)](#) Rulemaking Requirements. In essence, the 2015 rule responded to the BOG's suggestion by promulgating NPS regulations to ensure national preserves are managed consistent with federal law and policy and to prevent historically prohibited sport hunting practices, those conflicting with NPS law and policy, from being authorized in national preserves.

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<sup>70</sup> <https://www.federalregister.gov/documents/2015/10/23/2015-26813/alaska-hunting-and-trapping-in-national-preserves>

<sup>71</sup> See Attachment #2: 1984 RD Roger Cantor Remarks to BOG

<sup>72</sup> See Attachment #3: 1985 ARD Michael Finley Testimony to BOG

<sup>73</sup> See Attachment #4: 2006 ASFWP Letter to ELASRAC Chair

<sup>74</sup> See Attachment #10: 2013 NPS Change Request Form to BOG

<sup>75</sup> Transcript on file at the NPS Alaska Regional Office

Contrary to those who alleged that the 2015 rule was “federal overreach,” the NPS did, in fact, work closely with and communicated with the State since 1982 on this topic. The NPS wrote letter after letter, by our count at least 36 letters through 2017; and Alaska Regional Directors have gone to the BOG to speak, as have Preserve Superintendents and other technical staff on numerous occasions. The NPS has shown extraordinary effort to accommodate to State laws and goals that conflict with federal laws, seeking to work out the details of conflicting mandates. In all this time, and specifically in the 2015 final rule, the NPS has done the job they were supposed to do, by managing the National Park System for “all” the people of the Nation in a manner consistent with federal law, regulation, and policy. By refusing to address well-documented NPS concerns about liberalized predator hunting methods that conflict with NPS wildlife management mandates and policies through the BOG process, the State of Alaska has sought to position itself as the sole arbiter of wildlife management policies in Alaska, regardless of federal land ownership, jurisdiction, and federal laws. A substantial body of law simply does not support this position; nor does the legislative and administrative history of federal and state wildlife law and management in Alaska.

The scope of the 2015 and 2024 rules were, in fact, very limited. They did not affect ANILCA Title VIII subsistence harvest; did not broadly affect sport hunting or trapping; and the vast majority of State sport hunting and trapping regulations continued to apply in Alaska’s national preserves because they are consistent with applicable federal law and policy. In contrast, the current proposed rule would have sweeping impacts to not only sport hunting and trapping in national preserves, but also to subsistence uses in all park areas in Alaska. We will discuss these concerns in greater detail in the Comment section below.

As described previously, a detailed analysis of the preemption of Federal wildlife law over State law in Alaska is provided by Julie Lurman and Sanford P. Rabinowitch, in “Preemption of State Wildlife Law in Alaska: Where, When, and Why,” *Alaska Law Review* 145-172 (2007)<sup>76</sup>. As stated in their analysis: “What is now also clear is that the Alaska’s Intensive Management statute meets the criteria for direct conflict with federal laws specifically the Organic Act and the ANILCA, as well as derivative regulations and policies, and must be preempted in favor of wildlife management goals and techniques that are in line with the mandates established by Congress.” To supplement our review of relevant authorities and related legislative and administrative history, we hereby incorporate by reference the attached 2007 Lurman & Rabinowitch *Alaska Law Review* article<sup>77</sup> (cited above) into our comments.

**8. Conclusion** – Under ALL applicable federal laws, regulations, and policies, NPS may only adopt “non-conflicting” State hunting regulations. The extensive administrative history summarized above documents longstanding NPS concerns about significant differences and potential conflicts between certain State liberalized predator hunting “allowances” implemented under its 1994 Intensive Management statute vs. NPS wildlife management responsibilities under the NPS Organic Act, ANILCA, and related NPS management policies. The NPS concerns have occurred across many years and different generations of NPS managers; and across multiple Presidential Administrations with multiple appointed Interior Secretaries and NPS Directors of the NPS from 1982-2015. Decades of well documented NPS concerns about conflicts between Alaska’s liberalized hunting regulations and NPS wildlife management mandates and policies cannot be summarily dismissed simply based on a “change in position” by the current Administration. Despite this extensive documentation, NPS is now proposing to adopt any/all liberalized predator hunting methods currently authorized by the State; and presumably to adopt any/all future allowances approved by the Board of Game, regardless of inherent conflict(s) between State-authorized liberalized predator hunting regulation(s) with well-established NPS management policies.

Concerns about the BOG authorizing “liberalized” sport hunting methods that conflict with NPS management policies is not a static situation; it is a continuously evolving, ongoing situation. Liberalized

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<sup>76</sup> Attachment # 11: 2007 Lurman & Rabinowitch, article on Preemption of State Wildlife Law in Alaska

<sup>77</sup> *Ibid.*

“allowances” authorizing questionable methods of predator harvest that are not authorized one year, may be subsequently authorized the next year under the BOG’s open process for considering new hunting regulations in which “any individual or group may submit a proposal to the Board of Game for a change to the hunting or trapping regulations.”<sup>78</sup>

The history of the Alaska IM statute’s implementation is that additional liberalized hunting and trapping practices have been added over time; harvest seasons have been expanded and then expanded again; and harvest limits have been increased and then increased again. Given this incremental pattern of implementation, it is predictable that additional IM liberalizations will be proposed and authorized by the BOG in the future that will directly affect NPS national preserves. Such changes will create additional future conflicts between State regulations and NPS management policies; and inevitably have substantive adverse impacts and implications for wildlife resources and values within the national preserves. For example, if the NPS prohibition on bear baiting is eliminated, a review of GMU descriptions where bear baiting is allowed in the 2025-2026 Alaska Hunting Regulations<sup>79</sup>, p. 26, indicates that baiting of black bears will be allowed in at least nine national preserves; and baiting of brown bears would be allowed in at least four national preserves, if not prohibited under current NPS regulations.<sup>80</sup> In other words, if NPS implements the hunting rule as proposed, it will be re-opening nine national preserves to black bear baiting; and four to brown bear baiting.

## GENERAL COMMENTS

**1. The preamble of the proposed rule largely fails to acknowledge or summarize the extensive administrative history documenting longstanding NPS concerns about certain State-authorized, “liberalized” predator hunting practices that conflict with NPS wildlife management mandates and policies** – We have summarized the substantive administrative history of this issue in the Background section above, which documents longstanding NPS objections to certain of the State’s liberalized predator harvest regulations overlapping national preserves in the years leading up to the 2015 Rule. In contrast, FR p. 11484 of the preamble (in the section before the description of the 2015 Rule) largely omits any discussion of this extensive administrative history. In general, the major NPS objections occurred after the State began implementing its 1994 Intensive Management Law (IM) in ever widening areas. The significant omission of such relevant administrative history in the Background section of the proposed rule is misleading to the public regarding the true nature and extent of longstanding NPS concerns about the State’s liberalized predator hunting allowances that conflict with NPS management policies.

Whether the significant omission of the relevant administrative history in the preamble is intentional or not, the preamble as written creates an inaccurate and biased narrative that the proposed rule will somehow “restore” NPS “interpretations of laws, policies, and regulations adopted to implement ANICLA” to what was in effect prior to the 2015 rulemaking. The administrative history shows that NPS interpretations of its wildlife management mandates and policies under the NPS Organic Act and ANILCA have NOT changed significantly since the passage of ANILCA. What has changed is the State’s relentless pursuit of its Intensive Management mandate since 1994 eventually culminating in such glaring conflicts between the State’s liberalized predator harvest methods and NPS wildlife management policies that NPS was forced to finally take action to prohibit conflicting State regulations, which it did in the 2015 rule. This most recent change in Administration has resulted in NPS revisiting, reinterpreting, and summarily dismissing its well-documented and longstanding past concerns about conflicts between the State’s liberalized predator harvest practices and NPS management policies.

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<sup>78</sup> [https://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/bog\\_process.pdf](https://www.adfg.alaska.gov/static/regulations/regprocess/gameboard/pdfs/bog_process.pdf)

<sup>79</sup> [https://www.adfg.alaska.gov/static/regulations/wildliferegulations/pdfs/regulations\\_complete.pdf](https://www.adfg.alaska.gov/static/regulations/wildliferegulations/pdfs/regulations_complete.pdf)

<sup>80</sup> 36 CFR §13.42(f).

Rescinding the relatively limited prohibitions of a few State hunting regulations in the NPS regulations now, as proposed, will NOT restore a more acceptable situation; it will only exacerbate conflicts between the State-authorized “liberalized” predator hunting practices and the proper management and conservation of wildlife in the national preserves in accordance with applicable federal laws, regulations and policies.

**2. The Supplementary Information section of the preamble contains numerous errors and omissions –**

The many errors and omissions result in sometimes confusing NPS explanations and rationale that “blur the lines” between State and NPS authority to regulate and manage “sport hunting” and “subsistence uses” in national preserves as defined under ANILCA. Collectively, these errors and omissions create an inaccurate and biased narrative about the status of NPS interpretations of law, policies, and regulations adopted to implement the Alaska National Interest Lands Conservation Act of 1980 that were in effect for over three decades” prior to the 2015 rule. There are too many errors and omissions in the Supplementary Information section for us to list them all here; however, we provide some representative examples below.

**a. Incorrect use of “park” terminology (FR pp. 11484-11491)** – The Supplementary Information section of the preamble uses the word “park” dozens of times, often in association with other words (such as “park lands,” “parklands,” “park units,” “park areas,” and “park users”). The usage of mixed terminology is often inconsistent and sometimes incorrect in application, especially since the proposed rule is supposed to be about “Hunting and Trapping in National Preserves.” The imprecise use of such a variety of terms, many of which are not legally defined, is confusing as to what geography NPS is actually referring to. In some cases, the use of mixed terms seems to “blur the lines” (i.e., create ambiguity) between Part 13 regulations applicable specifically and only to “national preserves” vs those applicable to all “park areas” in Alaska. Because of the technical and legal nature of this issue, we ask NPS to review and revise, as needed, its many imprecise references to “parks” and “park [lands, units, areas, etc.]” in the preamble; and use only terminology as defined in 36 CFR §1.4 and 36 CFR §13.1, which includes:

--**National Park System (Park area)** means any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes. (36 CFR §1.4)

-- **National Preserve** shall include the following areas of the National Park System: Alagnak National Wild River, Aniakchak National Preserve, Bering Land Bridge National Preserve, Denali National Preserve, Gates of the Arctic National Preserve, Glacier Bay National Preserve, Katmai National Preserve, Lake Clark National Preserve, Noatak National Preserve, Wrangell-St. Elias National Preserve, and Yukon-Charley Rivers National Preserve. (36 CFR §13.1)

-- **Park areas** means federally owned lands administered by the National Park Service in Alaska. (36 CFR §13.1)

**b. Misleading statement about findings of 2014 EA for the 2015 Rule (FR p. 11484)** – In section 1 on this page, the last sentence states, in part: “Information surrounding the rule focused public attention on certain harvest methods and values **despite finding no impacts to wildlife populations and confirming that finding through an environmental analysis.**” (*Emphasis added*) This statement is fundamentally incorrect and not supported by the plain language of the 2014 EA<sup>81</sup>. Page 17 of the EA states the following conclusion about the impacts of NPS adopting ALL State wildlife harvest regulations in national preserves:

**“Conclusion: The no-action alternative (Adopt State Wildlife Harvest Regulations) is anticipated to result in changes in wildlife populations and habitat, relative to other factors. Localized effects on individual animals, family groups, and packs are expected to be substantial. These changes would be incompatible with NPS mandates to maintain natural ecosystems, processes, and**

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<sup>81</sup> <https://parkplanning.nps.gov/document.cfm?parkID=1&projectID=49062&documentID=61261>

**behaviors of affected wildlife, especially bears. This alternative could also result in the feeding and conditioning of wildlife to human foods; and the altered behaviors have the potential to increase the likelihood more bears are taken in defense of life and property.** (Emphasis added)

In contrast, the Conclusion under the Alternative to Promulgate NPS Wildlife Harvest Regulations prohibiting certain State-authorized harvest methods (i.e., the NPS proposed action), p. 17, states:

**"Conclusion:** The NPS action alternative would allow for the continuation of long-standing predator harvest opportunities, with the exception of the harvest of black bears over bait. It is compatible with the maintenance of natural ecosystems, processes, and behaviors of affected wildlife, especially bears. There would be essentially no change in wildlife population levels or numbers and their habitat from current conditions as a result of this action." (Emphasis added)

Thus, it appears the authors of this background information badly misread and misinterpreted the 2014 EA. Their interpretation and summary of the 2014 EA's conclusions is plainly incorrect on its face; and is grossly misleading to the public reviewing the information NPS has provided in the preamble regarding the proposed rule. We ask NPS to correct the record in the final rule.

**c. Statement about State authority under §1314(a) of ANILCA omits mentioning the Secretary of the Interior's similar authority under §1314(b) (FR p. 11484)** – The middle column, first full paragraph states, in part:

Section 1314(a) of ANILCA reaffirms that “Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in title VIII of this Act, or to amend the Alaska constitution.” 16 U.S.C. 3202(a).

*Comment:* While the above quote is accurate, the preamble omits the well-known counterpoint to the statement about State authority in §1314(a) in found in §1314(b), which states:

Except as specifically provided otherwise by this Act, nothing in this Act is intended to enlarge or diminish the responsibility and authority of the Secretary over the management of the public lands. (Emphasis added)

Omission of the section about the Secretary's (and thus the NPS's) authority over the management of public lands (including park areas) is very misleading. We ask NPS to correct the record by including §1314(b) in the final rule.

**d. Misleading statement about State authority to regulate ANILCA Title VIII subsistence uses on Federal lands (FR p. 11484)** – Specifically on the subject of subsistence uses under ANILCA Title VIII, the middle column, second paragraph states, in part:

As part of its management for sustainability under the Alaska Constitution, the State authorizes regulated take on Federal lands, while the Federal Subsistence Board acts as the Federal regulating agency to assure a subsistence priority is provided to rural residents. (Emphasis added)

*Comment:* ANILCA Title VIII, not the State, authorizes subsistence uses on Federal lands in Alaska. The 1989 State Supreme Court ruling in *McDowell vs. the State of Alaska*<sup>82</sup> established that under its Constitution

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<sup>82</sup> <https://npshistory.com/publications/alaska/subsistence/chap7.htm>

the State could NOT adopt regulations giving preference to rural residents as required under ANILCA Title VIII. In the aftermath of that ruling, the Federal Subsistence Board (FSB) was created and it assumed responsibility for promulgating federal regulations applicable to subsistence uses on Federal lands in accordance with Title VIII. The first such (1991-92) regulations were published in the June 26, 1991 *Federal Register*.<sup>83</sup> In other words, Since its creation in 1990, the FSB, not the State, has regulated subsistence uses on Federal in accordance with ANILCA Title VIII. We ask that NPS correct the record in the final rule.

**e. Misleading statement about the apparent lack of NPS concerns about conflicts between State hunting regulations and NPS management policies prior to the 2015 Rule (FR p. 11485)** – In Section 3, the background information near the top left of page 11485 states, in part: "...the 2015 Rule failed to explain that this provision had operated for years in the context of Federal management without issue." (*Emphasis added*)

*Comment:* Describing the pre-2015 situation as being "**without issue**" is grossly misleading and incorrect. As described in great detail in the Background section of this letter, prior to the 2014 rulemaking, NPS had objected to the BOG many times over a number of years to the State's expanded use of liberalized predator harvest methods in an attempt to decrease the numbers of predators and increase the availability of ungulates for human hunters. The fact that the preamble inaccurately portrays the situation prior to 2015 is quite concerning! It is unclear if the misrepresentation of such information is due to the drafters' unfamiliarity with the administrative history of this issue; or if it is intended to support the inaccurate and biased narrative that everything was fine between NPS and the State prior to the promulgation of the 2015 rule. Again, we ask that NPS correct the record in the final rule.

**f. Misleading statement about the relative impacts of fully adopting State hunting regulations vs promulgating limited NPS prohibitions of certain State harvest methods (FR p. 11485)** – In Section 4, the final two sentences state as follows:

"The environmental analysis found no substantial difference in impact on NPS resources between the no action and preferred alternative adopted in the 2015 Rule. Numerous commenters objected to the omission in the analysis of significant impacts to the human environment and to the State's mandate for sustainable wildlife management." (*Emphasis added*)

*Comment:* This statement is NOT accurate! See the respective "Conclusion" statements from 2014 EA in comment "3.a" above, which reflect substantive differences in the EA regarding the wildlife effects of the two alternatives. While it would be technically correct to state that the 2014 EA and 2015 Finding of No Significant Impact indicated that the potential impacts of either alternative would NOT be "significant" or "at the State-wide population level"; it is patently false to state that the analysis found "no substantial difference in impact between the two alternatives." The fact is that the EA's "Conclusions" quoted in the comment above describe substantive differences in the impacts of the two alternatives. Again, we ask NPS to correct the record in the final rule.

**g. Misleading statement about NPS authority to regulate subsistence uses in park areas under ANILCA Title VIII (FR p. 11486)** – In a discussion about the 2017 regulation, first column, first new paragraph states:

The combined effect of these changes effectively expanded NPS's authorities to limit harvests administered through State of Alaska, U.S. Fish and Wildlife Service, and Federal Subsistence Board regulations. (*Emphasis added*)

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<sup>83</sup> *Ibid.* See Table 7-1.

*Comment:* NPS did not “expand” or “overreach” its lawful authority to regulate subsistence uses. It simply exercised the authority provided under ANILCA §1314(b), as described in comment “3.c” above; and similar authority provided under 43 CFR §51.13(a)(3)<sup>84</sup>, which states: “Nothing in the regulations in this part shall enlarge or diminish the authority of any agency to issue regulations necessary for the proper management of public lands under their jurisdiction in accordance with ANILCA and other existing laws.” (*Emphasis added*) Again, we ask NPS to correct the record in the final rule.

#### **h. Misleading statements about the 2024 Rule’s discussion of subsistence uses (FR p. 11488) –**

There are two misleading statements, which are as follows:

1) “In the preamble to that [2015] rule, NPS concluded the word “subsistence” in ANILCA and its implementing regulations 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.” (*Emphasis added*)

*Comment:* The 2015 explanation about “subsistence” applying to only “rural residents” in the quoted text above is consistent with the definition of “subsistence uses” in §803 of ANILCA, which states: “As used in this Act, the term “subsistence uses” means 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.”

In other words, ANILCA’s reference to “customary and traditional uses” applies specifically to “rural Alaska residents”; it does NOT apply more broadly to ALL Alaska residents as implied in the NPS’s current criticism of the 2015 preamble. Because of the previously discussed State Supreme Court ruling in *McDowell v. State of Alaska*<sup>85</sup>, “the federal government has managed subsistence uses on federal lands in Alaska since Alaska changed its state law in 1990.”<sup>86</sup> It is inaccurate and misleading for NPS to imply in the current preamble that “subsistence” under ANILCA is applicable more broadly than just to the “rural Alaska residents” mandated under the law; or that federal subsistence is “regulated and prioritized” equally by Federal agencies and the State. Again, we ask NPS to correct the record in the final rule.

2) “Allowances in 36 CFR 13.400 for subsistence uses to occur consistent with applicable State and Federal law have not proven effective at maintaining the balance struck in the pre-2015 regulations that park users and resource managers relied on for 35 years, which this rulemaking proposes to restore.” (*Emphasis added*)

*Comment:* The above statement is grossly inaccurate and misleading. There was no “**balance struck**” between State and Federal subsistence regulations prior to 2015. Again, because of *McDowell v. State of Alaska*<sup>87</sup>, the Federal government, not the State, has managed subsistence on federal lands in Alaska since 1990. As described in CRS Report #R47511<sup>88</sup>, titled “Subsistence Uses of Resources in Alaska: An Overview of Federal Management,” April 20, 2023:

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<sup>84</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51/subpart-B/section-51.13>

<sup>85</sup> <https://npshistory.com/publications/alaska/subsistence/chap7.htm>

<sup>86</sup> <https://www.everycrsreport.com/reports/R47511.html>

<sup>87</sup> <https://npshistory.com/publications/alaska/subsistence/chap7.htm>

<sup>88</sup> *Ibid.*

From a historical perspective, Title VIII of ANILCA provides the opportunity to manage subsistence hunting and fishing on Alaskan federal lands to the State of Alaska in lieu of the federal government.<sup>89</sup> Under ANILCA, such management is contingent upon the state legislature enacting laws consistent with certain provisions and terms of the legislation. This includes ANILCA’s requirements for establishing a priority for subsistence hunting and fishing for rural Alaskans. Following the enactment of ANILCA, the State of Alaska enacted a law that limited the definition of *subsistence uses* to residents of “rural areas,” thereby complying with Title VIII of ANILCA.<sup>90</sup> Pursuant to Title VIII, the State of Alaska, through the state Board of Fisheries and Board of Game, managed subsistence uses on federal lands for the first decade following ANILCA’s enactment.

Then in 1989, the Alaska Supreme Court held that the rural residency preference established by state law (and required under ANILCA) violated the equal access clause of the Alaska state constitution.<sup>91</sup> After the ruling, the State removed the rural preference from its subsistence use law, which caused the law to no longer comply with the requirements of Title VIII of ANILCA for state management on federal lands. Because the Alaska state constitution prevents the State from enacting a law to manage subsistence uses that is consistent with Title VIII of ANILCA, the federal government has managed subsistence uses on federal lands in Alaska since Alaska changed its state law in 1990.

Surely, the drafters of the proposed rule have heard of the 1989 Alaska Supreme Court decision in *McDowell vs. the State of Alaska*<sup>92</sup>? The practical effect of the ruling is that it led to federal agencies assuming primary responsibility for management of subsistence uses on federal lands as authorized under Title VIII of ANILCA. This in turn led to creation of the Federal Subsistence Board, which promulgated interim Federal subsistence regulations; and ultimately promulgated the Federal subsistence regulations currently found in 43 CFR Part 51.<sup>93</sup>

In other words, it simply is NOT accurate for the preamble to claim that there was a “balance” between State and Federal subsistence regulations for over three decades prior to the 2015 rulemaking. The reality is that the Federal Subsistence Board has properly managed subsistence hunting and fishing in Federal conservation units since 1990. Similarly, it is also incorrect for NPS to assert that there was a “balance” between State and NPS management of wildlife harvest (i.e., sport hunting) in national preserves between 1980 and 2015. As noted in the Background section above, NPS responded to the State’s increasingly liberalized regulatory changes by instituting preserve-specific closures/prohibitions on certain hunting practices in various Superintendent’s Compendiums starting in 2010; which was followed by the more encompassing 2015 rule. As described in great detail in the Background section of this letter, whatever balance existed during the early years of national preserve management following the passage of ANILCA was upended by the State’s Intensive Management Law in 1994; and the subsequent institution of a variety of “liberalized” predator hunting practices. Again, we ask NPS to correct the record in the final rule.

**i. Misleading description of an information source related to bear baiting (FR p. 11490)** – The middle column, first paragraph states, in part:

The 2024 Rule placed substantial weight on a query of 28 bear management and research biologists from across North America to support a ban on bear baiting on national preserves in Alaska...

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<sup>89</sup> 16 U.S.C. §3115(d) ANILCA does not impact the state’s ability to exercise its own jurisdiction over state and private lands.

<sup>90</sup> Act of May 30, 1986, ch. 52, 1986 Alaska Sess. Laws 1.

<sup>91</sup> *McDowell v. State of Alaska*, 785 P.2d 1, 1 (Alaska 1989).

<sup>92</sup> <https://nps.history.com/publications/alaska/subsistence/chap7.htm>

<sup>93</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51?toc=1>

Although the query of biologists is perhaps useful for understanding potential risks (of bear baiting), the NPS now finds the lack of data on any particular public safety risks from bear baiting in Alaska is more persuasive.

*Comment:* We believe the above section of the preamble refers to a peer reviewed research study conducted by Lafferty DJR, Trujillo SM, Hilderbrand GV, Sears A, Christian P, Payer D, et al. (2024) “Bear baiting risks and mitigations: An assessment using expert opinion analyses.” PLoS ONE 19(11): e0312192.<sup>94</sup> The NPS characterization of the information being derived from a “query” without citing the study seems to suggest that the information was derived from an informal survey and is therefore not credible or scientifically valid, which is not the case. We ask that NPS properly cite the source of the information it is referring to in this section of the preamble. In general, the preamble omits or minimizes discussion of numerous other scientific articles related to the impacts of bear baiting and supplemental feeding of bears. We will discuss this in greater detail in a later comment about Bear Baiting. However, for now we point out that NPS *Management Policies 2006*<sup>95</sup>, Section 2.1.2 states, in part: “[NPS] Decision-makers and planners will use the best available scientific and technical information and scholarly analysis to identify appropriate management actions for protection and use of park resources.” Since portions of the preamble discussion question are either dismissive of, or simply fail to acknowledge, the best available scientific studies related to bear baiting, we must question NPS’s compliance with Management Policy § 2.1.2 in this case.

**j. Incorrect citation of State regulations in Live Wildlife Collection section (FR p. 11491)** – The middle column, top of page, states, in part:

Falconry activities in Alaska are managed through State regulations (5 AAC 93.037) and U.S. Fish and Wildlife Service regulations (50 CFR 21.82 and 21.85), including the collection of live chicks for training. (*Emphasis added*)

*Comment:* State regulation 5 AAC 93.037<sup>96</sup> applies to ADFG fees for access to Stan Price State Wildlife Sanctuary. The correct citation for the State falconry regulations is AAC 92.037.<sup>97</sup> Again, we ask NPS to correct the record in the final rule.

**3. The proposed rule overly defers to state hunting and trapping regulations in national preserves. The preamble largely fails to adequately acknowledge or explain that NPS has the plenary authority to manage and regulate such uses in national preserves** – It is well established that NPS has the plenary authority to prohibit State-authorized sport hunting practices that are conflict with NPS policies. Under the Property and Supremacy Clauses of the U.S. Constitution, State wildlife laws that conflict with NPS's efforts to carry out its statutory wildlife management mandate are preempted. *See, e.g. Kleppe v. New Mexico*, 426 U.S. 529 (1976); *Hunt v. United States*, 278 U.S. 96 (1928); *New Mexico State Game Comm'n v. Udall*, 410 F.2d 1197 (10th Cir.), *cert. denied*, *New Mexico State Game Comm'n v. Hickel*, 396 U.S. 961 (1969); *United States v. Brown*, 552 F.2d 817 (8th Cir. 1977). Similarly, in *Safari Club International v. Haaland*, No. 21-35030 (9th Cir. 2022), the Ninth Circuit affirmed that the U.S. Fish and Wildlife Service (FWS) can limit or prohibit hunting practices on national wildlife refuges in Alaska, even if those practices are approved by the state. The court upheld the "Kenai Rule," reinforcing that federal regulations take precedence on federal lands. Last, but not least, 16 U.S.C. 3201 of ANILCA provides that “within national preserves the Secretary may designate zones where and periods when no hunting, fishing, trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment.”

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<sup>94</sup> <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0312192>

<sup>95</sup> <https://www.nps.gov/orgs/1548/upload/ManagementPolicies2006.pdf>

<sup>96</sup> <https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=158332>

<sup>97</sup> <https://regulations.justia.com/states/alaska/title-5/part-3/chapter-92/article-3/section-5-aac-92-037/>

As described in Lurman and Rabinowitch,<sup>98</sup> “[i]t has been clear for some time that NPS regulations may preempt state wildlife management laws that conflict with the NPS’s own mandates at any time under the Organic Act. What is now also clear is that the Alaska’s Intensive Management statute meets the criteria for direct conflict with federal laws specifically the Organic Act and the ANILCA, as well as derivative regulations and policies, and must be preempted in favor of wildlife management goals and techniques that are in line with the mandates established by Congress.” (p. 170)

In brief, there is a longstanding administrative history documenting decades of conflicts between State-authorized, liberalized predator hunting methods and NPS’s statutory wildlife conservation mandates and related management policies. In the absence of adequate NPS regulatory constraints on such practices, such conflicts are highly likely to continue well into the future. For this reason, NPS should readopt the 2015 Rule’s prohibition on predator reduction efforts because the State’s regulations are designed to manipulate predators to increase abundance of prey, and such practices are contrary to the Service’s statutory mandates and policies.

**4. The proposed rule fails to analyze or determine if application of Alaska’s liberalized predator hunting regulations in national preserves are, in fact, “non-conflicting” with applicable federal regulations and policies** – As previously mentioned, 36 CFR §13.42(a) Taking of wildlife in national preserves provides that: “Hunting and trapping are allowed in national preserves in accordance with applicable Federal and **non-conflicting** State law and regulation.” The extensive administrative history summarized in the Background section above documents longstanding NPS concerns about conflicts between the State’s liberalized predator hunting allowances under its IM program and NPS wildlife management mandates and policies.

Give the history of this issue, NPS has an affirmative responsibility to ensure that State hunting regulations meet the “non-conflicting” standard before adopting any such regulation(s) for implementation in national preserves. Despite this, NPS has provided no information or analysis to that effect in the proposed rule; and fails to make a determination that the Alaska regulations to be adopted are, in fact, non-conflicting with the above guidance. Lacking such analysis or determination, any reasonable and prudent person familiar with the NPS Organic Act’s conservation mandate and related NPS management guidance would conclude that many of the State-sanctioned enhanced predator hunting practices, which are currently prohibited by NPS, are, in fact, a *prima facie* example of State regulations that are in direct conflict with the applicable federal laws and regulations. As a result, those State regulations should not, and legally cannot, be adopted by NPS for implementation in the national preserves in Alaska.

**5. Similarly, the proposed rule fails to analyze or determine if Alaska’s liberalized predator hunting regulations are an “appropriate use” in accordance with NPS Management Policies 2006 Section 8.1.2** – This section of management policies provides a clear “process for determining appropriate uses.” Despite this, the proposed rule neither evaluates nor concludes that the State-sanctioned enhanced predator hunting practices, such as those previously or currently prohibited by NPS in 2015 and 2024, meet the standard of an “appropriate use.” Lacking such analysis or determination, any reasonable and prudent person familiar with the NPS Organic Act and related management guidance would conclude that many of the State-sanctioned enhanced predator hunting practices, such as those previously or currently prohibited by NPS in 2015 and 2024, are, in fact, a *prima facie* example of State regulations that are an “inappropriate use” within the national preserves of Alaska.

**6. Section 13.400(e) of the proposed rule inappropriately attempts to elevate the State’s authority to regulate subsistence uses in park areas in Alaska, when it is well known that the State Constitution**

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<sup>98</sup> Attachment #11: 2007 Lurman & Rabinowitch, article on Preemption of State Wildlife Law in Alaska

**prohibits the State from giving preference to rural residents as required under ANILCA** – Findings in Title VIII § 801<sup>99</sup> of ANILCA affirm that:

- 1) the continuation of the opportunity for subsistence uses by rural residents of Alaska, including both Natives and non-Natives, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence; (*Emphasis added*)
- 2) the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;
- 3) 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. (*Emphasis added*)

ANILCA §804<sup>100</sup> establishes the “preference for subsistence uses” of fish and wildlife by rural residents in conservation system units, including park areas, in Alaska. As discussed in great detail in the Background section above, because the Alaska state constitution prevents the State from giving preference to “rural residents” over all other residents, Alaska is unable to enact a law to manage subsistence uses on federal land that is consistent with Title VIII of ANILCA. See State Supreme Court ruling in *McDowell vs. the State of Alaska*.<sup>101</sup> The practical effect of the court ruling is that Federal agencies, NOT the State, have assumed primary responsibility for management of subsistence uses on federal lands since 1990. This in turn led to creation of the Federal Subsistence Board, which promulgated interim Federal subsistence regulations; and ultimately promulgated the Federal subsistence regulations originally found in 50 CFR 100<sup>102</sup>, but now found at 43 CFR Part 51<sup>103</sup>. In other words, under applicable authorities, Federal and NPS subsistence regulations preempt State subsistence regulations on federal land.

Despite the well-established federal authority to regulate and manage the federal subsistence program, §13.400(e) of the proposed rule would authorize the State of Alaska “to regulate the taking of fish and wildlife for subsistence uses within park areas to the extent such regulation is consistent with applicable Federal law, including but not limited to ANILCA.” To put it bluntly, NPS does NOT have the authority to empower the State of Alaska to regulate subsistence uses in park areas; only Congress has that authority. As discussed previously, while ANILCA Title VIII provides the opportunity for the State to regulate subsistence uses on federal lands, the State Constitution prevents the State from complying with Title VIII’s subsistence preference for rural residents. See State Supreme Court ruling in *McDowell vs. the State of Alaska*.<sup>104</sup>

In general, the State’s subsistence hunting program is incompatible and conflicts with the Federal subsistence program authorized under ANILCA Title VIII because the State generally does not limit subsistence hunting to “rural residents.” Again, see *McDowell vs. the State of Alaska*.<sup>105</sup> Because of the inherent conflicts between the Federal subsistence program authorized under ANILCA Title VIII and the State’s version of subsistence, it makes no sense for NPS to propose a rule that would attempt to authorize the State to regulate subsistence uses in park areas. This questionable approach would allow urban residents of Alaska to engage

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<sup>99</sup> <https://www.doi.gov/sites/doi.gov/files/13-anilca-title-8-508.pdf>

<sup>100</sup> <https://www.doi.gov/sites/doi.gov/files/13-anilca-title-8-508.pdf>

<sup>101</sup> <https://npshistory.com/publications/alaska/subsistence/chap7.htm>

<sup>102</sup> <https://www.govinfo.gov/app/details/CFR-2009-title50-vol6/CFR-2009-title50-vol6-part100>

<sup>103</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51?toc=1>

<sup>104</sup> <https://npshistory.com/publications/alaska/subsistence/chap7.htm>

<sup>105</sup> <https://npshistory.com/publications/alaska/subsistence/chap7.htm>

in subsistence activities in park areas that are statutorily limited to rural residents of the State. Such an approach would substantially increase competition for rural subsistence users and the wildlife they depend on. In effect, the proposed rule change would open the door for non-rural residents to “subsistent hunt” in national preserves under the guise of State regulations, as if they were federally qualified rural users, which they are not.

In addition to longstanding NPS concerns in the context of sport hunting about certain State-authorized “liberalized” predator hunting practices conflicting with NPS wildlife mandates and policies, some the same harvest methods also conflict directly with some of the Federal subsistence hunting regulations in 43 CFR §51.28.<sup>106</sup> For example, §51.26(b)(17) Prohibits “Taking a bear cub or a sow accompanied by cub(s).” In contrast, current Alaska bear hunting regulations<sup>107</sup>, p. 19, provide that: 1) “Black bear cubs and sows accompanied by cubs, may be taken by resident hunters Oct. 15-Apr. 30 under customary and traditional use activities at a den site in GMU 24. (Emphasis added) Similarly, 43 CFR §51.26(b)(10) prohibits “Using a trap to take ungulates or bear” under the Federal Subsistence program. In contrast, current Alaska bear hunting regulations<sup>108</sup>, p. 32, include “**black bear**” in the definition of *furbearer*, which is “a classification of animals subject to taking with a trapping license.” In other words, whereas Federal Subsistence regulations prohibit trapping black bears, State regulations allow it. A particular concern with the proposed rule is that NPS would rescind its own definition of *furbearer* in 36 CFR §13.1<sup>109</sup>, which does NOT include “**black bears**” as a *furbearer*; and presumably adopt the State definition, which does include “**black bears.**” In other words, the proposed rule would open national preserves to trapping of black bears under State regulations by reclassifying **black bears** as a *furbearer* subject to trapping, which is effectively prohibited under the existing NPS definition of *furbearer*.

It is also concerning that the preamble for the proposed rule neither acknowledges nor considers these apparent conflicts between the State’s liberalized predator hunting regulations and the Federal subsistence hunting regulations. Potential adverse impacts of NPS adopting such conflicting State regulations on federally qualified subsistence hunters have not been adequately disclosed or evaluated. Specifically, NPS has NOT issued an environmental assessment (EA) under NEPA or an ANILCA 810 Analysis in conjunction with the proposed rule. As a result, the public has not been informed of potential impacts to consider as they prepare comments about the proposed rule

In summary, the proposed rule would likely increase competition for resources that are hunted and trapped; and if the rule were to be made final, there is a significant risk of adverse impacts to federally qualified subsistence users (i.e., rural Alaskan residents) because of increased demand for finite resources. For these reasons, we must view the proposed rule as detrimental to subsistence users and therefore cannot support it.

**7. Bear Baiting: The proposed rule would remove the current NPS prohibition on bear baiting in national preserves** – First, we fully support the existing prohibition on bear baiting in national preserves. We remind you of NPS’s previous well-reasoned position on this topic as stated in the NPS Response to Comment # 31 in the 2015 Final Rule, which stated, in part (*emphasis added to underlined sections*):

The NPS proposed prohibiting the harvest of brown bears over bait to avoid public safety issues, to avoid food conditioning bears and other species, and to maintain natural bear behavior as required by the NPS legal and policy framework. By design, baiting typically uses human or pet food to alter the natural behavior of bears to predictably attract them to a specific location for harvest... Food-

<sup>106</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51/subpart-D/section-51.26>

<sup>107</sup> [https://www.adfg.alaska.gov/static/applications/web/nocache/regulations/wildliferegulations/pdfs/regulations\\_complete.pdf6694CD70D88F5D6218300D1668AE3E9A/regulations\\_complete.pdf](https://www.adfg.alaska.gov/static/applications/web/nocache/regulations/wildliferegulations/pdfs/regulations_complete.pdf6694CD70D88F5D6218300D1668AE3E9A/regulations_complete.pdf)

<sup>108</sup> *Ibid.*

<sup>109</sup> <https://www.ecfr.gov/current/title-36/chapter-I/part-13/subpart-A/section-13.1>

conditioned bears are also believed more likely to cause human injury. To that end, NPS regulations [36 CFR §2.2(a)(2)] prohibit feeding wildlife and the practice of baiting is at odds with this. (*Emphasis added*)

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. Because of the accessibility of these areas, they are sometimes used by multiple users, which contributes to the public safety concerns associated with baiting. Although there are State regulations that prohibit bait stations within a certain distance of structures (cabins/residences), roads, and trails, these distances lack biological significance relative to bears, whose home ranges can include tens to hundreds of square miles. (*Emphasis added*)

To the information above, we would add that bait stations do NOT distinguish between black bears or brown/grizzly bears or importantly other wildlife species. Not only are black bears attracted to black bear bait stations, but brown bears and other animals may be attracted as well. In effect, the use of bait stations can adversely impact the assemblage of wildlife species in areas open to bear baiting, as numerous species can and likely do find and utilize the bait. In effect, this further compounds the problem of food-conditioning wildlife.

In contrast to the State's assertion that "baiting does not cause bears to become food-conditioned," which is made without compelling supporting evidence, the problems with bear baiting and supplemental feeding are well documented in the scientific literature:

- Females with cubs are particularly vulnerable to bait and feed sites, and if their mother is killed, cubs who are orphaned are less likely to survive.<sup>110</sup>
- Bait and supplemental feeding sites concentrate bears – putting young bears in harm's way. Adult bears may prey upon cubs or small bears.<sup>111</sup>
- Spoiled baits are also toxic and even fatal to bears and other wildlife.<sup>112</sup>
- Bait and feeding sites concentrate wildlife of different species and thus increase the potential for disease and parasite transmission between species, especially rabies<sup>113</sup>, which is an ongoing concern in Alaska with impacts more likely to affect rural Alaskans.
- Baiting is considered unsporting among many sportsmen because it is not "fair chase," the cornerstone of ethical sport hunting.<sup>114</sup>
- Bears that become habituated to bait and feed become less shy and more unpredictable.<sup>115</sup>

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<sup>110</sup> K. V. Noyce and D. L. Garshelis, "Influence of Natural Food Abundance on Black Bear Harvests in Minnesota," *Journal of Wildlife Management* 61, no. 4 (1997); K. D. Malcolm and T. R. Van Deelen, "Effects of Habitat and Hunting Framework on American Black Bear Harvest Structure in Wisconsin," *Ursus* 21, no. 1 (2010).

<sup>111</sup> M. Elfstrom et al., "Ultimate and Proximate Mechanisms Underlying the Occurrence of Bears Close to Human Settlements: Review and Management Implications," *Mammal Review* 44, no. 1 (2014)

<sup>112</sup> Dunkley and Cattet

<sup>113</sup> Inslerman et al., "Baiting and Supplemental Feeding of Game Wildlife Species. The Wildlife Society.," <http://wildlife.org/wp-content/uploads/2014/05/Baiting06-1.pdf>, no. Technical Review. 58 p. (2006)

<sup>114</sup> J. Posewitz, *Beyond Fair Chase: The Ethic and Tradition of Hunting* (Helena, Montana: Falcon Press, 1994); T. L. Teel, R. S. Krannich, and R. H. Schmidt, "Utah Stakeholders' Attitudes toward Selected Cougar and Black Bear Management Practices," *Wildlife Society Bulletin* 30, no. 1 (2002); C.W. Ryan, J.W. Edwards, and M.D. Duda, "West Virginia Residents: Attitudes and Opinions toward American Black Bear Hunting," *Ursus* 2, (2009); C. A. Loker and D. J. Decker, "Colorado Black Bear Hunting Referendum: What Was Behind the Vote?," *Wildlife Society Bulletin* 23, no. 3(1995).

<sup>115</sup> Inslerman et al.; Dunkley and Cattet

- As a result of placing bait and feed in the woods, bears associate food with the smells of humans, and even livestock.<sup>116</sup> Feeding bears with bait increases the likelihood of conflicts.
- Baited and fed bears experience serious behavior modifications, which are sometimes irreversible.<sup>117</sup>
- Food-conditioned bears change their eating habits, home ranges, and movement patterns.<sup>118</sup>
- Bait and feed sites require ease of access and biologists have noted habitat destruction at these places, including the spread of invasive plants.<sup>119</sup>
- Bait piles are smelly and irritating to other outdoor recreationists, and if they are near roadways, can endanger bears that travel near or on roadways to access bait piles.<sup>120</sup>
- Non-target species can be attracted to bait stations, including the attraction of brown/grizzly bears to black bear bait stations, resulting in human-wildlife conflicts and hunter kills of the wrong species of bears. For example, from 1996-2016 hunters in Idaho and Wyoming illegally killed at least 23 federally listed as Threatened grizzly bears at black bear bait stations as documented in the 2019 Complaint in *Wild Earth Guardians et al vs. U.S. Forest service and U.S. Fish & Wildlife Service*.<sup>121</sup>
- More recently, a study<sup>122</sup> relevant to bear baiting in national preserves found that: “Bear baiting is functionally equivalent to feeding bears, bears may defend a bait station similar to how they would defend a carcass, and bear baiting can lead to human food-conditioning in bears. Bear baiting also increases the likelihood bears will be killed in defense of life and property, and alters natural bear behaviors and ecological processes. Further, current mitigation strategies to minimize public safety risks and potential property damage are inadequate. For example, because bears are known to defend food resources, avoiding food conditioning of bears is central to the educational messaging of all entities that manage bears. In short, bear baiting is a harvest practice that challenges harmony between State mandates, which emphasize hunter opportunity, and NPS mandates that include public safety and natural processes.”

Finally, ADFG’s own educational website, “Living with Bears”<sup>123</sup>, points out the significant problems caused by bears having access to human food, which include the following concerns (*emphasis added to underlined sections*):

- “Feeding bears is dangerous for both people and bears. Bad habits are hard to break and bears are creatures of habit. Bears seek out the same wild foods in the same places year after year. Bears conditioned to eating human food will similarly return to neighborhoods, campgrounds, and dumpsters, until food is no longer available or they are killed.”
- “Remember: Food conditioned bears can be aggressive. Leaving out bear attractants, such as garbage, birdseed or fish waste can draw bears into neighborhoods or campsites. A person who allows bears to feed on improperly stored food or garbage is putting other people at risk.”
- “Bears like garbage. Garbage can be easy for bears to obtain and is often calorie-rich, which makes it attractive food for bears.”

<sup>116</sup>Beck et al.; Inslerman et al.; Dunkley and Cattet

<sup>117</sup>Inslerman et al.

<sup>118</sup>J. P. Beckmann and J. Berger, "Rapid Ecological and Behavioural Changes in Carnivores: The Responses of Black Bears (*Ursus Americanus*) to Altered Food," *Journal of Zoology* 261, (2003).

<sup>119</sup>Hank Hristienko and Jr. McDonald, John E., “Going in the 21st Century: A Perspective on Trends and Controversies in the Management of the Black Bear," *Ursus* 18, no. 1 (2007).

<sup>120</sup>*Ibid.*

<sup>121</sup><https://wildernesswatch.org/images/wild-issues/2019/06-05-2019-WW-Lawsuit-Complaint-Bear-Baiting.pdf>

<sup>122</sup>Attachment #7: Lafferty et al, article on Bear Baiting Risks and Mitigations

<sup>123</sup><http://www.adfg.alaska.gov/index.cfm?adfg=livingwithbears.bearharmony>

In other words, baiting bears is feeding bears, which in the State's words (*cited above*), "is dangerous for both people and bears" [because] "food conditioned bears can be aggressive." This concern is of particular importance given that Alaska has the highest recorded incidence of bear attacks on humans in North America. From 2000-2017, there were 46 total fatal bear attack incidents, resulting in 48 total deaths, in North America. Moreover, eight fatal bear attack incidents, resulting in 10 deaths, occurred in Alaska, between January 2000 through June 2017. During this period, Alaska's number of incidents account for 29.6 percent of all fatal attacks in the U.S., along with 17.4 percent of all fatal attacks in North America. And the state's number of resulting deaths account for 34.5 percent of total deaths-by-bear in the U.S., and 20.8 percent of total deaths-by-bear in North America.<sup>124</sup>

Regarding the State's IM objective of reducing brown bear numbers through predator control and liberalized hunting practices in order to increase ungulate harvests, there is no evidence in Alaska that such efforts to date have accomplished the objectives desired by the Intensive Management Law.<sup>125</sup> In addition, it is well documented that ADFG and the BOG lack accurate estimates of black or brown bear population densities across the State to support conclusions that more bears could be killed sustainably. For example, in *Alaska Wildlife Alliance vs. State of Alaska, BOG, and ADFG*,<sup>126</sup> a case challenging the State's Mulchatna bear control program<sup>127</sup> that was initiated in 2022, the State Superior Court found that:

"ADFG lacks estimates of black or brown bear population densities in Unit 17 or 18. The State's admission that the BOG lacked sufficient bear population and distribution information illustrates that the BOG failed to consider all the factors that are important and relevant to assure sustainability of the bear population... Other than anecdotal information in the record when the BOG heard testimony suggesting that "brown bears are widely distributed in Unit 17 in abundance, there is no credible scientific information in the record or discussion by the BOG to support the conclusion that bears could be killed sustainably." (Emphasis added)

In terms of the State's predator control program, there is ample evidence, including studies published by former ADFG biologists<sup>128</sup>, that the State's aerial shooting of bears and wolves is generally NOT effective at increasing the numbers of caribou and moose for harvest<sup>129</sup>. It is noteworthy that the Board of Game does NOT include any wildlife scientists among its board members.<sup>130</sup> It is well known that the State's predator control program does NOT follow National Research Council recommendations for monitoring and evaluating the effects and effectiveness of the State's predator control program.<sup>131</sup>

In the proposed rule's preamble discussion on bear baiting (p. 11489), NPS acknowledges that "there are no data specific to the harvest of brown bears over bait in national preserves, data from the State of Alaska reveals that between 2012 and 2016, 40 brown bears were taken over bait in certain areas where baiting is allowed and that are adjacent to, within, or overlap with, national preserves (NPS, 2019a; SOA, 2018)." NPS

<sup>124</sup> <https://www.alaskasnewsresource.com/content/news/MAP-Fatal-Bear-Attacks-in-North-America-432734333.html>

<sup>125</sup> <https://wildlife.onlinelibrary.wiley.com/doi/10.1002/jwmg.186>

<sup>126</sup> <https://mustreadalaska.com/wp-content/uploads/2025/03/3AN-23-07495CI-brown-bear-decision.pdf>

<sup>127</sup> <https://www.akwildlife.org/mulchatna-predator-control#:~:text=The%20Mulchatna%20Predator%20Control%20Program&text=In%202022%2C%20the%20State%20of,%20biologists%20and%20the%20public.>

<sup>128</sup> <https://www.mdpi.com/1424-2818/14/11/939>

<sup>129</sup> <https://alaskapublic.org/2023/07/20/alaska-predator-control-doesnt-result-in-more-moose-harvests-according-to-a-study-of-one-game-unit/>

<sup>130</sup> <https://www.adfg.alaska.gov/index.cfm?adfg=gameboard.bogmembers>

<sup>131</sup> <https://alcesjournal.org/index.php/alces/article/view/371/455#:~:text=In%201995%2C%20Governor%20Tony%20Knowles%20re%2Dquested%20that,1997%29%20and%20addressed%20biological%20and%20socioeconomic%20issues>

does NOT mention or acknowledge whether or not the State has provided any data regarding the harvest of black bears over bait in national preserves; however, we suspect such data is not available either.

In general, we understand that ADFG does NOT analyze data specific to wildlife harvest, including by bear baiting, in national preserves. We also understand that ADFG records its bear harvest data by Uniform Coding Units (UCUs), which are subunits of Game Management Units (GMUs); then ADFG tabulates the data by GMU and releases it to the public. Despite the absence of data specific to national preserves, in the preamble NPS specifically estimates that “the proposed rule would result in the harvest of no more than 10 bears per year (2 black bears and up to 8 brown bears, where authorized).” Given ADFG’s lack of harvest data related to bear baiting in national preserves and lack of data on bear population densities, we question the validity of the NPS estimates of potential bear harvest over bait in national preserves. This is a classic case of “garbage in, garbage out,” meaning the quality of output is based on the quality of input. For these reasons, in the forthcoming environmental assessment (EA) for the proposed rule, we ask NPS to include all relevant data, as well as data sources, that it has used in its harvest estimates and in its analysis of potential impacts to local bear populations if bear baiting is reintroduced into the national preserves.

The NPS notion that the expected low body count of bears killed over bait somehow justifies allowing bear baiting in national preserves is fundamentally in conflict with multiple NPS management policies as described in the paragraph below. And while population-wide predator reductions resulting from the implementation of various liberalized predator hunting methods, including bear baiting, may not be “significant,” the likelihood of adverse impacts to park resources and values remains a concern. For example, as described in the 2014 NPS Wildlife Harvest EA,<sup>132</sup> “[l]ocalized effects on individual animals, family groups, and packs are expected to be substantial. These changes would be incompatible with NPS mandates to maintain natural ecosystems, processes, and behaviors of affected wildlife, especially bears. This alternative could also result in the feeding and conditioning of wildlife to human foods; and the altered behaviors have the potential to increase the likelihood more bears are taken in defense of life and property.” (*Emphasis added*)

The preamble discussion about Bear Baiting, pp. 11488-11491, not only disregards the preponderance of scientific literature related to concerns about and impacts of bear baiting, it also does NOT discuss potential impacts to the national preserve “values” that NPS is mandated to protect. While the body count is not expected to be high, the activity of bear baiting is likely to adversely impact not only the conservation of bears in national preserves but also the conservation of “values.” As described previously, such “values” are protected under the NPS Organic Act and multiple related NPS *Management Policies 2006*,<sup>133</sup> including the following:

- **Section 1.4.3 – The NPS Obligation to Conserve and Provide for Enjoyment of Park Resources and Values**, which states in part: “The fundamental purpose of the national park system, established by the Organic Act and reaffirmed by the General Authorities Act, as amended, begins with a mandate to conserve park resources and values. This mandate is independent of the separate prohibition on impairment and applies all the time with respect to all park resources and values, even when there is no risk that any park resources or values may be impaired... Congress... has provided that when there is a conflict between conserving resources and values providing for enjoyment of them, conservation is to be predominant. This is how courts have consistently interpreted the Organic Act.” (*Emphasis added*)
- **Section 1.4.6 – What Constitutes Park Resources and Values**, which states, in part: “The ‘park resources and values’ that are subject to the no-impairment standard include the park’s scenery,

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<sup>132</sup> <https://parkplanning.nps.gov/document.cfm?parkID=1&projectID=49062&documentID=61261>

<sup>133</sup> <https://www.nps.gov/orgs/1548/upload/ManagementPolicies2006.pdf>

natural and historic objects, and wildlife, and the processes and conditions that sustain them, including, to the extent present in the park: the ecological, biological, and physical processes that created the park and continue to act upon it; scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells; water and air resources; soils; geological resources; paleontological resources; archeological resources; cultural landscapes; ethnographic resources; historic and prehistoric sites, structures, and objects; museum collections; and native plants and animals; appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them. (Emphasis added)

- **Section 4.4.1 – General Principles for Managing Biological Resources**, which states in part: "The National Park Service will maintain as parts of the natural ecosystems of parks all plants and animals native to park ecosystems...The Service will successfully maintain native plants and animals by: preserving and maintaining the natural abundances, diversities, dynamics, distribution, habitat, and behaviors of native plant and animal populations and the communities and ecosystems in which they occur." (Emphasis added)
- **Section 4.4.3 - Harvest of Plants and Animals by the Public**, which states in part: "The Service does NOT engage in activities to reduce the numbers of native species for the purpose of increasing the numbers of harvested species (i.e., predator control), nor does the Service permit others to do so on lands managed by the National Park Service." (Emphasis added)

The preamble also fails to note that BOG has expanded the allowance of bear baiting over the years to include baiting of brown/grizzly bears in some locations. This was not always the case for the first few decades of bear baiting, which was limited to black bears. Besides conditioning bears to human foods and potentially creating nuisance and dangerous bears, hunters are generally not authorized to shoot a sow bear with cubs. Thus sow bears teach their young to take human food whenever it is available. We have seen how that turned out in places like Yosemite and Yellowstone NPs. Bears began to trash campsites and vehicles to access human food. Though bear bait stations may be in relatively remote locations, the relatively modest setback distances (e.g., from nearest human use sites) required under the State bear baiting regulations are NOT biologically significant, as bears can follow their noses for many miles to access easy food sources.

Also in the preamble, near the top of the middle column of page 11489, the background information states: "It is difficult to predict how many more bears might be taken due to the proposed rule, and thus how much more bear baiting might occur, because neither the NPS nor the State of Alaska maintain data on the total number of bears taken over bait in national preserves in Alaska when this practice was allowed in previous years." Though a correct statement, in light of the lack of data, it elevates questions about the validity of NPS's estimate about the number of bear that could be taken by bear baiting: and underscores NPS's deliberate ignorance of the preponderance of scientific literature related to the risks of bear baiting.

Lastly, we point out that NPS *Management Policies 2006*<sup>134</sup>, Section 2.1.2 states, in part: "[NPS] Decision-makers and planners will use the best available scientific and technical information and scholarly analysis to identify appropriate management actions for protection and use of park resources." (Emphasis added) By dismissing the collective wisdom and scholarly advice of numerous scientific articles in order to allow bear baiting based on a simplistic low body count rationale, NPS is clearly NOT using the "best available science and technical information and scholarly analysis" as required in NPS management policies. For these reasons, NPS's proposal to rescind the ban on bear baiting is plainly arbitrary.

**8. The 30-day public comment period on the proposed rule is INADEQUATE in light of the complexity of issues, the high level of public interest, and the precedents of the length of comment periods held on previous iterations of the national preserve hunting rule** – As evidence of the high level of public interest

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<sup>134</sup> <https://www.nps.gov/orgs/1548/upload/ManagementPolicies2006.pdf>

in this issue, the NPS received approximately 70,000 comments during the public comment period for the 2014 proposed rule that would become the 2015 final rule. These included unique comment letters, form letters, and signed petitions. Approximately 65,000 comments were form letters. The NPS also received three petitions with a combined total of approximately 75,000 signatures<sup>135</sup>, with the vast majority of comments supporting the NPS proposed rule. In 2018, the NPS received approximately 211,780 pieces of correspondence on the proposed amendment of the 2015 rule with a total of 489,101 signatures. Of the 211,780 pieces of correspondence, approximately 176,000 were form letters and approximately 35,000 were unique comments.<sup>136</sup> In that instance, the vast majority of public comments opposed the NPS proposed rule change. And for the 2023 proposed rule change, the NPS received 199,494 pieces of correspondence on that proposed rule, including 196,158 form letters and 3,336 unique pieces of correspondence.<sup>137</sup>

During the 2014, 2018, and 2023 rulemakings, NPS established the precedent of allowing at least 60 days initially for public comment. In fact, the 2014 rulemaking was open for comment for a total of 90 days<sup>138</sup>; the 2018 rulemaking was open for comment for a total of 168 days<sup>139</sup>; and the 2023 rulemaking was open for comment for a total of 77 days<sup>140</sup>.

Furthermore, NPS has not yet issued an environmental assessment (EA) evaluating potential impacts of the proposed rule, nor notified the public if/when the EA may become available for public review and comment. Similarly, NPS has not issued an ANILCA §810<sup>141</sup> Analysis, which is required to evaluate potential impacts to subsistence uses and users, nor notified the public if/when the 810 Analysis may become available for public review and comment. In effect, NPS has asked the public to comment on the proposed rule without seeing NPS's analysis of potential impacts of the proposed rule changes, thereby demonstrating a total lack of interest in having an informed public. While the 810 Analysis is mandatory under ANILCA, we realize that the revised DOI NEPA guidance<sup>142</sup> allows Interior agencies more "flexibility" in allowing public comment on EA's (or not). However, given the longstanding and contentious nature of this issue (this is the fourth national preserve hunting rulemaking since 2014), a true commitment to public involvement in the process would involve an adequate length public comment period, on par with the 60+ day comment periods for the previous rulemakings; as well as basic coordination of timing for the release of the proposed rule and its associated EA and 810 Analysis.

Lastly, we understand that of the seven NPS Subsistence Resource Commissions (SRC) established under Title VIII of ANILCA, only one SRC has met in the time frame that would allow them to comment on the proposed rule. In addition, of the ten Subsistence Regional Advisory Councils (RACs) established in Title VIII of ANILCA, only four have met in the time frame that would allow them to comment on this proposed rule. We cannot overstate just how important it is that NPS provide the respective SRCs and RACs with adequate notice, opportunity, and time to comment on the proposed rule, which will likely impact the federally qualified subsistence users that these federally authorized entities represent.

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<sup>135</sup> <https://www.federalregister.gov/documents/2015/10/23/2015-26813/alaska-hunting-and-trapping-in-national-preserves>

<sup>136</sup> <https://www.federalregister.gov/documents/2020/06/09/2020-10877/alaska-hunting-and-trapping-in-national-preserves>

<sup>137</sup> <https://www.federalregister.gov/documents/2024/07/03/2024-14701/alaska-hunting-and-trapping-in-national-preserves>

<sup>138</sup> <https://www.federalregister.gov/documents/2015/10/23/2015-26813/alaska-hunting-and-trapping-in-national-preserves>

<sup>139</sup> <https://www.federalregister.gov/documents/2020/06/09/2020-10877/alaska-hunting-and-trapping-in-national-preserves>

<sup>140</sup> <https://www.federalregister.gov/documents/2024/07/03/2024-14701/alaska-hunting-and-trapping-in-national-preserves>

<sup>141</sup> <https://www.doi.gov/sites/doi.gov/files/13-anilca-title-8-508.pdf>. See §810.

<sup>142</sup> <https://www.doi.gov/oepe/national-environmental-policy-act-nepa>

Despite these many concerns, NPS has denied multiple reasonable requests from multiple constituencies for an extension of the 30-day comment period. We urge NPS to reconsider its stance on limiting public comment to only 30; and request that NPS extend the comment period by at least 30 days.

Note: As we finalize these comments for submission on deadline day, we've learned that NPS has initiated a Federal Register Notice that will be published on April 10, 2026<sup>143</sup> (i.e., the day after the deadline) to extend the public comment for 15 days until April 24, 2026. In response to this latest development, we can only say "Good grief!"

Since Day 1 of the comment period (March 10, 2026), NPS has denied numerous reasonable requests to extend the comment period. Now, on the very last day of the comment period after numerous individuals and organizations have already submitted their comments, we learn that NPS will issue a last minute extension of the comment period. While we think that this last minute extension is "better late than never," it reinforces our belief that NPS has grossly mismanaged the public participation process for this rulemaking. We remain concerned that NPS has issued the proposed rule for public comment without also issuing the related NEPA analysis (EA) or Section 810 analysis.

## SECTION-BY-SECTION COMMENTS

**1. Section 13.1 Definitions** – The proposed rule would:

**a. Remove the current definition of "Furbearer,"** which is:

*Furbearer* means one of the following species: beaver, coyote, arctic fox, red fox, lynx, marten, mink, least weasel, short-tailed weasel, muskrat, land otter, red squirrel, flying squirrel, ground squirrel, Alaskan marmot, hoary marmot, woodchuck, wolf, and wolverine.<sup>144</sup>

First, the current NPS definition is consistent with the definition of the term in the Federal subsistence regulations at 43 CFR §51.25(a).<sup>145</sup> In contrast to the consistency between the respective federal definitions, current codified ADFG hunting regulations define *furbearer* as including: "[B]eaver, **black bear**, coyote, Arctic fox, red fox, lynx, fisher, marten, mink, weasel, muskrat, river otter, squirrel, marmot, wolf, or wolverine; *furbearer* is a classification of animals subject to taking with a trapping license."<sup>146</sup> (*Emphasis added*) We understand that this State allowance for trapping black bears in all GMUs was issued in July 2010.<sup>147</sup>

As a result of the State definition, if NPS drops its definition of *furbearer* as proposed, it would appear to open up national preserves to the trapping of black bears, a practice that has long been prohibited. In addition, trapping bears is a practice that is prohibited on federal lands under Federal Subsistence regulations at 43 CFR §51.26(b)10).<sup>148</sup> As a result, it appears that rescinding the NPS definition of *furbearer* is ill advised as it could also potentially open national preserves to trapping of other wildlife species if/when the BOG decides to liberalize their definition of *furbearer* again in the future, which seems likely to happen. The preamble to the proposed rule neither discloses nor analyzes the impacts of allowing bear trapping in national preserves. For these reasons, we urge NPS to retain its existing definition of *furbearer*, which as sated above is consistent with the Federal subsistence definition of *furbearer* at 43 CFR §51.25(a).<sup>149</sup>

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<sup>143</sup> <https://www.federalregister.gov/public-inspection/2026-07006/hunting-and-trapping-in-national-preserves-alaska>

<sup>144</sup> <https://www.ecfr.gov/current/title-36/chapter-I/part-13/subpart-A/section-13.1>

<sup>145</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51/subpart-D/section-51.25>

<sup>146</sup> [https://www.adfg.alaska.gov/static/regulations/wildliferegulations/pdfs/regulations\\_complete.pdf](https://www.adfg.alaska.gov/static/regulations/wildliferegulations/pdfs/regulations_complete.pdf). See p. 34.

<sup>147</sup> State trapping book, 2010-2011, No. 51, p.16.

<sup>148</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51/subpart-D/section-51.26>

<sup>149</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51/subpart-D/section-51.25>

**b. Revise the current definition of "Trapping"** to state: "**Trapping** means the taking of **furbearers** under a **trapping license**." Given that NPS would eliminate its definition of ***furbearer*** (see comment above), inclusion of the soon-to-be -undefined term ***furbearer*** within the proposed definition of ***trapping*** is confusing with regard to which animal species the NPS term ***trapping*** would apply. In addition, in the cloud of confusion that would be created by these proposed definition changes, we believe that NPS could surreptitiously adopt the State's definition of ***furbearer***, which includes **black bears**. Such action would, in effect, authorize the trapping of black bears in national preserves, a practice that is prohibited under current NPS regulations as well as under the Federal Subsistence regulations 43 CFR §51.26(b)(10)<sup>150</sup>. The preamble to the proposed rule neither discloses nor analyzes the impacts of allowing bear trapping in national preserves if NPS were to adopt the State's definition of ***furbearer***.

Furthermore, the State trapping regulations<sup>151</sup> provide that "Most ***furbearers*** are taken with either traps (including foothold and killer-style or body-grip traps) or snares, **but can also be shot with firearms unless specifically prohibited**." (*Emphasis added*) In other words, State trapping regulations allow the use of firearms under a trapping license to shoot healthy, free ranging furbearers, which is effectively hunting.

The 2024 NPS revision of the definition of ***trapping*** was intended to limit trapping to only those activities that actually involve use of a "trap" as that term is currently defined in 36 CFR §13.1. It allows the use of firearms to shoot furbearers under a trapping license only in the limited circumstances of humanely dispatching furbearers that have been injured or otherwise not killed by their encounter with a trap. In other words, the 2024 revision was intended to resolve any question about whether ***trapping*** in national preserves could include any/all State-authorized method(s) of taking furbearers, such as by using a firearm, under the guise of a State trapping license. Last but not least, the current definition provides important clarification that only those activities that involve use of a trap constitute trapping. In effect, under the existing NPS definition, using a firearm to shoot a free ranging, uninjured animal is *de facto* hunting, not trapping. For these reasons, we urge NPS to retain its current definition of ***trapping***.

**c. The proposed rule does not but should provide a definition of "for sport purposes"** – ANILCA §1313<sup>152</sup> provides that "the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve." While this section of ANILCA clearly distinguishes between "hunting for sport purposes" and "subsistence uses," the term "for sport purposes" (seemingly equivalent to the term "sport hunting") is not defined. In contrast, the concept of "subsistence uses" (inclusive of subsistence hunting) as referred to in ANILCA is well defined and understood in applicable federal regulations in 36 CFR Part 13<sup>153</sup> and 43 CFR Part 51<sup>154</sup>. However, the lack of clarity regarding what is considered "hunting for sport purposes" under ANILCA §1313 contributes to confusion and ambiguity regarding whether State hunting regulations adopted by NPS in national preserves actually apply to "hunting for sport purposes" or to "subsistence hunting." Furthermore, giving meaning to the term "sport" in NPS regulations would help distinguish between rural residents who are hunting for federally defined subsistence purposes and nonlocal residents who are hunting for sport purposes. Such a distinction is consistent with the priority that Congress placed on the customary and traditional uses of wild renewable resources by rural residents under ANILCA § 803.

**2. Section 13.40 Taking of fish and wildlife** – The proposed rule would combine current NPS fishing regulations with its hunting and trapping regulations. Such a change is more likely to create confusion than it

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<sup>150</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51/subpart-D/section-51.26>

<sup>151</sup> <https://www.adfg.alaska.gov/static/regulations/wildliferegulations/pdfs/trapping.pdf>. See p. 5.

<sup>152</sup> <https://www.nps.gov/locations/alaska/upload/nilca-electronic-version.pdf>

<sup>153</sup> <https://www.ecfr.gov/current/title-36/chapter-I/part-13?toc=1>

<sup>154</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51?toc=1>

is to improve management efficiency or user understanding. First, whereas the fishing regulations relate to both “fishing” and “commercial fishing” and apply ALL park areas in Alaska; the hunting and trapping regulations apply only to national preserves. There is no apparent benefit of combining these two regulations, which otherwise are not related to each other. Second, separation of NPS fishing vs hunting and trapping regulations in 36 CFR Part 13 is consistent with the separation of NPS fishing vs hunting and trapping regulations in 36 CFR Part 2<sup>155</sup>; and with the separation of fishing vs hunting and trapping in the Federal subsistence regulations at 43 CFR Part 51.<sup>156</sup> For these reasons, we recommend that NPS drop its proposal to combine both the fishing and hunting and trapping regulations into one subsection in 36 CFR Part 13.

**3. Section 13.42 Taking of wildlife in national preserves** – In addition to combining this section with §13.40 Fishing as described above, the proposed rule would also eliminate current sub-section (j) which states:

(j) Collecting, capturing, or possessing living wildlife is prohibited unless expressly authorized by federal statute or pursuant to § 2.5 of this chapter. A falconry permit or other permit issued by the State of Alaska does not provide the required authorization. These collecting activities are not hunting or trapping activities and therefore are not allowed in national preserves under paragraph (a) of this section. This regulation does not prohibit the use of trained raptors for hunting activities where authorized by applicable federal and state law. (*Emphasis added*)

In general, we object to the live capture of any wildlife in any park area, as it clearly conflicts with the Organic Act’s and ANILCA’s wildlife conservation mandates. The practice also conflicts with related NPS management policies related “to preserving and maintaining the natural abundances, diversities, dynamics, distribution, habitat, and behaviors of native plant and animal populations and the communities and ecosystems in which they occur.”<sup>157</sup> In this case, without explaining how this practice is a form of hunting or trapping, NPS proposes to allow the capture of live raptors in national preserves. This change without justification is arbitrary. NPS must provide a rational and well-supported explanation as to why capturing live wildlife in national preserves is permissible under ANILCA and the NPS Organic Act or else reject this proposal.

**4. Section 13.50 Closure and Restriction Procedures** – The proposed rule would reduce the maximum allowed length of “emergency closures” from no more than 60 days (in current regulations) to no more than 30 days in the proposed rule; it would create a new category of “temporary closure” that could last between 31 days up to 12 months; and it would require rulemaking to institute “permanent closures” lasting more than 12 months. Ironically, this section would require NPS to allow at least 60 days for public comment on rulemaking for permanent closures when NPS has only allowed 30 days (plus a last minute extension of 15 days as of April 9, 2026) for public comment on this proposed rule on hunting and trapping.

Our primary concern about this section is that the emergency closure provision would be reduce to only 30 days; whereas the existing regulation limits it to 60 days. We note that neither 36 CFR §1.4 nor 36 CFR §13.1 defines the term “emergency.” A standard dictionary definition of “emergency” is:

Something dangerous or serious, such as an accident, that happens suddenly or unexpectedly and needs fast action in order to avoid harmful results.<sup>158</sup>

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<sup>155</sup> <https://www.ecfr.gov/current/title-36/chapter-I/part-2>

<sup>156</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51?toc=1>

<sup>157</sup> <https://www.nps.gov/orgs/1548/upload/ManagementPolicies2006.pdf>. See §4.4.1.

<sup>158</sup> <https://dictionary.cambridge.org/us/dictionary/english/emergency>

NPS has not adequately explained why it would limit an emergency closure to only 30 days without possible extension. The proposed 30-day limit will hamstring a Superintendent and knowledgeable NPS staff in responding to and managing true emergency situations that may not be easily or quickly resolved. We note that the Federal Subsistence regulations at 43 CFR § 51.19<sup>159</sup> provide for “emergency special actions” (which could include emergency closures) not to exceed 60 days. There is clear value in structuring the NPS closure procedures similar to the Federal Subsistence Board “special action” procedures in the above referenced section of 43 CFR, since such actions may affect similar users groups in certain situations. For these reason, we urge NPS to retain the existing 60-day limit on emergency closures.

**5. Section 13.400 (e):** As discussed in General Comment # 4 above, the proposed rule inappropriately attempts to elevate the State of Alaska’s authority to regulate subsistence uses in park areas in Alaska, when it is well known that the State Constitution prohibits the State from giving preference to rural residents as required under ANILCA Title VIII. See State Supreme Court ruling in *McDowell vs. the State of Alaska*.<sup>160</sup> Furthermore, NPS is NOT empowered to grant such authority to the State; only Congress can.

In general, the State’s subsistence hunting program is incompatible and conflicts with the Federal subsistence program because the State does not typically limit subsistence hunting to federally qualified “rural residents” as required under ANILCA Title VIII. Again, see *McDowell vs. the State of Alaska*.<sup>161</sup> Despite this obvious conflict, the proposed rule fails to inform the public that the NPS proposed interpretation of “subsistence uses” would substantially degrade protections for federally qualified subsistence users provided by Congress in ANILCA. The proposed rule would, in effect, allow so-called “State subsistence hunts” within national preserves that would be open to all residents of the State. Because of the inherent conflicts between the Federal subsistence program authorized under ANILCA Title VIII and the State’s version of subsistence, it makes no sense for NPS to propose a rule that would attempt to authorize the State to regulate subsistence uses in park areas and suggest that it would comply with ANILCA Title VIII priorities. For these reasons, we urge NPS to delete this section of the proposed rule.

**6. Section 13.420 Definitions.** In this section, the proposed rule would:

**a. Remove definitions for “Animal parts” and “Handicraft”** – We object to the proposed deletion of these two definitions. The current definition of “*animal parts*”<sup>162</sup> provides helpful clarification applicable to the collection non-edible animal parts for customary and traditional subsistence purposes. Similarly, the current definition of “*handicraft*”<sup>163</sup> also provides helpful clarification. Most notably, ANILCA §803<sup>164</sup> refers to “*handicraft articles*” in its definition of “*subsistence uses*”; however, the Act does NOT define “*handicraft*.” Similarly, the Federal Subsistence Regulations definition of “subsistence uses”<sup>165</sup> includes the “making and selling of *handicraft* articles out of nonedible byproducts of fish and wildlife resources.” Yet again, the term “*handicraft*” is NOT defined. We therefore urge NPS to retain its existing definitions of “*animal parts*” and “*handicraft*” as they improve clarity regarding what raw materials and products made from raw materials are considered appropriate under the Federal subsistence program.

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<sup>159</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51/subpart-B>

<sup>160</sup> <https://npshistory.com/publications/alaska/subsistence/chap7.htm>

<sup>161</sup> <https://npshistory.com/publications/alaska/subsistence/chap7.htm>

<sup>162</sup> 36 CFR §13.420: *Animal parts*. As used in this part, this term means nonedible antlers, horns, bones, teeth, claws, hooves, skins, hides, fur, hair, feathers, or quills that: (1) Are obtained from lawfully hunted or trapped fish or wildlife; (2) Have been shed or discarded as a result of natural life-cycle events; or (3) Remain on the landscape as a result of the natural mortality of fish or wildlife.

<sup>163</sup> 13 CFR §13.420

<sup>164</sup> <https://www.doi.gov/sites/doi.gov/files/13-anilca-title-8-508.pdf>

<sup>165</sup> <https://www.ecfr.gov/current/title-43/subtitle-A/part-51/subpart-A/section-51.4>

**b. Revise the current definition for “*Subsistence uses*”** – The proposed definition is similar to the definition used in §803<sup>166</sup> of ANILCA, which is:

As used in this Act, the term “*subsistence uses*” means 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. For the purposes of this section, the term-- (1) “*family*” means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and (2) “*barter*” means the exchange of fish or wildlife or their parts, taken for subsistence uses- (A) for other fish or game or their parts; or (B) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

However, a key difference is that the proposed rule would add (i.e., include) a definition of “*customary trade*” in a new subsection (3) after the definition of *barter*. As proposed, “***Customary trade shall be limited to the exchange of furs for cash.***” We believe this definition is too limiting in that it excludes, therefore prohibits, the exchange of handicrafts for cash, including skin masks, fur hats, mittens, and baskets.

We recommend that the definition be revised as follows to provide an allowance for the customary trade of handicrafts: “***Customary trade***” **shall include – in addition to the exchange of furs for cash—the selling of handicraft articles made from plant material taken by local rural residents of the park area.**” The suggested revised definition is similar to definitions of “*customary trade*” in the special regulations for Gates of the Arctic National Park and Preserve<sup>167</sup> and Kobuk Valley National Park.<sup>168</sup> We are not aware of any concerns or unintended consequences related to the definition(s) of *customary trade* used in those two park areas. For these reasons, we urge NPS to adopt a similar, region-wide definition in 36 CFR §13.1.

## CLOSING COMMENTS

As described in the comments above, we have numerous concerns about the proposed revisions to the NPS rule on hunting and trapping in national preserves. Major concerns include the following:

- The preamble of the proposed rule largely fails to acknowledge or summarize the extensive administrative history documenting longstanding NPS concerns about certain State-authorized predator hunting practices that conflict with NPS wildlife management mandates and policies.
- The Supplementary Information section of the preamble contains numerous errors and omissions.
- The proposed rule overly defers to state hunting and trapping regulations in national preserves, when it is well established that NPS has the plenary authority to manage and regulate such use.
- Section 13.400(e) of the proposed rule inappropriately attempts to elevate the State of Alaska’s authority to regulate subsistence uses in park areas in Alaska, when it is well known that the State Constitution prohibits the State from giving preference to rural residents as required under ANILCA
- The proposed rule would remove the NPS prohibition on bear baiting in national preserves.

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<sup>166</sup> *Ibid.*

<sup>167</sup> <https://www.ecfr.gov/current/title-36/chapter-I/part-13/subpart-M>. See §13.1006.

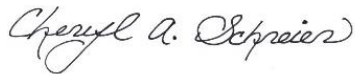
<sup>168</sup> <https://www.ecfr.gov/current/title-36/chapter-I/part-13/subpart-R>. See §13.1504.

- The proposed rule will likely have adverse impacts on national preserve resources and values; yet NPS has NOT issued an environmental assessment (EA) to disclose, analyze, and allow public comment on such impacts.
- Similarly, the proposed rule will likely have adverse impacts on federally qualified subsistence uses and users; yet NPS has NOT issued an ANILCA 810 analysis to disclose, analyze, and allow public comment on such impacts.
- The NPS appears to have NOT provided all of the ANILCA established Regional Advisory Councils (RACs) or the Subsistence Resource Commissions (SRCs) with a meaningful opportunity to review and comment on this proposed rule. See ANILCA sections 805 and 808.

In brief, NPS 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-authorized liberalized hunting practices within national preserves that clearly conflict with NPS's wildlife conservation mandates. Finalizing the proposed rule as written would violate statutory mandates governing wildlife management in national preserves under ANILCA and the NPS Organic Act.

In closing, we urge NPS to abandon this ill-considered proposed rulemaking; and, instead, reinstate the 2015 rule's prohibition on adopting State regulations that have the intent or effect of predator reduction, which includes the practice of bear baiting. We appreciate the opportunity to comment on this important issue.

Sincerely,



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#### ATTACHMENTS

Attachment #1: 1982 NPS & ADFG Master Memorandum of Understanding

Attachment #2: 1984 RD Roger Cantor Remarks to BOG

Attachment #3: 1985 ARD Michael Finley Testimony to BOG

Attachment #4: 2006 ASFWP Letter to EIASRAC Chair

Attachment #5: 2010 GAAR Final Compendium

Attachment #6: 2010 YUCH Final Compendium

Attachment #7: 2012 LACL Final Compendium

Attachment #8: 2013 DENA Final Compendium

Attachment #9: 2015 DENA Final Compendium

Attachment #10: 2013 NPS Change Request Form to BOG

Attachment #11: 2007 Lurman & Rabinowitch, article on Preemption of State Wildlife Law in Alaska

Attachment #12: 2024 Lafferty et al, article on Bear Baiting Risks and Mitigations.PLOS.0312192