

4310-EJ

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

[NPS-AKRO-27791; PPAKAKROZ5, PPMRLE1Y.L00000]

RIN 1024-AE38

Alaska; Hunting and Trapping in National Preserves

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service amends its regulations for sport hunting and trapping in national preserves in Alaska. This rule removes regulatory provisions issued by the National Park Service in 2015 that prohibited certain sport hunting practices otherwise permitted by the State of Alaska. These changes are consistent with Federal law providing for State management of hunting and trapping in Alaska preserves.

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

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SUPPLEMENTARY INFORMATION:

Background.

On October 23, 2015, the National Park Service (NPS) published a final rule (2015 Rule) to amend its regulations for hunting and trapping in national preserves in Alaska. 80 FR 64325. The 2015 Rule imposed prohibitions on certain types of harvest practices that are or could be

authorized by the State of Alaska in national preserves. The specific practices addressed by the rule are: taking any black bear, including cubs and sows with cubs, with artificial light at den sites; harvesting brown bears over bait; taking wolves and coyotes (including pups) during the denning season (between May 1 and August 9); taking swimming caribou; taking caribou from motorboats under power; taking black bears over bait; and, using dogs to hunt black bears. In addition, the 2015 rule prohibited any State authorization or management action from being allowed in Alaska preserves if it related to a predator reduction effort, meaning with the intent or potential to alter or manipulate natural populations or processes in order to increase harvest of ungulates by humans. The prohibition of these practices is inconsistent with State of Alaska hunting regulations found at 5 AAC Part 85.

Since early 2017, several actions have occurred which lead the NPS to reconsider portions of the 2015 rule that affect hunting and trapping opportunities on Alaska preserves and contradict State harvest regulations and wildlife management decisions. On March 2, 2017, Secretary Zinke signed Secretary's Order 3347, Conservation Stewardship and Outdoor Recreation, in order to "enhance conservation stewardship, increase outdoor recreation, and improve the management of game species and their habitat." On September 15, 2017, Secretary Zinke signed Secretary's Order 3356, Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with State, Tribes, and Territories, to "enhance and expand upon Secretary's Order 3347 and further implement the recommendations provided by the Secretary." On September 10, 2018, Secretary Zinke issued a memorandum to the heads of Department of the Interior bureaus recognizing States as the first-line authorities for fish and wildlife management and expressing a commitment to defer to States in this regard except as otherwise required by Federal law. The memorandum further directed agencies to review all

regulations, policies, and guidance pertaining to fish and wildlife conservation and management, specifically provisions that are more restrictive than otherwise applicable State provisions.

Additionally, on April 3, 2017, a U.S. Fish and Wildlife Service rule for Alaska National Wildlife Refuges that was nearly identical in substance to the aspects of the 2015 Rule at issue in this rulemaking was repealed under the authority of the Congressional Review Act. *See* Pub. L. No. 115-20, 131 Stat. 86. House and Senate sponsors of the law strongly criticized those aspects of the NPS's 2015 Rule, *e.g.*, 163 Cong. Rec. H1260 (Feb. 16, 2017), S1864-69 (Mar. 21, 2017), but acknowledged that repeal through the Congressional Review Act was time-barred, *id.* at S1868 (remarks of Sen. Murkowski). With the passage of a joint resolution of disapproval, the U.S. Fish and Wildlife Service cannot promulgate substantially similar regulations until specifically authorized by law. 5 U.S.C. 801(b)(2). While refuges operate under different frameworks than national preserves, this action by Congress was taken into account when interpreting consistency with the authorities and principles that were common to both rulemakings, including statutory requirements for wildlife management activities to be carried out under State law, as well as in considering how to complement regulations on surrounding lands and waters to the extent legally practicable.

In light of the aforementioned actions and resulting analysis, the NPS has revisited its approach regarding the authorizations that are the subject of this rule, focusing on the statutory scheme that requires the management of hunting and trapping in preserves under State law and reserves limited closure authority to NPS for enumerated purposes. This rule complements State regulations by more closely aligning harvest opportunities in national preserves with harvest opportunities on surrounding lands. *See* Secretary's Order 3347, Sec. 1 and 2; and Secretary's Order 3356, Sec. 4.b.(4) and 4.d.(7); September 10, 2018, Memorandum. As mandated by the

Alaska National Interest Lands Conservation Act of 1980 (ANILCA), Pub. L. No. 96-487, 94 Stat. 2383, the NPS has consistently deferred to State laws, regulations, and management of hunting and trapping, other than for subsistence uses by rural Alaska residents under Federal regulations, in national preserves since their establishment in 1980. This rule acknowledges this longstanding deference to State law required by statute in removing the hunting and trapping prohibitions identified in this rule.

Both the 2015 rule and the individual preserve closures that preceded it were intended to prevent any “conflict with laws and policies applicable to NPS areas that require preserving natural wildlife populations” and the State authorizations at issue in this rule were not “allowed on NPS lands” for that reason. 80 FR 64326-27. The harvest prohibitions were based on a view of the NPS legal and policy framework that was at odds with statutory mandates, and not on concerns over wildlife population-level effects from allowing those uses. 80 FR 64334. The NPS has carefully reassessed whether the State hunting and trapping authorizations applicable within Alaska preserves are prohibited by other law or policy.

As a part of the National Park System, each preserve must be “administered in accordance with the provisions of any statute made specifically applicable to that area.” General Authorities Act of 1970, Pub. L. No. 91-383, Sec. 2(b), 84 Stat. 826. ANILCA specifically provides 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[.]” 16 U.S.C. 3201. The Alaska Statehood Act of 1958 provided for the transfer of “the administration and management of the fish and wildlife resources of Alaska” from the Federal government to the State of Alaska. Pub. L. No. 85-508, Sec. 6(e), 72 Stat. 341; Exec. Order No. 10857, Dec. 29, 1959; Letter to Sam Rayburn, Speaker of the House of

Representatives, from Fred A. Seaton, Secretary of the Interior, Apr. 27, 1959 (“I hereby certify that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of the fish and wildlife resources of Alaska in the broad national interest.”). This general Federal-State relationship was confirmed in 43 C.F.R. 24.1(a), which found that “Federal authority exists for specified purposes while State authority regarding fish and resident wildlife remains the comprehensive backdrop applicable in the absence of specific, overriding Federal law.”

This specific Federal-State relationship was also confirmed in ANILCA, in which Congress established and set aside national preserves in Alaska as NPS-administered units where sport hunting and trapping shall continue being managed by the State of Alaska, except that 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.” Pub. L. No. 96-487, Secs. 203, 1313, 1314, 94 Stat. 2483-84; *see also* S. Rep. No. 96-413, at 307-08 (1979) (describing the Senate Committee on Energy and Natural Resources’ intent to “preserv[e] the status quo with regard to the responsibility and authority of the State to manage fish and wildlife, and . . . [a]t the same time . . . confir[m] the status quo with regard to the authority of the Secretary to manage the wildlife habitat on federal lands” and noting “the statutory requirement that the taking of fish and wildlife be allowed does not deprive the Secretary of his traditional authority to close public lands . . . to the taking of fish and wildlife under statutory criteria”).

As stated in a 1981 NPS rulemaking to begin implementing the just-passed ANILCA, the “desire to continue sport fishing and hunting on all public lands in Alaska [was] a consistent and dominant theme of the public participation process during the development and final passage” of

ANILCA. 46 FR 5642. In 1983, NPS promulgated 36 C.F.R. 2.2(b)(1), providing that “[h]unting shall be allowed in park areas where such activity is specifically mandated by Federal statutory law.” The NPS Management Policies provided the following guidance: “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.” Management Policies 2006, Sec. 1.4.3.1. As described in more detail below, analysis including more recent harvest data and the best available science does not demonstrate potential for unacceptable impacts to park resources from removing the prohibitions at issue in this rule.

In a 1982 Master Memorandum of Understanding, both the Alaska Department of Fish and Game (ADFG) and NPS agreed that ANILCA “and subsequent implementing regulations recognize that the resources and uses of Service lands in Alaska are substantially different than those of similar lands in other states and mandate continued subsistence uses in designated National Parks plus sport hunting and fishing, subsistence, and trapping uses in National Preserves under applicable State and Federal laws and regulations[.]” As outlined above, this includes NPS authority to, after consultation with ADFG, prohibit sport hunting, fishing, or trapping “for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment.” 16 U.S.C. 3201. Although the 2015 rule predominantly stemmed from finding state authorizations that “liberalize predator harvest in areas that included national preserves” were in “conflict with laws and policies applicable to NPS areas that require preserving natural wildlife populations[.]” it also referenced a need to “protect fauna and provide for public use and enjoyment consistent with ANILCA” as well as “public safety concerns associated with baiting.” 80 FR 64326, 64329. Whether or to what extent these findings and reasons continue to apply was

examined throughout the course of this rulemaking, and is explored in greater detail in the Responses to Comments.

In addition to reconsidering the 2015 Rule in light of the requirements in ANILCA, new population data and information, and Congressional action, the NPS completed an Environmental Assessment, which was revised after the public comment period on this rule (as revised, the EA) to analyze the impacts these hunting methods would have on national preserves in Alaska. Similar to its findings in 2015, the EA concludes that under this rule, for the foreseeable future, healthy populations of wildlife will continue to exist in a manner consistent with the range of natural variability. This conclusion is based upon the low levels of additional take that are anticipated to occur under this rule. The NPS's findings regarding low levels of additional take are based upon harvest data from 2012-2016 that were not available to the NPS when it promulgated the 2015 Rule. This new data was provided by the State, and is more fully discussed in the EA (see EA, section 3.2.2). The conclusions in the EA are also based on the NPS's authority to take action whenever necessary to protect NPS resources and values from unacceptable impacts, including implementing specific, local closures to hunting and trapping pursuant to ANILCA. 16 U.S.C. 3201.

As stated in the EA, allowing the State regulations to apply within national preserves is not anticipated to cause population-level effects, and any reductions in opportunities for take of predator species over the long-term, or increases in prey species, are expected to be minimal and localized. Under Article VIII, Section 4, of the Alaska Constitution, the State manages take of wildlife under a "sustained yield principle" which "denotes conscious application insofar as practicable of principles of management intended to sustain the yield of the resource being managed" and "balance[s] maximum use of natural resources with their continued availability to

future generations.” *See* The Alaska Constitutional Convention, Proposed Constitution for the State of Alaska: A Report to the People of Alaska (1956). In accordance with this principle, which applies to both predator and prey populations, the State has assured the NPS that, in the event harvest were to increase beyond sustainable levels, the ADFG would close seasons by emergency order, if immediate action was necessary, and/or recommend more conservative seasons, bag limits, and/or methods to the Alaska Board of Game for future hunting seasons.

Application of the statutes and policies at issue is addressed in more detail in the Responses to Comments below, but generally, the NPS finds that the potential effect of the harvest practices does not threaten impairment of park resources under the Organic Act or the maintenance of healthy populations under ANILCA. Having reconsidered its prior position in light of specific mandates under ANILCA for Alaska preserves, revised guidance, new information, and the impacts permitting these hunting methods on national preserves in Alaska would have, the NPS has now determined that its 2015 characterization of the harvest methods as conflicting with NPS laws and policies was inconsistent with applicable law allowing hunting and trapping in national preserves. For these reasons, as explained in more detail below, the NPS promulgates this rule.

Proposed Rule and Responses to Comments.

On May 22, 2018, the NPS published the proposed rule in the Federal Register. 83 FR 23621. This rule was open for an initial 60-day public comment. The NPS extended the comment period twice, first on July 19, 2018, 83 FR 34094, and again on September 6, 2018, 83 FR 45203, in response to requests from the public for more time to review the proposal. In total, the comment period was open for 168 days including both extensions. The comment period closed on November 6, 2018. The NPS invited comments through the mail, hand delivery, and through

the Federal eRulemaking Portal at <http://www.regulations.gov>. The NPS received approximately 211,780 pieces of correspondence on the proposed 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.

The NPS also held several government to government consultation meetings with the State of Alaska and Alaska Native tribes and corporations. Consultation meetings were requested by the State, 12 tribal entities, and two corporations; meetings were conducted in February, March, and October of 2018.

A summary of the pertinent issues raised in the comments received and NPS responses are provided below. After consultation, considering public comments, and revising the EA, the NPS did not make any changes in the final rule.

1. Comment: Several commenters stated that the proposed rule violates the mandate in the NPS Organic Act that the NPS regulate the use of the National Park System to conserve the scenery, natural and historic objects, and wildlife in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 54 U.S.C. 100101.

NPS Response: Through the Organic Act, Congress granted the NPS broad discretion over how to regulate activities within National Park System units. In national preserves in Alaska, however, Congress narrowed the scope of the NPS's discretion with respect to the harvest of wildlife, directing that national preserves shall be managed "in the same manner as a national park . . . except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve under applicable State and Federal law and regulation[.]" 16 U.S.C. 3201. No specific provision in the Organic Act as limited by ANILCA prohibits the harvest methods that are the subject of this rule, and the NPS has

determined this rule will not result in unacceptable impacts or an impairment of park resources. *See Non-Impairment Determination* appended to the Finding of No Significant Impact for the EA. In light of new policy direction, revised guidance, newly available harvest data showing low levels of take, State law requiring the management of wildlife under the sustained yield principle, and a review of the impacts permitting these hunting methods on national preserves in Alaska would have, the NPS has determined that its 2015 determination that the harvest practices violated the Organic Act failed to take into account applicable statutory requirements under ANILCA.

The EA concludes that due to the low levels of additional take anticipated under this rule, and considering the NPS's closure authority under ANILCA, healthy populations of wildlife will continue to exist in a manner consistent with the range of natural variability for the foreseeable future. Finally, for reasons discussed in the response to Comment 5, the NPS has concluded State management provided by ANILCA modifies and does not violate applicable NPS Management Policies that explain how the NPS implements the Organic Act and other laws that apply to the National Park System. Accordingly, the NPS has reconsidered its position in the 2015 Rule and concluded that allowing the hunting practices at issue in this rule would not violate the Organic Act.

2. Comment: Several commenters stated that the proposed rule violates Sec. 101(b) of ANILCA, which states that Congress intends that the statute provide for the maintenance of sound populations of wildlife species.

NPS Response: ANILCA states that Congress intended the statute to provide for the maintenance of sound populations of, and habitat for, wildlife species. 16 U.S.C. 3101(b). Specific to national preserves, each was established to allow for continued hunting and trapping

under State management and, among other reasons, “to protect habitat for and populations of fish and wildlife.” 16 U.S.C. 410hh, 410hh-1. Three units include references to natural processes and/or biological processes in describing how the unit is to be managed. 16 U.S.C. 410hh(1) (Aniakchak National Preserve: “to study, interpret, and assure continuation of the natural process of biological succession”), 410hh(8) (Noatak National Preserve: “To maintain the environmental integrity of the Noatak River and adjacent uplands within the preserve in such a manner as to assure the continuation of geological and biological processes unimpaired by adverse human activity”), 410hh(10) (Yukon-Charley Rivers National Preserve: “To maintain the environmental integrity of the entire Charley River basin, including streams, lakes and other natural features, in its undeveloped natural condition for public benefit and scientific study”). Title VIII of ANILCA, pertaining to subsistence uses, refers multiple times to managing for “conservation of healthy populations” of wildlife in national preserves. ANILCA also requires the NPS to allow the taking of wildlife for sport purposes in national preserves under applicable State and Federal law and regulation. 16 U.S.C. 3201, 3202. Therefore some level of sport hunting is appropriate and compatible with the various provisions of the law.

ANILCA does not address specific harvest methods; rather, it defers to State fish and game management to establish methods and means and provides limited closure authority to the NPS for the protection of resources. It provides that agencies should manage wildlife using recognized principles of fish and wildlife management. 16 U.S.C. 3101(c), 3112(1). The State’s legal framework for managing wildlife in Alaska is based on the principle of sustained yield, *see* Alaska Constitution Article VIII, Section 4, which is defined as “achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game, subject to preferences among beneficial uses, on an annual or periodic basis.” AS 16.05.255. The State’s

constitutional mandate for sustained yield is consistent with NPS Management Policies, which state that the NPS “manages [wildlife] harvest to allow for self-sustaining populations of harvested species.” NPS Management Policies 2006, Sec. 4.4.3. The State asserts that it is legally obligated to implement this framework in a way that will maintain sustainable populations of wildlife. The State also maintains that the effects on wildlife populations from allowing these harvest methods in particular locations within national preserves will likely be negligible based on its analysis of similar harvest practices elsewhere in the state. This conclusion is consistent with the findings in the EA that population-level effects are not anticipated, and healthy populations of wildlife would continue to exist in a manner consistent with the range of natural variability. The State of Alaska assures the NPS that it is required to and will take immediate action if necessary to ensure sustainable population levels. This stated approach for managing wildlife is consistent with the direction in ANILCA to maintain sound populations of wildlife species.

The rule also does not diminish the limited closure authority of the NPS to designate areas and periods of time where sport hunting and trapping would not be allowed in national preserves for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment. 16 U.S.C. 3201. ANILCA specifically granted this authority to the Secretary, and the NPS could implement specific, local closures if, when, and where necessary to prevent unacceptable impacts. For these reasons, this rule is consistent with the requirement in ANILCA to provide for the maintenance of sound populations of wildlife species in national preserves.

3. *Comment:* Several commenters expressed confusion about the term “sport hunting” and stated that the proposed rule violates ANILCA because it authorizes methods of sport hunting that are not “sporting.”

NPS Response: ANILCA states 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.” 16 U.S.C. 3201. Although ANILCA defines “subsistence uses” under 16 U.S.C. 3113, it does not define “sport purposes.” ANILCA defines who may engage in subsistence hunting under Title VIII, but does not restrict or otherwise define who may engage in sport hunting in national preserves. ANILCA is also silent in regard to harvest methods that can, and cannot, be used for sport purposes. Lacking any indication in the statute that Congress intended the phrase “sport purposes” to have a specialized meaning, the NPS finds that the term was used by Congress merely to distinguish subsistence hunting from other types of hunting. Thus, it is the NPS’s position that hunting for “sport purposes” is the harvest of wildlife in national preserves in Alaska that is authorized under applicable State and Federal law and that does not qualify as subsistence hunting under Title VIII. This represents a change from the 2015 rule in how the NPS has implemented ANILCA’s authorization for sport hunting.

In ANILCA Sec. 1314, regarding the “Taking of Fish and Wildlife,” Congress expressly retained the status quo regarding the respective responsibilities and authorities of “the State of Alaska for management of fish and wildlife on the public lands” and “the Secretary over the management of the public lands.” 16 U.S.C. 3202. The legislative history explains that, “for the National Park System components, this provision intends to make applicable in Alaskan Parks and Preserves the same Federal-State relations on fish and wildlife management that apply in lower 48 State national parks and preserves.” 126 Cong. Rec. S15129, S15131 (Dec. 1, 1980).

With few exceptions, compendiums in National Park System units where Congress has mandated hunting, trapping, and fishing are consistent with State harvest regulations. In its comments on the proposed rule, the State noted that “national park units with mandated hunting

in other states also allow activities that the proposed NPS Alaska rule will allow.” State of Alaska letter to NPS Regional Director re: RIN 1024-AE38, p. 13 (Nov. 2, 2018) (2018 State Comments). This included, at the time, 25 national park units with year-round coyote seasons, six of which allow the use of artificial light, seven units which allow hunting black bears with dogs, and four which allow the harvest of black bears over bait. Moreover, unlike national preserves in Alaska, some of the units which allow these practices have explicit statutory closure authority for wildlife management or faunal protection and management in their enabling legislation.

The position taken by the NPS in this final rule is supported by the State’s comments on the proposed rule, which likewise determined that the methods that are the subject of this rule qualify as taking wildlife for “sport purposes” under ANILCA. It also furthers the direction in Secretary’s Order 3356 and the September 10, 2018, Memorandum that hunting regulations for NPS lands and waters should complement the regulations on the surrounding lands and waters to the extent legally practicable.

4. Comment: Several commenters stated that allowing sport hunters to use the same harvest methods as subsistence users frustrates ANILCA's subsistence preference in Title VIII.

NPS Response: The NPS recognizes that this rule increases harvest opportunities for individuals hunting under State regulations in national preserves, which could increase competition with rural Alaska resident subsistence users in these locations. The NPS does not expect that the State’s allowance of these harvest practices in national preserves will increase harvest levels to the degree that there are population-level impacts. This is supported by the NPS’s analysis and conclusions in its ANILCA Section 810 Subsistence Evaluation and Finding appended to the EA. Qualified rural Alaska resident subsistence users will continue to have the

opportunity to hunt in accordance with Federal subsistence regulations. Title VIII of ANILCA ensures rural Alaska residents have a priority for customary and traditional consumptive uses of fish and wildlife resources in national preserves in Alaska where conservation concerns require limitations on harvest. 16 U.S.C. 3114. This rule does not change the methods and means for Federal subsistence harvest in national preserves and does not change the priority for subsistence uses in ANILCA. The Federal Subsistence Board has the authority to address competition among user groups in a variety of ways in order to provide a priority for rural Alaska resident subsistence users where there is a conservation concern.

Further, rural Alaska resident subsistence users may harvest wildlife in national preserves under Federal subsistence regulations or State regulations, depending on the advantage. Some of the State authorizations that would no longer be prohibited under this rule were initially requested by rural Alaska resident subsistence users to allow cultural and traditional harvest and resource management practices to continue in their use area, which can include proposals to the State of Alaska Board of Game and/or the Federal Subsistence Board to either allow for or prevent certain harvest practices from being allowed in Alaska preserves.

For example, in addressing proposals to allow take of cubs and females with cubs in dens as “an opportunity for local people to take meat and to practice these customary and traditional methods,” the Alaska Board of Game clarified the limited allowance was “an attempt to move towards this goal of recognizing some of the customary and traditional practices that go on out in the Bush. A way people get food . . . this is in no way part of any predator management program.” *See* Transcript of Nov. 10, 2008 Public Meeting of the Alaska Board of Game, *quoted in* 2018 State Comments, Att. C, at p. 70. This perspective is supported by the proposals to the Board, which reasoned that the fact “these practices were conducted for generations without any

substantial, long-lasting or irreversible effects to predator populations is testimony to their ecological integrity, as well as substantiating assertions by Alaska's indigenous people that their traditional harvest activities were/are essentially a part of the evolved ecosystem(s)." Proposal 55 from Orutsararmiut Native Council to the Alaska Board of Game (Nov. 2008).

Subsistence users can also participate directly in the Federal Subsistence Management Program through statewide Subsistence Regional Advisory Councils, and Subsistence Resource Commissions advising on specific NPS-administered areas. The Wrangell-St. Elias National Park Subsistence Resource Commission has requested the 2015 rule be rescinded multiple times. At its October 2018 meeting, the Western Interior Subsistence Regional Advisory Council voted unanimously to support the adoption of State regulations in Alaska preserves, as proposed in this rule. Some concerns for subsistence users tend to reflect the complexity of regulating harvest in Alaska, which council members agreed would be simplified by "having Federal, State, and Park Service regulations match each other as much as possible." Transcript of Oct. 10, 2018 Public Meeting of the Western Interior Federal Subsistence Regional Advisory Council at p. 86:10-12.

The Eastern Interior Subsistence Regional Advisory Council maintained a similar position in its comments on the proposed rule. The Council found the "regulations proposed for removal interfere with long-standing cultural practices of rural residents on and off park lands. Wildlife does not recognize administrative boundaries, so the application of different rules on NPS and State lands in areas of mixed land administration creates confusion and intrusion into traditional practices, which interferes with wildlife conservation. In addition, these rules are inconsistent with the rules adopted by the Federal Subsistence Board, adding unnecessary confusion for rural residents." Eastern Interior Subsistence Regional Advisory Council letter to NPS Regional Director, p. 2 (Nov. 5, 2018). The Council also noted that the 2015 rule had been

“adopted despite the Council’s strong objection to it based on potential negative effects on Federally qualified subsistence users[,]” including their “abilities to continue traditional practices with their families, while only allowing ‘sport’ uses on National Preserves.” *Id.* The Council continued to observe that “[m]any rural subsistence users hunt and trap under general State regulations and greatly benefit from those more liberal methods, seasons, and bag limits.” Eastern Interior Subsistence Regional Advisory Council letter to NPS Regional Director, p. 2 (Nov. 20, 2014).

5. *Comment:* Several commenters stated that the proposed rule violates Sec. 4.4.3 of NPS Management Policies with regard to prohibiting predator control. Several commenters stated that the proposed rule violates Secs. 4.1, 4.4.1, 4.4.1.2, 4.4.2 of NPS Management Policies with regard to protecting natural ecosystems and processes.

NPS Response: NPS Management Policies explain how the NPS generally will implement the laws that apply to the National Park System, including the NPS Organic Act, and explain how the NPS will manage activities on lands and waters within the System. NPS Management Policies state that the legislative requirements of ANILCA, although not cited directly in the various policies, must be complied with in the interpretation and application of the management policies. NPS Management Policies 2006, Hierarchy of Authorities. NPS Management Policies can only be applied in a manner consistent with ANILCA’s mandates, including the special status of the national preserves as park units where hunting and trapping are allowed under State and Federal law. As explained in the response to Comment 2, ANILCA provides for the management of sound populations, with the purposes for three units calling for maintenance of natural and/or biological processes, while at the same time mandating sport hunting.

While NPS Management Policies state that “activities to reduce the numbers of native species for the purpose of increasing numbers of harvested species (i.e. predator control)” are not allowed on lands managed by the NPS, NPS Management Policies 2006, Sec. 4.4.3, ANILCA provides 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[,]” 16 U.S.C. 3201. It is the NPS’ position that hunting for “sport purposes” is the harvest of wildlife in national preserves in Alaska that is authorized under applicable State and Federal law and that does not qualify as subsistence hunting under Title VIII, as outlined in the response to Comment 3. The NPS is also not allowing these hunting practices in national preserves in Alaska for the purpose of reducing predators, because the State has not provided for predator control activities in Alaska preserves. The State of Alaska’s purpose in authorizing these practices is to expand hunting opportunities, rather than as part of a formal predator control or other program designed to reduce a population below sustainable levels. *See* 2018 State Comments, at p. 22.

In the 2015 Rule, the NPS concluded that the harvest methods prohibited by that rule were inconsistent with NPS Management Policies in Sec. 4.4.3 because the NPS believed that the State’s allowance of those methods was motivated by the goal of increasing the number of prey species. The NPS recognizes that requests submitted to the State of Alaska for liberalized harvest methods in game management units (GMUs) that include land within national preserves may have been motivated by a desire to reduce predators in order to increase prey. The NPS also recognizes that individual board members may have voted based in part on a desire to reduce predators. Nonetheless, these are management considerations reserved to the State under ANILCA. The State has shown that “general hunting and trapping regulations are developed

under sustained yield concepts for both predator and prey populations where there is a harvestable surplus,” and are distinct from actions which “aim to reduce predator populations and improve prey populations.” *Id.* The State has also explained that the harvest methods that are the subject of this rule “simply reflect the existence of an abundant population of wildlife and a small segment of the public’s desire to hunt them that fit within the sustained yield concept of scientific management Alaska follows.” *Id.* at p. 18.

The NPS acknowledges that the State made similar assertions about the purpose of the harvest methods subject to this rule in its comments on the 2015 Rule and related environmental assessment (2014 EA), and that the NPS reached a different conclusion then. In reaching this conclusion, the NPS has carefully considered its statutory requirements and authorities, including that its policies must be applied consistent with ANILCA, all of the State’s representations and explanations regarding its purposes for the harvest practices, as well as the fact that the NPS’s own environmental analysis finds that allowing the harvest methods identified in this rule will still support healthy populations of wildlife within preserves. These findings are supported by 2012-2016 harvest data provided by the State to the NPS. The NPS is also now viewing the State's communications from the perspective inspired by Congressional disapproval and required by revised guidance and policy direction announced by the Secretary since the promulgation of the 2015 Rule. The NPS has determined that the State’s representations and explanations regarding the authorizations at issue, as well as the legal and administrative requirements that support them, are more relevant to NPS action than the motivations of individual requesters or state game board members, especially in light of the recent reiteration of the State’s position.

Finally, the EA concludes that the hunting practices at issue will not have a significant effect on predator and prey populations and therefore will not have the effect of predator

reduction or predator control, regardless of any perception of the purpose of the hunting practices. Based upon the NPS's purpose in complying with its statutory responsibilities to allow for harvest opportunities under State and Federal law, the State's comments on the 2015 Rule, and the State's November 2018 letter asserting that such activities serve to provide hunter opportunity rather than to reduce predators or increase prey, and on the lack of any significant effect of predator reduction in practice, the NPS concludes these hunting activities do not violate Sec. 4.4.3 of the NPS Management Policies in light of the specific statutory requirements related to national preserves.

Several provisions of NPS Management Policies 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. NPS Management Policies 2006, Secs. 4.1, 4.4.1, 4.4.1.2, 4.4.2. These policies can be read to be at odds with hunting and trapping, and so it is understandable that Congress established national preserves, new and distinct units of the National Park System where the differentiating characteristic is that harvest is allowed under State and Federal law. As mentioned above, while the NPS Management Policies call for maintaining natural populations, they must be read in the context of ANILCA's specific legal mandate to allow sport hunting in national preserves, which by its very nature is a human intrusion upon natural cycles, and ANILCA's call for preserves to be managed for sound populations of wildlife using limited closure authority. By specifically mandating that hunting be allowed, Congress intended to authorize management for something less than populations untouched by human influence, and this is how the NPS and the State have managed national preserves since ANILCA was enacted.

Section 1.4.3.1 of NPS Management Policies provides that, "[i]n 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.” ANILCA limits this authority to closures for specified purposes, including the protection of wildlife. The State maintains that any effects to the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife from implementing its regulations are likely negligible. ADFG letter to NPS Regional Director re: RIN 1024-AE21 (Nov. 26, 2014) (2014 State Comments). While data are limited, the State reports that increased harvest opportunities provided by its regulations have not resulted in meaningful effects on predator or prey abundance. Based upon the analysis in the EA, the NPS believes additional take that could occur from the harvest methods identified in this rule, as currently allowed by the State, would not likely alter natural predator-prey dynamics at the population level or have a significant foreseeable adverse impact to wildlife populations (including natural variability in terms of the range of natural variability), or otherwise impair park resources. As noted above, the NPS retains the authority to designate areas and periods of time where sport hunting and trapping would not be allowed in national preserves for purposes of protecting wildlife. 16 U.S.C. 3201. For these reasons, the NPS does not believe these harvest practices violate NPS Management Policies Secs. 4.1, 4.4.1, 4.4.1.2, 4.4.2.

6. Comment: Several commenters stated that the proposed rule does not advance the purposes of Secretary’s Orders 3347 and 3356 because it would only affect harvest opportunities on 6% of lands in the State of Alaska and would not have any effect on harvest under Federal subsistence regulations.

NPS Response: Section 1 of Secretary’s Order 3347 identifies the purpose of the Order by

stating that the Department of the Interior shall increase “outdoor recreation opportunities, including hunting and fishing, for all Americans.” Section 2 says that the Department will “expand recreational and conservation opportunities for all Americans,” including through the “expansion and enhancement of hunting opportunities.” Section 4.b.(4) of Secretary’s Order 3356 directs the NPS to identify whether hunting opportunities on NPS lands could be expanded.

Allowing hunting and trapping opportunities under State law on national preserves is consistent with the direction in Secretary’s Orders 3347 and 3356. The Orders do not establish a minimum acreage, percentage of the hunting population, or access threshold that would qualify as an expansion of hunting opportunities as that policy goal is articulated in the Orders. This rule would remove Federal restrictions on harvest methods that currently apply to hunters on more than 22,000,000 acres of NPS-administered land.

In addition to allowing for State hunting and trapping opportunities, this rule would comply with the direction in Secretary’s Order 3356 to more closely align NPS management of wildlife with that of the State. Section 4.d. of Secretary’s Order 3356 requires the NPS to work cooperatively with State wildlife agencies to ensure that hunting regulations for NPS lands and waters complement the regulations on the surrounding lands and waters to the extent legally practicable. As stated above, this rule more closely aligns with Federal law by aligning hunting opportunities in national preserves with hunting opportunities allowed by the State of Alaska on surrounding lands, ensuring State law applies inside the preserves.

7. Comment: Several commenters stated that bear baiting creates a public safety hazard. Commenters noted that bait stations are often placed near roads and trails without proper signage which further increases the public safety risk and the risk of bears being taken in defense of life or property.

NPS Response: The NPS acknowledges that negative human-bear interactions occur throughout the State. It is difficult to determine, however, which if any such interactions are attributable to bears obtaining food rewards specifically from bear baiting. That said, the NPS recognizes that some bears that are attracted to bait stations, but not harvested, could pose a threat to public safety. Further, such bears may be more prone to being taken in defense of life or property. The NPS also recognizes that bears occur throughout Alaska and that people engaging in outdoor activities on NPS lands may encounter them. Adverse human-bear interactions are rare, but the consequences of such interactions can be severe (serious injury or death).

Bear baiting in national preserves would occur in the midst of nearly 20 million acres of very sparsely populated and remote areas, with few visitor facilities or services on site, if any. Human-bear interactions from bear baiting are likely to be rare – except for hunters seeking bears – both due to the lack of observed bear conditioning to associate bait stations with humans and the relatively few people in such remote areas to interact with bears. The State registers thousands of black bear bait stations yearly, and has done so for many years, but to date, it and other states which allow this practice have not detected problems that can be directly attributed to bear baiting. *See* 2014 State Comments, Att., at p. 14. The State also noted that “[e]stablishing, maintaining and cleaning up bear bait stations involves significant labor and materials and is typically conducted off of road or trail systems. All but one preserve in Alaska is many miles from the road system and hunters are not likely to use those areas for this use due to the extra cost and effort involved when easier to access locations are available.” 2018 State Comments, Att. B, at p. 54.

Alaska Department of Fish and Game regulations for bear bait stations will serve to mitigate risk to public safety, as they include requirements for site registration, signage, site

cleanup and removal, and minimum distances from maintained roads, trails, houses, businesses and developed recreational facilities. The NPS will work with the State to take actions to sustain and improve compliance with these risk-mitigation regulations and will attempt to address any site-specific issues related to bear baiting through the Alaska Board of Game, to the maximum extent allowed by Federal law. ANILCA continues to provide the ability to enact specific closures if necessary in the future.

The NPS recognizes that, even with safety measures in place, the practice of bear baiting could increase the frequency of adverse human-bear interactions for visitors to national preserves. The EA observes that, "[b]y design, baiting of bears alters their behavior to increase their predictability and facilitate harvest." EA, Sec. 3.2.2. Herrero (2002:41-44) referred to bears that become used to people through regular contact as "habituated" bears, and noted that if such bears also obtain food rewards, such as garbage that they associate with people, they can become "food conditioned." Habituated and food conditioned bears are more likely to become a nuisance and be taken in defense of life or property, and they pose an elevated public safety risk. Herrero (1970, 1976, 2002).

However, bear baiting differs in that bears do not necessarily associate baits with humans, and thus may not become food conditioned or habituated, as defined by Herrero (2002). Paquet (1991:2), *cited in* Hristienko and McDonald (2007) reported that bears exposed to bait in Manitoba did not become nuisance animals. Similarly, in its decades of experience, the State has found "no evidence to support the claim that use of bait leads to food conditioned bears. Instead all information indicates just the opposite, which is that in areas where bear baiting is allowed there are fewer Defense of Life and Property (DLP) and agency kills." 2018 State Comments, Att. B, at pp. 52-53; *see also* 2014 State Comments, Att., at p. 10 (arguing against the claim that

prohibiting bear baiting would reduce nuisance bears as “contrary to the observations of subsistence users, state wildlife biologists, and state law enforcement officers that baiting can help to reduce nuisance bear problems”).

ANILCA and the Organic Act provide for a variety of public uses in national preserves, and some of the uses inherently detract from others, for example flightseeing and backcountry camping in designated wilderness. In these and many other cases, the NPS must exercise its discretion in managing competing authorized or mandated uses. Here, considering that habituation and safety issues related to bear baiting are expected to be rare, and the authority the NPS has to enact local closures if and where necessary, the NPS is removing Federal prohibitions on the harvest methods that are the subject of this rule. This will allow the State to determine whether bear baiting is allowed within national preserves consistent with ANILCA, and will also ensure State mitigations for human-bear interactions can be employed.

8. Comment: Several commenters stated that bear baiting is inconsistent with the NPS’s efforts to educate visitors about the risks of feeding wildlife and the importance of securing food to prevent adverse human-bear interactions.

NPS Response: Consistent with NPS regulations that prohibit feeding wildlife, the NPS advises park visitors not to feed wildlife and to keep food and other attractants secure in order to avoid attracting bears. ANILCA allows sport hunting under State law, however, and State regulations allow individuals to take bears over bait in specific areas, some of which may be located within national preserves. If there is a tension between allowing bear baiting and prohibiting visitors from feeding bears, this is to be resolved in management considerations. The NPS’s approach on this issue is informed by the Congressional mandate to allow sport hunting under State law. As stated above, the State has adopted regulations for bait stations to help

prevent adverse human-bear interactions. Additionally, as noted in the EA, bear baiting differs from the act of feeding bears, in that bears do not necessarily associate baits with humans, Hristienko and McDonald (2007), and thus may not become food conditioned or habituated, Herrero (2002). Visitor feeding of bears, both in Alaska and elsewhere (such as Yellowstone National Park), has resulted in bears associating humans with food.

9. Comment: Several commenters stated that bear baiting violates the Wilderness Act by degrading the untrammeled and undeveloped qualities of wilderness character.

NPS Response: State management practices, including bear baiting, are allowed by ANILCA in the national preserves, including within designated wilderness. As discussed in the EA, implementation of this rule would have a minimal adverse impact on the untrammeled quality of wilderness in small and scattered locations by intentionally altering wildlife behavior. In addition, the presence of bear bait stations and associated debris would temporarily, in such small and scattered locations, degrade the undeveloped quality of wilderness. Overall, due to the low level of additional take expected under the proposed action, and the large areas of designated wilderness in national parks and preserves in Alaska, wilderness character would continue to exist in a manner similar to current conditions in accordance with statutory requirements in ANILCA and the Wilderness Act.

Furthermore, ANILCA provides that designated wilderness is to be administered in accordance with the Wilderness Act except as otherwise expressly provided for by ANILCA. ANILCA includes several special provisions for wilderness areas in Alaska. These special provisions are referred to as "non-conforming" uses. Relevant to sport hunting, ANILCA requires the NPS to permit, subject to reasonable regulation to ensure compatibility, the establishment and use of temporary facilities and equipment directly and necessarily related to

the taking of wildlife. 16 U.S.C. 3204(a). The establishment and use of bait stations in wilderness areas for the purpose of taking bears under State laws and regulations qualifies as an allowed, non-conforming use under this provision. The State requirements pertaining to clean-up and prompt removal of bait stations are consistent with protection of the areas while allowing for the Congressionally-mandated activity of sport hunting under applicable State and Federal law and regulation within national preserves.

For these reasons, although bear baiting has minimal adverse impacts to wilderness character in small and scattered locations, this rule would not impair wilderness character and would ensure compliance with both ANILCA and the Wilderness Act.

10. Comment: Some commenters stated available data are inadequate to evaluate the impact of liberalized hunting regulations on predators or prey. Some stated the proposed rule disregards scientific recommendations and conclusions made to and by the NPS through the public consultation process for the 2015 rule.

NPS Response: The NPS recognizes that data necessary to evaluate potential impacts of hunting on predators and their prey are difficult and costly to obtain. Neither the NPS nor the State of Alaska consistently collect population-level abundance or demographic data for black bears, brown bears, or wolves in GMUs that overlap with national preserves. Rather, the NPS typically evaluates historical harvest data, often in the context of evaluating proposals submitted to the Alaska Board of Game, to determine if significant impacts on predator populations are likely. Similarly, in preparing the EA, the NPS analyzed harvest data provided by the State for black bears, brown bears, and wolves in GMUs overlapping national preserves. National preserves composed less than 11% of the land area of those GMUs, so hunting regulations in each GMU were largely unconstrained by the 2015 Rule or prior restrictions imposed by the

NPS. Based in part on harvest data from 2012-2016 and consideration of potential additional harvest under current State regulations allowed by this rule, the NPS determined that, in general, meaningful population-level impacts on black bears, brown bears, or wolves are unlikely. The NPS will continue to work with the State to obtain and analyze harvest and population data, with particular attention to the most easily accessible areas. The NPS retains the authority under ANILCA to designate areas and periods of time where sport hunting and trapping would not be allowed in national preserves for purposes of protecting wildlife.

In making its determinations, the NPS did not disregard scientific recommendations or conclusions arising from the public consultation process for the 2015 Rule. The 2015 Rule was based upon “the NPS legal and policy framework[.]” 80 FR 64328 (Frequently Asked Questions section). The NPS evaluated predator harvest and its influence on predator-prey systems in the context of population-level (*i.e.*, GMU-scale) impacts rather than localized impacts. *See* EA, Sec. 3.2.2. Further, the overall conclusion in the Finding of No Significant Impact (FONSI) for the EA supporting the current rule - a determination that the proposed action will not result in significant adverse impacts - is consistent with NPS statements made in the Finding of No Significant Impact for the 2015 Rule, which noted how neither of its alternatives was “likely to have a significant effect on park resources.”

The NPS reached its conclusions in the EA and FONSI that support the current rule by evaluating the management implications of available scientific literature and other data, some of which is new information not used or available during the public consultation process for the 2015 rule. With regard to effects on wildlife, the 2014 EA stated, “[I]ocalized effects on individual animals, family groups, and packs may be substantial (e.g., direct mortality, increased mortality risk due to loss of family or group members, and food conditioning).” The EA

supporting the current rule reaches a similar conclusion relative to mortality risks; however, the effects were not found to be “substantial.” As documented in the EA, the NPS considered harvest data from 2012-2016 and determined that there is likely to be only a low level of additional take of predators from preserves under the proposed action.

With regard to impacts related to bear baiting, data not included in the 2015 Rule and EA, cited in Hristienko and McDonald (2007), suggest that, when managed correctly, there is no evidence to suggest that black bears exposed to baits are destined to become problem bears. *See* EA, Sec. 3.2.2. The EA supporting the current rule clarifies that food conditioned bears are those that become habituated to humans first, then learn to associate food with humans and thereby become a potential nuisance and public safety risk. Herrero (2002). Therefore, baiting that is conducted in a manner consistent with required mitigations (*e.g.*, signage, setback, cleanup) is unlikely to result in food conditioning.

The NPS acknowledges that several sources included in the 2014 EA are not used in the EA supporting the current rule. During its review of Boertje et al. (2012) for the current rule, the NPS determined the study does not apply as used in the 2014 EA because that study included impacts of targeted wolf control actions on the nutritional status and distribution of caribou. Such actions contrast with the practices that would be allowed under this rule, which are intended to expand hunting opportunities in preserves rather than to reduce predator populations.

Commenters also pointed out that the following sources included in the 2014 EA are not included in the current EA: Barber-Meyer et al. (2008), Beschta and Ripple (2010), Evans et al. (2006), Ripple et al. (2014), and Ruth et al. (2004). These sources were cited once in the 2014 EA to support the conclusion that, when striving to maintain natural processes, some consideration of the effects of designed management perturbations on an entire suite of species,

their interactions, trophic cascades, and system stability is necessary. The NPS acknowledges and has considered these concepts, but based on the entirety of the information reviewed during the EA process, the NPS has determined that population-level effects that would alter the natural processes listed are unlikely. The NPS will continue to work with the State to monitor harvest and, where practicable, status of predator and prey populations, and retains the authority under ANILCA to designate areas and periods of time where sport hunting and trapping would not be allowed.

Final Rule.

The NPS is removing paragraphs (f) and (g) of 36 CFR 13.42. Paragraph (f) states that State of Alaska management actions or laws or regulations that authorize taking of wildlife are not adopted in park areas if they are related to predator reduction efforts, which are defined as efforts with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes, in order to increase harvest of ungulates by humans. Removing this provision will expand harvest opportunities, complement regulations on lands and waters within and surrounding national preserves, and defer to the State in regard to fish and wildlife management, which is consistent with the NPS Organic Act, ANILCA, and 43 C.F.R. 24. This provision has not been utilized by the NPS since it was promulgated in 2015 and the NPS believes that removing it will help provide regulatory certainty to park users about what hunting practices are or are not allowed in national preserves.

Paragraph (g) sets forth a table of prohibited methods of taking wildlife for sport purposes in national preserves in Alaska. Most of these prohibited methods are also prohibited by the State of Alaska. Some of them, however, conflict with authorizations by the State of Alaska as explained above.

The NPS believes that removing paragraphs (f) and (g) is consistent with Congressional direction for the management of Alaska preserves and will better implement the policy direction announced in Secretary's Orders 3347 and 3356 by increasing hunting opportunities in national preserves and promoting consistency between Federal regulations and State wildlife harvest regulations. In addition, this rule removes the definitions of "Big game", "Cub bear", "Fur animal", and "Furbearer" from section 13.1 because those terms are only used in paragraphs (f) and (g).

Compliance with Other Laws, Executive Orders and Department Policy.

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

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is significant because it will raise novel legal or policy issues.

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

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771).

Enabling regulations are considered deregulatory under guidance implementing E.O. 13771 (M-17-21). This rule would remove prohibitions on certain methods of taking wildlife for sport purposes in national preserves in Alaska, thereby enabling those activities where they are allowed by State law.

Regulatory Flexibility Act.

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This certification is based on the cost-benefit and regulatory flexibility analyses found in the report entitled “Cost-Benefit and Regulatory Flexibility Analyses: Proposed Revisions to Sport Hunting and Trapping Regulations in National Preserves in Alaska” which can be viewed online at <http://parkplanning.nps.gov/akro>.

Small Business Regulatory Enforcement Fairness Act.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.).

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or

unique effect on state, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Takings (Executive Order 12630).

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

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule only affects use of federally administered lands and waters, and seeks to align federal and state regulations on lands and waters within and surrounding the preserves. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

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

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

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

Consultation with Indian tribes (Executive Order 13175 and Department Policy).

The Department of the Interior strives to strengthen its government-to government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation and

Alaska Native Claims Settlement Act (ANCSA) Native Corporation policies and have determined that this rule may have substantial direct effect on federally recognized Indian tribes. The NPS invited Alaska Native tribes and corporations to consult on the proposed rule and has consulted with those tribes and corporations that have requested consultation.

Paperwork Reduction Act.

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

National Environmental Policy Act.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The NPS prepared the EA and determined that a detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the NPS reached the FONSI. The EA and FONSI are available online at <http://parkplanning.nps.gov/akro>.

Effects on the Energy Supply (Executive Order 13211).

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and recordkeeping requirements.

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

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

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

Authority: 16 U.S.C. 3124; 54 U.S.C. 100101, 100751, 320102; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104–333, 110 Stat. 4240.

§ 13.1 [AMENDED]

2. In § 13.1 remove the definitions of “Big game”, “Cub bear”, “Fur animal”, and “Furbearer”.

§ 13.42 [AMENDED]

3. In § 13.42, remove and reserve paragraphs (f) and (g).

George Wallace
Assistant Secretary
for Fish and Wildlife and Parks.