



4310-EJ

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

[NPS-AKRO- 15122; PPAKAKROZ5, PPMRLE1Y.L00000]

RIN 1024-AE21

Alaska; Hunting and Trapping in National Preserves.

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to amend its regulations for sport hunting and trapping in National Preserves in Alaska. This proposed rule would not adopt state laws or regulations that authorize taking of wildlife, hunting or trapping activities, or management actions involving predator reduction efforts with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes to increase harvest of ungulates by humans. The rule would maintain long-standing prohibited sport hunting and trapping practices; update procedures for closing an area or restricting an activity in National Park Service areas in Alaska; update obsolete subsistence regulations; prohibit obstructing persons engaged in lawful hunting or trapping; and authorize use of native species as bait for fishing.

DATES: Comments must be received by [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024-AE21, by any of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail or hand deliver to*: National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to www.regulations.gov, including any personal information provided. For additional information see “Public Participation” under SUPPLEMENTARY INFORMATION below.

FOR FURTHER INFORMATION CONTACT: Andee Sears, Regional Law Enforcement Specialist, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Phone (907)-644-3417. Email: AKR_Regulations@nps.gov

SUPPLEMENTARY INFORMATION:

Background.

In enacting the Alaska National Interest Lands Conservation Act (ANILCA) (Pub. L. 96-487, Dec. 2 1980; 16 U.S.C. 410hh-410hh5; 3101-3233) in 1980, Congress’ stated purpose was to establish nationally significant areas including National Park System units in Alaska in order to preserve them “for the benefit, use, education, and inspiration of present and future generations[.]” ANILCA Sec. 101(a); 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. ANILCA, Sec. 101(a)-(b); 16 U.S.C. 3101(a)-(b).

The legislative history of ANILCA reinforces the purpose of the National Park System units to maintain natural, undisturbed ecosystems. “Certain units have been selected because they

provide undisturbed natural laboratories—among them the Noatak, Charley, and Bremner River watersheds.” Alaska National Interest Lands, Report of the Senate Committee on Energy and Natural Resources, Report No. 96-413 at page 137 [hereafter Senate Report]. Legislative history identifies Gates of the Arctic, Denali, Katmai, and Glacier Bay National Parks as “large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause.” Senate Report, at page 137.

The congressional designation of “National Preserves” in Alaska was for the specific and sole purpose of allowing sport hunting and commercial trapping, unlike areas designated as national parks. 126 CONG. REC. H10549 (Nov. 12, 1980) (Statement of Rep. Udall). Section 1313 directs 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 ANILCA and as used in this document, the term “subsistence” refers to subsistence activities by rural Alaska residents authorized by Title VIII of ANILCA, which ANILCA identifies as the priority consumptive use of fish and wildlife on federal public lands. ANILCA, Sec. 804; 16 U.S.C. 3144. Subsistence taking of fish and wildlife in NPS areas is generally regulated by the Department of the Interior. Taking wildlife for sport purposes in National Preserves is generally regulated by the State of Alaska (SOA).

In addressing wildlife harvest, the 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).

Activities related to taking wildlife remain subject to other federal laws, including the mandate of the NPS Organic Act (16 U.S.C. 1, *et. seq.*) “to conserve the scenery and the natural and historic objects and the wild life therein” and provide for visitor enjoyment of the same for this and future generations. Policies implementing the NPS Organic Act require the National Park Service (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 §§ 4.1, 4.4.1, 4.4.1.2, 4.4.2. The legislative history of ANILCA reflects that Congress did not intend to modify the NPS Organic Act 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. 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.

The SOA’s legal framework for managing wildlife in Alaska is based on sustained yield, which is defined by state statute to mean “the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game[.]” AS §16.05.255(k)(5). To that end, the Alaska Board of Game (BOG) “shall 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[.]” AS §16.05.255(e). Allowances that manipulate natural systems and processes to achieve these goals, including actions to reduce or

increase wildlife populations for harvest, conflict with laws and policies applicable to NPS areas that require preserving natural wildlife populations. See, e.g., NPS Management Policies 2006 §§ 4.1, 4.4.3.

This potential for conflict was recognized by the Senate Committee on Energy and Natural Resources prior to the passage of ANILCA, which stated that “[i]t is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem, and that concept should be maintained.” Senate Report, at page 171.

In the last several years, the SOA has adopted an increasing number of liberalized methods of hunting and trapping wildlife and extended seasons to increase opportunities to harvest predator species. Among the predator harvest practices recently authorized on lands in the state, which included several National Preserves:

- hunting black bears, including sows with cubs, with artificial light at den sites;
- harvesting brown bears over bait (which often includes dog food, bacon/meat grease, donuts, and other human food sources); and
- taking wolves and coyotes (including pups) during the denning season when their pelts have little trophy, economic, or subsistence value.

These practices are not consistent with the NPS implementation of ANILCA’s authorization of sport hunting and trapping in National Preserves. To the extent such practices are intended or reasonably likely to manipulate wildlife populations for harvest purposes or alter natural wildlife behaviors, they are not consistent with NPS management policies implementing the NPS

Organic Act. Additional liberalizations by the SOA that are inconsistent with NPS management directives and policy are anticipated in the future.

ANILCA Section 1313 (16 U.S.C. 3201) provides “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.” In order to comply with federal law and NPS policy, the NPS has adopted temporary restrictions to prevent the application of the above listed predator harvest practices to National Preserves in Alaska (see, e.g., 2013 Superintendent’s Compendium for Denali National Park and Preserve). These restrictions protect fauna and provide for public use and enjoyment consistent with ANILCA. While the NPS prefers a state solution to these conflicts, the SOA has been mostly unwilling to accommodate the different management directives for NPS areas. In the last 10 years, the NPS has objected to more than 50 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. Had these requests been accommodated, this proposed rule would not be necessary.

In deciding not to treat NPS lands different from state and other lands, the BOG suggested the NPS is responsible for ensuring that taking wildlife complies with federal laws and policies applicable to NPS areas, and that the NPS should use its own authority to ensure National Preserves are managed in a manner consistent with federal law and NPS policy. Statement of BOG Chairman Judkins to Superintendent Dudgeon, BOG Public Meeting in Fairbanks, Alaska (February 27, 2010) (NPS was testifying in opposition to allowing the take of black bear cubs and sows with artificial light in National Preserves). In the absence of state

action excluding preserves, this rulemaking is required to make the temporary restrictions permanent. 36 CFR 13.50(d). This rule would also respond to the BOG's suggestion by promulgating NPS regulations to ensure preserves are managed consistent with federal law and policy and prevent historically illegal sport hunting practices from being authorized in National Preserves.

The scope of this rule is limited—sport hunting and trapping are still allowed throughout National Preserves and the vast majority of state hunting regulations are consistent with federal law and policy and would continue to apply in National Preserves. This proposed rule would only affect sport hunting and trapping in National Preserves, which constitute less than 6% of the lands in Alaska open to hunting. The proposed rule would not limit the taking of wildlife for subsistence uses under the federal subsistence regulations.

The Proposed Rule.

The proposed rule would separate taking of fish and taking of wildlife into two sections; 13.40 and 13.42, respectively. The proposed rule would make the following substantive changes:

(1) In accordance with NPS policies, taking wildlife, hunting or trapping activities, or management actions involving predator reduction efforts with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes to increase harvest of ungulates by humans would not be allowed on NPS-managed lands. It would also explain how the NPS would notify the public of specific activities that are not consistent with this section.

(2) Prohibit historically illegal practices for taking wildlife for sport purposes, including the practices recently authorized by the state for taking predators: (i) taking black bear cubs and

sows with artificial light at den sites; (ii) taking brown bears over bait; and (iii) taking wolves and coyotes during the denning season.

(3) Prohibit intentionally obstructing or hindering persons actively engaged in lawful hunting or trapping.

(4) Update procedures for implementing closures or restrictions in park areas, including taking fish and wildlife for sport purposes, to more effectively engage the public.

(5) Update NPS regulations to reflect federal assumption of the management of subsistence hunting and fishing under Title VIII of ANILCA from the SOA in the 1990s.

(6) Allow the use of native species to be used as bait, commonly salmon eggs, for fishing in accordance with non-conflicting state law. This would supercede for park areas in Alaska the Service-wide prohibition on using certain types of bait in 36 CFR 2.3(d)(2).

Prohibiting Methods and Means of Taking Wildlife in National Preserves.

Activities or management actions involving predator reduction efforts with the intent or potential to alter or manipulate natural ecosystems or processes (including natural predator/prey dynamics, distributions, densities, age-class distributions, populations, genetics, or behavior of a species) are inconsistent with the laws and policies applicable to NPS areas. The proposed rule would clarify in regulation that these activities are not allowed on NPS lands in Alaska. Under the proposed rule, the regional director would compile a list updated at least annually of activities prohibited by this section of the proposed rule. Notice would be provided in accordance with 36 CFR 13.50(e).

The proposed rule would codify in federal regulations applicable to National Preserves what had been traditional and long-standing prohibited sport hunting and trapping practices, some of which have been recently authorized by the state for taking predators. It would also

prohibit the use of electronic devices not specifically approved by the Regional Director, the use of airborne devices controlled remotely and used to spot or locate game with the use of a camera, video, or other sensing device, and eliminate an allowance under adopted state laws that authorizes sport hunters to take caribou while swimming in certain National Preserves.

In 2013, the NPS adopted temporary restrictions on taking brown bears over bait in National Preserves which the proposed rule would make permanent . At that time, the NPS received several comments suggesting that black bear baiting also be prohibited. The NPS specifically seeks comment on whether taking black bears over bait should be allowed in National Preserves.

Unlike the practice of taking brown bears over bait, black bear baiting has been authorized in Alaska for several decades, including in National Preserves. Black bear baiting is authorized by the state pursuant to a permit. State regulations prohibit setting up a bait station within a mile of a home or other dwelling, business, campground and other places. State regulations also prohibit setting up a bait station within a quarter mile of a road or trail. As mentioned above, items that are inexpensive and highly attractive are used to bait bears; commonly old bread, donuts, bacon grease, dog food, and marshmallows, among other things.

Though authorized since the 1980s, the practice of black bear baiting in National Preserves is relatively uncommon. From the harvest data reported to the SOA, ≤ 37 black bears were hunted over bait in National Preserves, and ≤ 34 of these were harvested in Wrangell-St. Elias National Preserve. Of the 37 reported, only three black bears were harvested over bait by rural Alaska residents from NPS preserves between the commencement of federal subsistence regulation in 1992 and 2010.

Many of the same concerns with taking brown bears over bait also apply to black bear baiting. It is generally agreed that food-conditioned bears are more likely to be a danger to humans than bears that are not food-conditioned and are also more likely to be killed in defense of life and property. For these reasons, natural resource agencies throughout North America discourage intentionally feeding bears.

The NPS also specifically seeks comment on whether to continue to allow the practice of using dogs to hunt black bears in National Preserves. Current state hunting regulations allow individuals to obtain a state permit to use dogs to hunt black bears. These state regulations apply in National Preserves. The proposed rule would maintain current state prohibitions on taking big game with the aid or use of a dog, except for using a leashed dog to track wounded big game and using dogs to take black bears pursuant to a state permit. The proposed rule would not limit the use of dogs in support of hunting wildlife other than big game, such as waterfowl or game birds.

Prohibiting the Obstruction of Persons Engaged in Lawful Hunting or Trapping.

This proposed rule would prohibit the intentional obstruction or hinderance of another person's lawful hunting or trapping activities. This would include (i) placing one's self in a location in which human presence may alter the behavior of the game that another person is attempting to take; or the imminent feasibility of taking game by another person; or (ii) creating a visual, aural, olfactory, or physical stimulus in order to alter the behavior of the game that another person is attempting to take. These actions are prohibited by state law but are not adopted under the existing regulations for National Preserves because the state law does not directly regulate hunting and trapping. The proposed rule would codify these prohibitions as federal law to prevent the frustration of lawful hunting and trapping in National Preserves.

Updating Closure and Restriction Procedures.

This proposed rule would also amend the procedures for implementing closures and restrictions on certain activities in NPS areas in Alaska. The proposed rule would update the current procedures to reflect the availability of alternative communications technologies and approaches that have emerged or evolved over the last 33 years. Current regulations rely on public hearings to engage the public and newspapers, radio broadcast, and notices posted at postal offices to provide public notice. The proposed changes recognize the internet has become a primary method to communicate with the public and is often more effective tool for engaging Alaskans and the broader American public.

The proposed changes are not intended to limit public involvement or reduce public notice; rather the NPS intends to engage in ways more likely to encourage public involvement in a manner that is fiscally sustainable. For example, in 2013, the NPS held seven public hearings on three restrictions to taking wildlife for sport purposes. In total, about 75 individuals attended the hearings. One of the hearings was attended by fewer than five individuals. On the same topics, the NPS received over 59,000 email comments and significant interest and participation in NPS-hosted web chats. This year, the NPS expects to hold 15-20 public hearings on the same three wildlife harvest restrictions, including those part of this proposed rule.

The NPS does recognize that in-person public meetings will still be the most effective way to engage Alaskans on some issues and in certain areas and the NPS intends to continue that practice when appropriate. The NPS also recognizes that many individuals in rural Alaska do not have access to high speed internet and for that reason the NPS will continue to use other methods of communication, such as newspapers, where available to provide adequate notice.

The NPS is also proposing to simplify categories of restrictions. The current regulations address emergency, temporary and permanent closures and restrictions. We propose a duration of up to 60 days for emergency closures and restrictions which is the same as adopted by the Federal Subsistence Board (FSB) after notice and comment. See 50 CFR 100.19(a)(2). Non-emergency closures and restrictions or the termination and relaxation of them would not require rulemaking after a specific period of time. Instead, rulemaking would be required if these closures or restrictions (or the termination and relaxation of them) are of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the area, adversely affect the area's natural, aesthetic, scenic or cultural values, or require a long-term or significant modification in the resource management objectives of the area. These rulemaking criteria are modeled after the rulemaking criteria in 36 CFR 1.5(b) that apply to NPS areas outside of Alaska.

The following table summarizes changes from the existing procedures in the proposed rule:

Current procedures.	Proposed procedures.
<i>Criteria used to determine whether to close an area or restrict an activity</i>	
Criteria only apply to emergency closures or restrictions	Apply to all types of closures or restrictions Clarifies the criteria to include protecting the integrity of naturally-functioning ecosystems as an appropriate reason for a closure or restriction
<i>Public Notice</i>	
Newspaper, radio, and signs are the primary methods of notifying the public of closures or restrictions	Updated to reflect the internet as the primary source of information for closures or restrictions. Other methods will be utilized as appropriate.
<i>Non-Emergency Closures or Restrictions</i>	

Duration: cannot exceed 12 months, no extensions. Permanent closures or restrictions published as rulemaking.	Duration: No time limit provided rulemaking criteria are not triggered.
Fish and wildlife related: -consultation with the state and representatives of affected user groups and -notice and hearing in the vicinity of the area directly affected prior to adopting a closure or restriction	Fish and wildlife related: -consultation with the state and -Opportunity for public comment required prior to adopting a closure or restriction
<i>Emergency Closures or Restrictions</i>	
Duration: 30 days, no extensions	Duration: 60 days, extensions subject to nonemergency procedures
Fish and wildlife related: effective upon notice and hearing	Fish and wildlife related: effective upon notice

Update Subsistence Regulations to Reflect Federal Management.

The proposed rule would update the subsistence provisions in NPS regulations (36 CFR 13.470, 13.480, and 13.490) to reflect the federal government’s assumption of the management and regulation of subsistence take of fish and wildlife under ANILCA and the transfer of subsistence management under Title VIII from the SOA to the FSB.

Allowing the Use of Native Species as Bait for Fishing.

NPS regulations generally prohibit the use of bait for fishing to help protect against the spread of nonnative species. Fish eggs from native species (usually salmon), are commonly used for fishing in Alaska. This proposed rule would allow use of local native species as bait for fishing.

Compliance With Other Laws, Executive Orders, and Department Policy.

Regulatory Planning and Review (Executive Order 12866).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

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. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act.

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

Small Business Regulatory Enforcement Fairness Act (SBREFA).

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

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

Unfunded Mandates Reform Act.

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630).

This rule does not affect a taking of private property or otherwise have taking 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. The proposed rule is limited in effect to federal lands managed by the NPS in Alaska and would not have a substantial direct effect on state and local government in Alaska. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This rule complies with the requirements of Executive Order 12988. Specifically, 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 (E.O. 13175 and Department policy) and ANCSA Corporations.

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 Department's Tribal consultation and Alaska Native Claims Settlement Act (ANCSA) Native Corporation policies. While the NPS has determined the rule would not have a substantial direct effect on federally recognized Indian tribes or ANCSA Native Corporation lands, water areas, or resources, the NPS is consulting Alaska Native tribes and Alaska Native Corporations regarding potential NPS restrictions on taking of wildlife for sport purposes on preserves.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

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. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act.

The NPS has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. We have prepared an environmental assesment to

determine whether this rule will have a significant impact on the quality of the human environment. An environmental assessment entitled “Wildlife Harvest On National Park System Preserves In Alaska” (EA) has been prepared and is available for public comment during the comment period for this proposed rule. The EA is available available online at <http://www.parkplanning.nps.gov/akro>, by clicking on the link entitled “Wildlife Harvest On National Park System Preserves In Alaska” and then clicking on the link entitled “Document List.”

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.

Clarity of this regulation.

The NPS is required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section above. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the

sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Drafting Information.

The primary authors of this regulation are Jay P. Calhoun, Regulations Program Specialist, National Park Service, Division of Jurisdiction, Regulations, and Special Park Uses; Philip Hooge, Denali National Park and Preserve; and Debora Cooper, Joel Hard, Grant Hilderbrand, Brooke Merrell, Sandy Rabinowitch, and Andee Sears of the Alaska Regional Office, National Park Service.

Public Participation.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section above.

Public Availability of Comments.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 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. 1, 3, 462(k), 3101 *et seq.*; Subpart N also issued under 16 U.S.C. 1a-2(h), 20, 1361, 1531, 3197; Pub. L. 105—277, 112 Stat. 2681-259, October 21, 1998; Pub. L. 106-31, 113 Stat. 72, May 21, 1999; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104-333, 110 Stat. 4240.

2. In § 13.1, add in alphabetical order the terms “Bait”, “Big game”, “Cub bear”, “Fur animal”, “Furbearer”, and “Trapping” to read as follows:

§ 13.1 Definitions.

* * * * *

Bait means, for purposes of taking wildlife other than fish, any material used to attract wildlife by sense of smell or taste except:

(1) Parts of legally taken wildlife that are not required to be salvaged as edible meat under state law if the parts are not moved from the kill site; or

(2) Game that died of natural causes, if not moved from the location where it was found.

Big game means black bear, brown bear, bison, caribou, Sitka black-tailed deer, elk, mountain goat, moose, muskox, Dall’s sheep, wolf, and wolverine.

* * * * *

Cub bear means a brown (grizzly) bear in its first or second year of life, or a black bear (including the cinnamon and blue phases) in its first year of life.

* * * * *

Fur animal means a classification of animals subject to taking with a hunting license which consists of beaver, coyote, arctic fox, red fox, lynx, flying squirrel, ground squirrel, or red squirrel that has not been domestically raised.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, least weasel, short-tailed weasel, muskrat, land otter, red squirrel, flying squirrel, ground squirrel, Alaskan marmot, hoary marmot, woodchuck, wolf and wolverine.

* * * * *

Trapping means taking furbearers under a trapping license.

* * * * *

3. Add § 13.42 to read as follows:

§ 13.42 Taking of wildlife in national preserves.

(a) Hunting and trapping are allowed in national preserves in accordance with applicable Federal and non-conflicting State law and regulation.

(b) – (e) [Reserved]

(f) State of Alaska laws or regulations that authorize taking of wildlife, hunting or trapping activities, or management actions involving predator reduction efforts with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes to increase harvest of ungulates by humans are not adopted in park areas.

(1) The Regional Director will compile a list updated at least annually of state laws and regulations not adopted under this paragraph (f).

(2) Taking of wildlife, hunting or trapping activities, or management actions identified in this paragraph (f) are prohibited. Notice of activities prohibited under this paragraph (f)(2) will be provided in accordance with § 13.50(e) of this chapter.

(g) This paragraph applies to the taking of wildlife in national preserves except for subsistence uses by local rural residents pursuant to applicable Federal law and regulation. The following are prohibited:

Prohibited acts.	Any exceptions?
(1) Shooting from, on, or across a park road or highway.	None.
(2) Using any poison or other substance that kills or temporarily incapacitates wildlife.	None.
(3) Taking wildlife from an aircraft, off-road vehicle, motorboat, motor vehicle, or snowmachine.	If the motor has been completely shut off and progress from the motor's power has ceased.
(4) Using an aircraft, snowmachine, off-road vehicle, motorboat, or other motor vehicle to harass wildlife, including chasing, driving, herding, molesting, or otherwise disturbing wildlife.	None.
(5) Taking big game while the animal is swimming.	None.
(6) Using a machine gun, set gun, or a shotgun larger than 10 gauge.	None.
(7) Using the aid of a pit, fire, artificial salt lick, explosive, expanding gas arrow, bomb, smoke, chemical, or a conventional steel trap with an inside jaw spread over nine inches.	Killer style traps with an inside jaw spread less than 13 inches may be used for trapping, except to take any species of bear or ungulate.
(8) Using any electronic device to take, harass, chase, drive, herd, or molest wildlife, including but not limited to: artificial light; laser sights; electronically enhanced night vision scope; any device that has been airborne, controlled remotely, and used to spot or locate game with the use of a camera, video, or other sensing device; radio or satellite communication; cellular or satellite telephone; or motion detector.	<p>(i) Rangefinders may be used.</p> <p>(ii) Electronic calls for big game animals except moose.</p> <p>(iii) Artificial light may be used for the purpose of taking furbearers under a trapping license during an open season from Nov. 1 through March 31 where authorized by the state.</p> <p>(iv) Artificial light may be used by a tracking dog handler with one leashed dog to aid in tracking and dispatching a wounded big game animal.</p> <p>(v) Electronic devices approved in writing by the Regional Director.</p>

(9) Using snares, nets, or traps to take any species of bear or ungulate.	None.
(10) Using bait.	(i) Using bait to trap furbearers. (ii) Using bait to hunt black bears.
(11) Taking big game with the aid or use of a dog.	(i) Leashed dog for tracking wounded big game. (ii) Taking black bears pursuant to a permit issued from the State.
(12) Taking wolves and coyotes from May 1 through August 9.	None.
(13) Taking cub bears or female bears with cubs.	None.
(14) Taking a fur animal or furbearer by disturbing or destroying a den.	None.

(h) The Superintendent may prohibit or restrict the non-subsistence taking of wildlife in accordance with the provisions of § 13.50 of this chapter.

(i) A person may not intentionally obstruct or hinder another person’s lawful hunting or trapping by:

(1) Placing one's self in a location in which human presence may alter the behavior of the game that another person is attempting to take or the imminent feasibility of taking game by another person; or

(2) Creating a visual, aural, olfactory, or physical stimulus in order to alter the behavior of the game that another person is attempting to take.

4. Redesignate paragraphs (d)(2), (d)(3), (d)(4), and (d)(5) of § 13.40 as paragraphs (b), (c), (d), and (e), respectively, of § 13.42.

5. In § 13.40, revise the section heading and paragraphs (d) and (e) to read as follows:

§ 13.40 Taking of fish.

* * * * *

(d) *Use of native species as bait.* Use of species native to Alaska as bait for fishing is allowed in accordance with applicable Federal law and non-conflicting State law and regulations.

(e) *Closures and restrictions.* The Superintendent may prohibit or restrict the non-subsistence taking of fish in accordance with the provisions of § 13.50 of this chapter.

6. Amend § 13.50 by revising paragraphs (a) through (e), removing paragraph (f), and redesignating paragraphs (g) through (i) as paragraphs (f) through (h), respectively, to read as follows:

§ 13.50 Closure and restriction procedures.

(a) *Applicability and authority.* The Superintendent may close an area or restrict an activity, or terminate or relax a closure or restriction, in NPS areas in Alaska in accordance with this section.

(b) *Criteria.* In determining whether to close an area or restrict an activity, or whether to terminate or relax a closure or restriction, the Superintendent must ensure that the activity or area is managed in a manner compatible with the purposes for which the park area was established. The Superintendent's decision under this paragraph must therefore be guided by factors such as public health and safety, resource protection, protection of cultural or scientific values, subsistence uses, conservation of endangered or threatened species, protecting the integrity of naturally-functioning ecosystems, and other management considerations.

(c) *Duration.* This paragraph applies only to a closure or restriction, or the termination or relaxation of such, which is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the area; adversely affect the area's natural, aesthetic, scenic, or cultural values; or require a long-term modification in the resource management

objectives of the area. Except in emergency situations, the closure or restriction, or the termination or relaxation of such, must be published as a rulemaking in the Federal Register. Emergency closures or restrictions may not exceed a period of 60 days.

(d) *Restrictions on taking fish or wildlife.* Except in emergencies, the NPS will consult with the State agency having responsibility over fishing, hunting, or trapping and provide opportunity for public comment before adopting closures or restrictions relating to the taking of fish or wildlife.

(e) *Notice.* Closures or restrictions will be effective upon publication on individual park websites accessible through the NPS website at www.nps.gov. A list of closures and restrictions will be available at park headquarters. Additional means of notice reasonably likely to inform residents in the affected vicinity will also be provided where available, such as:

- (1) Publication in a newspaper of general circulation in the State or in local newspapers;
- (2) Use of electronic media, such as the internet and email lists;
- (3) Radio broadcast; or
- (4) Posting of signs in the local vicinity.

* * * * *

7. In § 13.400, remove paragraph (e) and redesignate paragraph (f) as paragraph (e).

8. Revise § 13.470 to read as follows:

§ 13.470 Subsistence Fishing.

Fish may be taken by local rural residents for subsistence uses in park areas where subsistence uses are allowed in compliance with applicable Federal law and regulation, including the provisions of §§ 2.3 and 13.40 of this chapter. Local rural residents in park areas where

subsistence uses are allowed may fish with a net, seine, trap, or spear; or use native species as bait, where permitted by applicable Federal law and regulation.

9. Revise § 13.480 to read as follows:

§ 13.480 Subsistence Hunting and Trapping.

Local rural residents may hunt and trap wildlife for subsistence uses in park areas where subsistence uses are allowed in compliance with this chapter and 50 CFR Part 100.

10. In §13.490, revise paragraph (a) to read as follows:

§ 13.490 Closures and restrictions to subsistence uses of fish and wildlife.

(a) The Superintendent may temporarily restrict a subsistence activity or close all or part of a park area to subsistence uses of a fish or wildlife population in accordance with the provisions of this section. The Superintendent may make a temporary closure or restriction notwithstanding any other provision of this part, and only if the following conditions are met:

- (1) The restriction or closure must be necessary for reasons of public safety, administration, or to ensure the continued viability of the fish or wildlife population;
- (2) The Superintendent must provide public notice and hold a public hearing;
- (3) The restriction or closure may last only so long as reasonably necessary to achieve the purposes of the closure.

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Dated: August 25, 2014

Michael Bean
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

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