



4312-52

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

[NPS-AKRO-22487; PPAKAKROZ5, PPMRLE1Y.L00000]

RIN 1024-AE28

Alaska; Subsistence Collections

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service amends its regulations for National Park System units in Alaska to allow qualified subsistence users to collect nonedible fish and wildlife parts and plants for creating handicrafts for barter and customary trade. The rule also clarifies that capturing, collecting or possessing living wildlife is generally prohibited and adopts restrictions on using human-produced foods to bait bears for subsistence uses.

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

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SUPPLEMENTARY INFORMATION:

Background

Proposed Rule and Public Comment Period.

On January 13, 2016, the National Park Service (NPS) published the proposed rule in the

Federal Register (81 FR 1592). The rule was open for public comment for 90 days, until April 12, 2016, to coincide with scheduled meetings of the NPS Subsistence Resource Commissions and Federal Subsistence Regional Advisory Councils. The NPS invited comments through the mail, hand delivery, and through the Federal eRulemaking Portal at <http://www.regulations.gov>. The NPS received 27 comments on the proposed rule during the public comment period. A summary of comments and NPS responses is provided below in the section entitled “Summary of and Responses to Public Comments”. After considering the public comments and additional review, the NPS made some changes in the final rule from what was proposed. These changes are summarized below in the section entitled “Changes from the Proposed Rule”.

Subsistence Uses Authorized by ANILCA.

In 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 410hh-410hh-5; 3101-3233) to preserve various nationally significant areas in Alaska. One of the purposes of ANILCA is “to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.” 16 U.S.C. 3101(c). The subsistence take of fish and wildlife on (federal) public lands is governed by Title VIII of ANILCA (16 U.S.C. 3111-3126).

Title II of ANILCA established new National Park System units, added to existing units, and specified in which units that subsistence uses shall be allowed. 16 USC 410hh-2. Subsistence uses by local rural residents in Alaska are authorized in all national preserves and in the Alagnak Wild River (managed as a national preserve), Aniakchak National Monument, Cape Krusenstern National Monument, Gates of the Arctic National Park, Kobuk Valley National Park, Lake Clark National Park, Wrangell-Saint Elias National Park, 16 U.S.C. 410hh-(1)-(4), (6)-(10); and the additions to Denali National Park, 16 U.S.C. 410hh-1(3)(a).

ANILCA defines “subsistence uses” as:

[T]he customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade. 16 U.S.C. 3113

This definition reflects that the creation of hand-made crafts from nonedible natural materials has long been a part of the cultural, social, and economic practices of those living a subsistence way of life in Alaska. These individuals requested that the NPS allow this customary and traditional practice.

Consistency with NPS Regulations

NPS regulations for subsistence uses in park units in Alaska are found in 36 CFR part 13, subpart F—Subsistence. The regulations authorize local rural residents to take fish and to hunt and trap wildlife in specific park units for subsistence uses in compliance with state and federal law. 36 CFR 13.470 and 13.480. The Federal Subsistence Board (FSB) regulations governing the subsistence take of fish and wildlife on federal lands in Alaska are found at 50 CFR part 100. These part 100 regulations are limited to fish, wildlife and non-migratory birds. NPS regulations regarding the non-commercial subsistence use of timber and plant materials are located at 36 CFR 13.485. The non-commercial cutting of standing timber for firewood and house logs is authorized under 36 CFR 13.485(a) while the non-commercial gathering of plant materials such as fruits, berries, and mushrooms for subsistence uses without a permit is authorized by 36 CFR 13.485(b).

The NPS regulation at 36 CFR 13.420 defining the term “barter” is derived from the statutory definition of “subsistence uses” in section 803 of ANILCA (16 U.S.C. 3113). Barter means the exchange of fish or wildlife or their parts for other fish or game or their parts; or for

other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature. The term "customary trade" is limited by definition to the exchange of furs for cash, and other activities designated for a particular NPS unit by special regulation. These definitions recognize the traditional cultural, social, and economic practices of non-cash exchange of subsistence resources among those living a "genuine subsistence lifestyle", and that trapping was an "integral and longstanding part of the subsistence lifestyle in many regions in Alaska." See 1981 U.S. Fish and Wildlife Service interim regulations interpreting similar definitions of "barter" and "customary trade" (46 FR 31824, June 17, 1981).

Since the June 1981 rulemaking, two NPS units in Alaska where such customary trade was known to have occurred, Gates of the Arctic National Preserve and Kobuk Valley National Park, have promulgated special regulations that expand the definition of "customary trade" in those units to include the sale of handicrafts made from plant material taken by local rural residents of the park area. These special regulations do not require any written authorization from the superintendent. 36 CFR 13.1006 and 13.1504, respectively.

Except for these specific and limited authorizations for barter and customary trade of handicrafts in Gates of the Arctic National Preserve and Kobuk Valley National Park in Alaska, National Park System-wide regulations at 36 CFR 5.3 generally prohibit engaging in any business without authorization. This means that other forms of sale, barter, and trade that are customary and traditional uses of wild, renewable resources by rural Alaska residents are not allowed under current NPS regulations. In addition, National Park System-wide regulations at 36 CFR 2.1(a)(1) prohibit the collection of wildlife, plants, or parts thereof. There is a limited authorization for the hand-collection of fruits, berries, nuts, or unoccupied seashells for personal use or consumption, and a separate limited authorization for members of federally-recognized

tribes to collect plants for traditional purposes under an agreement with the NPS, but the sale or commercial use of the products collected under these authorities is prohibited. 36 CFR 2.1(c) and (d).

Environmental Impact Analysis.

The NPS prepared an Environmental Assessment (EA) to analyze the impacts of various alternatives that would address the collection of plant materials and nonedible animal parts to make handicrafts for barter and customary trade. On April 14, 2014, the Regional Director for the Alaska Region signed a Finding of No Significant Impact (FONSI) that selected a modified version of the preferred alternative (Alternative D) in the EA as the selected action. In the FONSI, the Regional Director determined that written authorization from the NPS would be required to collect both animal parts and plant materials for making handicrafts for barter and customary trade. On December 2, 2016, the NPS amended the FONSI to exempt plant materials from this requirement. The provisions in this rule about the capture, collection, or possession of live wildlife and restrictions on the types of bait that may be used to take bears for subsistence purposes were categorically excluded from further environmental analysis.

Final Rule.

Summary of Final Rule.

This rule implements the selected action identified in the amended FONSI and applies to all NPS units in Alaska where subsistence uses by local rural residents are authorized by ANILCA. The rule allows NPS-qualified local rural residents to collect and use the following items to make and sell handicrafts:

- plant materials; and
- nonedible animal parts (e.g., antlers, horns, bones, teeth, claws, hooves, skins, hides,

fur, hair, feathers, or quills) that are naturally shed or discarded, lawfully taken, or that remain on the landscape due to the natural mortality of an animal.

While ANILCA does not expressly address making and selling of handicrafts out of plant materials, the NPS concludes it falls within this definition, and that it is not otherwise prohibited. Making and selling handicrafts out of plant materials is clearly use of a wild renewable resource for barter or customary trade. The omission of plant materials from the statute's specific provision on handicraft articles does not indicate any intent to prohibit their use. That definition provides that fish and wildlife-based handicraft articles for subsistence purposes are only made from "nonedible byproducts" to avoid the take of fish and wildlife solely for the purpose of making handicrafts out of them. Plant materials fall within the definition's more general provision of wild, renewable resources and the making and selling of plant-based handicrafts is a customary and traditional use of wild, renewable resources for barter or customary trade.

Feathers may only be collected if such collection is not prohibited by the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, or other applicable law. Collection and use of bird feathers remains subject to any applicable federal and state laws.

Eligibility to collect plants or nonedible animal parts follows the same criteria for other subsistence uses in national parks, monuments and preserves. Collection of nonedible wildlife parts is limited to NPS-qualified subsistence users who are residents of communities or areas with a federally recognized customary and traditional use determination (as listed in 50 CFR part 100) for each species in the game management unit within the affected area. Thus, if an NPS qualified subsistence user can lawfully harvest the wildlife species in a particular area for subsistence uses, then they are allowed to collect nonliving, nonedible parts of that same species they encounter in the area. Eligible persons must have written authorization from the

superintendent to collect nonedible animal parts. The sale of raw unworked materials or parts remains prohibited because of concern about overuse and commercialization of the resource. The rule also allows NPS-qualified subsistence users to collect nonedible animal parts and plants on behalf of another NPS-qualified subsistence user or for cultural or educational programs that are qualified under FSB regulations at 50 CFR 100.25(g). The rule provides superintendents with authority to set conditions, limits, and other restrictions on collection activities to protect resources and values.

The rule allows the collection of nonedible animal parts and plants and their inclusion in handicrafts to be sold or exchanged through barter or customary trade. The regulatory definition of “barter” is amended to include exchange of handicrafts for fish or game or their parts; or for other food or nonedible items other than money if the exchange is of a limited and noncommercial nature. The regulatory definition of “customary trade” is amended to include exchange of handicrafts for cash to support personal or family needs, so long as these exchanges do not constitute a significant commercial enterprise.

The rule adds a definition of “handicraft” that is taken from the current federal subsistence regulations at 50 CFR 100.25(a). This definition clarifies that a handicraft must result from the alteration or manipulation of the shape and appearance of natural materials to create something of greater monetary or aesthetic value than the unaltered natural material alone.

Capture or Collection of Live Wildlife

In the proposed rule, the NPS stated that collecting or possessing living wildlife (including eggs and offspring) is prohibited in NPS units located in Alaska unless specifically authorized by federal statute or pursuant to (1) an NPS research specimen collection permit issued under 36 CFR 2.5; (2) federal subsistence regulations; or (3) special regulations for

Glacier Bay National Park and Preserve. This proposal originated from public inquiries about the collection of live falcon chicks in national preserves that would be trained and then used for sport hunting.

The take of wildlife is generally prohibited on National Park System units. Although in Alaska hunting and trapping are allowed in national preserves in accordance with applicable federal and non-conflicting state laws and regulations, the NPS does not consider the capture or collection of live falcons to be hunting or trapping. The NPS concludes that the harvest of migratory birds (including their eggs) pursuant to the Migratory Bird Treaty Act and implementing regulations in 50 CFR part 92 is an appropriate “subsistence use” as defined in section 803 of ANILCA, 16 U.S.C. 3113. Similarly, the NPS concludes that the harvest of marine mammals in accordance with the Marine Mammal Protection Act and implementing regulations in 50 CFR part 18 by NPS-qualified subsistence users is also an appropriate “subsistence use” as defined by section 803 of ANILCA. Thus, in this final rule, the NPS clarifies the prior definition of “subsistence uses” to explicitly include harvest of migratory birds under the MBTA and the harvest of marine mammals under the MMPA by qualified individuals. Except for these subsistence uses, the final rule continues the previous prohibitions on collecting, capturing, or possessing living wildlife unless expressly authorized by federal statute or pursuant to a NPS research specimen collection permit. This rule does not affect the use of trained raptors for hunting activities where authorized by applicable federal and state law. It also does not affect the collection of gull eggs in Glacier Bay by the Huna Tlingit pursuant to Pub. L. 113-142, sec. 2, 128 Stat. 1749 (2014).

Use of Bait for Taking Bears under Federal Subsistence Regulations

The NPS is adopting restrictions on the types of bait that may be used to take bears for

subsistence uses under federal subsistence regulations in units of the National Park System in Alaska. Under this rule, bait is limited to (1) parts of legally taken native fish or wildlife that are not required to be salvaged; or (2) remains of native fish or wildlife that died of natural causes. The rule prohibits human-produced items such as dog food, grease, bread, and marshmallows, which are currently allowed and used to bait bears.

Baiting alters the natural behavior of bears by predictably attracting them to a specific location for harvest. The use of human-produced food as bait can result human food-conditioned bears that are more likely to be killed by agency personnel or the public in defense of life or property. Human food-conditioned bears are also more likely to cause human injury. Bait stations tend to be located in accessible areas due to the infrastructure (typically a 55 gallon drum) used for baiting, the quantity of bait used to engage in this activity, and the frequency it must be replenished. Because of the accessibility of these areas, they are typically used by multiple user groups, which contributes to the public safety concerns associated with baiting.¹

The NPS recognizes that hunting black bears over bait has been authorized by the State since the 1980s. Taking brown or black bears over bait, however, is not a common activity in most NPS units in Alaska. The only NPS unit where taking bears over bait has traditionally occurred is Wrangell-St. Elias National Park and Preserve.² The final rule has been modified to give the superintendent of Wrangell-St. Elias National Park and Preserve the discretion to allow the use of human-produced food as bait pursuant to an annual permit. Permits would only be issued upon a written finding that such use is compatible with park purposes and values and that the permit applicant does not have reasonable access to natural materials that can be used as bait

¹ More information about the impacts of bear baiting can be found in the September 2014 Environmental Assessment entitled “Wildlife Harvest On National Park Preserves In Alaska” (Wildlife EA) that can be found at <https://parkplanning.nps.gov/projectHome.cfm?projectID=49062> and then clicking “Document List.”

² See Wildlife EA, pp. 11, 15.

under this rule. Permits will identify specific baiting locations and will not be issued for areas where user conflicts are likely (i.e., areas that receive higher visitation particularly by the nonhunting public). This provision is similar to practices at Kenai National Wildlife Refuge, where the FWS issues permits for bear baiting but only for certain areas. Permits will also help the NPS document the level of use and minimize user conflicts.

Summary of and Responses to Public Comments

A summary of public comments received on the proposed rule and NPS responses is provided below followed by a table that sets out changes we have made to the rule based on the analysis of the comments and other considerations.

General/Process

1. Comment: Some commenters asked the NPS to rescind or re-propose the rule without two of the proposed changes (the limit on types of bait that can be used to bait bears for subsistence uses and the prohibition on collecting live wildlife). The commenters stated that they were not properly notified of these changes because they are not related to subsistence collections, which was the title of the proposed rule, and were not included in the 2014 EA.

NPS Response: The NPS concludes the public was given sufficient notice for providing comments on all of the provisions in the proposed rule. In addition to publishing the proposed rule in the Federal Register, the NPS issued a press release and met with various interest groups and stakeholders during an extended 90-day comment period. Although the title of the proposed rule did not mention these other proposals, the summary on the first page of the proposed rule referred to these elements.

2. Comment: Some comments were received that said the proposed rule is inconsistent with ANILCA, which – according to the commenters – made Alaska NPS units “open unless

closed.” Another commenter said the NPS does not have authority to permanently close areas to subsistence uses.

NPS Response: The commenters did not specify which section of ANILCA makes NPS units in Alaska open unless closed. NPS units are generally open to public uses unless they have been restricted or prohibited by law or regulation. The primary function of this rule is to authorize subsistence collection. This rule limits the type of bait that can be used for baiting bears, but it does not close any areas to taking fish or wildlife.

3. *Comment:* Some commenters stated that the proposed restrictions on bait and capturing live wildlife should have been considered by the FSB and the State of Alaska Board of Game prior to being proposed as an NPS regulation.

NPS Response: While the provisions on bait and collecting live wildlife could have been addressed by the FSB or the State, the NPS is implementing its responsibilities under ANILCA and the NPS Organic Act (54 U.S.C. 100101) using the well-established process for notice and comment rulemaking.

4. *Comment:* Some commenters stated there was insufficient consultation with Tribes, the State of Alaska, and the affected public. One commenter suggested the NPS should consult on the proposed rule in addition to the Environmental Assessment (EA) on subsistence collections. Another commenter suggested the NPS should consult with the State on the proposed baiting restriction since individuals are required to register bait stations with the State.

NPS Response: This rule was published for an extended comment period (90 days as opposed to 30 days) in order to coincide with scheduled meetings of the NPS Subsistence Resource Commissions and Federal Subsistence Regional Advisory Councils. NPS staff attended these meetings and gave presentations on the proposed rule. Following these presentations,

several SRCs and RACs submitted formal written comments on the proposed rule. The NPS met with the State both during the comment period and after the comment period closed when the NPS was analyzing public comments and considering changes to the final rule. Specific issues addressed in those meetings included the proposed restrictions on bait for hunting bears and capturing falcon chicks, among other topics. The content of those discussions, along with written comments submitted by the State and others, helped inform this final rule. Consultation with Tribes, Native corporations, and others is addressed in the compliance section of this rule.

Customary Trade

5. *Comment:* One commenter suggested retaining the reference to park-specific special regulations in the definition of customary trade. The existing definition states that the NPS can designate other activities as “customary trade” by promulgating a special regulation for a particular park unit.

NPS Response: The proposed change does not result in a substantive change to the regulations. Removing the reference to park-specific regulations in the definition of customary trade does not affect the ability of parks to establish such regulations in the future if found to be necessary.

6. *Comment:* Several commenters responded to the NPS’s request for feedback on how the agency could better explain the phrase “significant commercial enterprise” in the definition of “customary trade”. Some commenters suggested the phrase was vague, while others stated that further defining this term was unnecessary. Some commenters suggested that “significant commercial enterprise” should not be based on the value of the handicrafts, which reflects the skill and time involved in their creation, but instead should be based upon the venue and quantity of sales (e.g., mass production and selling to a larger distributor for resale) or the use of paid

employees in their production.

NPS Response: The NPS agrees that the value of the handicraft does not necessarily determine whether the sale of that handicraft is a “significant commercial enterprise.” While quantity of sales is related to the level of commercial activity, the NPS concludes that the venue where the item is sold is not relevant. The NPS also concludes that prohibiting the use of paid employees helps to ensure that handicraft production under these regulations is not a “significant commercial enterprise.” This is also consistent with an existing NPS regulation in Alaska (36 CFR 13.42(c)) that prohibits the use of employees in trapping activities in national preserves. The final rule has been modified to prohibit the use of paid employees – except by qualified educational or cultural programs – to collect plant materials and animal parts.

7. *Comment:* The NPS requested comment on how the term “substantially greater monetary and aesthetic value” could be further explained to provide more clarity to the public about what qualifies as a handicraft. Some commenters said this term was vague while others said no further clarification or definition was necessary. Other commenters suggested the NPS adopt the definition found in federal subsistence regulations.

NPS Response: The NPS finds it is in the best interest of the public to be consistent with federal subsistence regulations to the extent possible. The NPS has modified the definition of “handicraft” in the rule to refer to the definition used in federal subsistence regulations (50 CFR 100.25(a)). As a result, any modifications made by the FSB to this definition in the future will be automatically adopted in NPS regulation. If the FSB clarifies the term “substantially greater monetary and aesthetic value” in the definition of “handicraft”, that change will be adopted in NPS regulation without additional rulemaking by the NPS. The NPS definition of handicraft differs in two ways from the FSB definition. First, the NPS definition includes plants. Plants are

not included in the definition in 50 CFR part 100 because the FSB does not have authority to regulate subsistence use of plants. Second, the NPS definition of handicraft specifically excludes trophy or European mounts of horns or antlers. Both state and federal subsistence regulations specifically prohibit the sale of trophies or mounts of horns or antlers. See 5 AAC 92.200, 50 CFR 100.25(j)(10).

Subsistence Collections

8. *Comment:* One commenter stated that subsistence collections should be limited to Alaska Natives.

NPS Response: ANILCA provides for subsistence uses by rural residents of Alaska regardless of ethnicity. Limiting subsistence collections to Alaska Natives is inconsistent with ANILCA.

9. *Comment:* Several commenters objected to the requirement that subsistence users obtain written authorization for collecting animal parts and plants for the creation and sale of handicrafts.

NPS Response: The preferred alternative in the EA would require individuals to obtain a permit in order to collect plants or animal parts for the making and sale of handicrafts. In the FONSI, however, the NPS decided to require written authorization for all items except for plant materials gathered in Kobuk Valley National Park and Gates of the Arctic National Park and Preserve where existing special regulations allow this activity without written authorization. Because collecting plants for subsistence uses is already authorized by NPS regulations, the NPS has decided to let the superintendent determine whether to require written authorization for collecting plants for making handicrafts for customary trade. Because the final rule does not require written authorization for this activity, the special regulations for Kobuk Valley and Gates

of the Arctic are no longer necessary and are removed.

10. Comment: Some commenters recommended the NPS issue written permission for the collection of plants and animal parts on a community-wide basis as opposed to issuing individual permits to each qualified subsistence user.

NPS Response: The written authorizations could take many forms, and they need not always be permits issued to individual subsistence users. Alternatives include written authorizations to resident zone communities or to entire resident zones, or annual authorizations documented in park compendia. Park superintendents will work with SRCs and, as appropriate, RACs, tribes and ANCSA corporations to determine the most appropriate type of written authorization for individual NPS units.

11. Comment: Some commenters said that requiring a permit or written authorization for subsistence uses was a closure. Other commenters stated that a permit requirement is burdensome and not justified in the absence of biological concerns.

NPS Response: Requiring a permit or otherwise putting conditions on an activity is not a closure. The NPS concludes that the incremental burden placed upon subsistence users to be required to obtain written authorization to collect animal parts is an appropriate and prudent mechanism for regulating the commercial use of these resources.

12. Comment: Some commenters stated that collected materials are sometimes exchanged before they reach an artist and are made into handicrafts, adding that it is too restrictive to say that materials must be modified before they can be exchanged. The commenters suggested that exchange of unworked material should be allowed to supply materials for elders to produce handicrafts and for qualified cultural and educational programs.

NPS Response: In the EA on subsistence collections, the NPS recognized that the person

collecting the materials would not always be the person who uses them to make handicrafts. The final rule has been modified to clarify that permits may be issued to allow an NPS-qualified subsistence user to gather plants or animal parts for making handicrafts on behalf of another NPS-qualified subsistence user or for qualified cultural and educational programs.

Baiting Bears

13. Comment: Some commenters stated that the proposed limits on the types of bait that may be used to take bears under federal subsistence regulations would essentially eliminate the opportunity for hunters to harvest bears over bait in the spring. This is because hunters may not have access to the types of baits that would be allowed in the spring, such as parts and remains of fish and wildlife.

NPS Response: As discussed above, the NPS has made an allowance for other types of bait in certain circumstances in Wrangell-St. Elias National Park and Preserve. This is the only NPS unit where bear baiting traditionally occurred. The final rule allows for NPS qualified subsistence users who do not have reasonable access to natural bait to apply for a permit to use other types of bait. The NPS will issue this permit for specific locations in the park unit upon a finding that using other types of bait is compatible with park purposes and values (e.g. will not result in user conflicts, particularly in areas that receive higher visitation by the nonhunting public).

14. Comment: Some commenters stated that using natural bait will attract more brown bears than black bears and that hunters could end up baiting brown bears even if that was not their intent.

NPS Response: The NPS expects that natural bait will attract both brown and black bears, just as human-produced foods attract both species as well as other wildlife. The use of natural

bait will help avoid conditioning brown and black bears to human-produced foods which can lead to more frequent interactions between humans and bears.

15. Comment: Some commenters stated that natural bait, such as a gut pile or furbearer carcasses, would be more difficult to clean up at the end of the baiting season than human-produced foods that are commonly used to bait bears, such as dog food or popcorn.

NPS Response: Federal subsistence regulations require that bait station sites be cleaned up when hunting is completed, including removing any litter, containers, chains, and other equipment used to set bait. The natural materials allowed by the rule – such as parts and remains of fish and wildlife – are not litter or equipment and thus would not be covered by this requirement.

16. Comment: Some commenters stated that inconsistent regulations about the types of bait that can be used will increase the possibility for confusion.

NPS Response: NPS acknowledges that this rule results in differences between the materials that can be used to harvest bears over bait under NPS-specific subsistence regulations and generally applicable federal subsistence regulations. In order to avoid the potential for confusion, the NPS will engage in outreach to local user groups, post information online, and make information available at park headquarters to inform local hunters of the rules that apply on NPS lands.

17. Comment: Some commenters stated that there is no biological data or other evidence demonstrating that baiting bears has the same effects as feeding wildlife, such as habituating bears to human foods or causing nuisance bear behavior.

NPS Response: Like feeding wildlife, baiting typically uses human or pet food to alter the natural behavior of bears to predictably attract them to a specific location for harvest. Food-

conditioned bears are more likely to be killed by agency personnel or the public in defense of life or property. Food-conditioned bears are also believed more likely to cause human injury.³

Capture or Collection of Live Wildlife

18. Comment: Two commenters addressed subsistence harvest of migratory birds and their eggs, noting that the collection of eggs is allowed under the Migratory Bird Treaty Act (MBTA) and that the harvest of migratory birds and their eggs is a customary and traditional practice.

NPS Response: ANILCA authorized the harvest of fish and wildlife for subsistence uses in specific NPS units under Title VIII of ANILCA and pursuant to federal regulations applicable to NPS units. National preserves in Alaska are open to the harvest of fish and of wildlife for sport hunting and trapping under State of Alaska regulations. The FSB generally regulates subsistence harvest of fish and wildlife. It does not regulate the harvest of migratory birds for subsistence uses in Alaska which is provided for by law under the MBTA and implementing regulations at 50 CFR part 92. The NPS concludes that ANILCA's broad definition of subsistence uses authorizes NPS-qualified rural residents to harvest migratory birds, including eggs, in NPS units where subsistence is authorized in accordance with the MBTA and the migratory bird subsistence regulations at 50 CFR part 92. Collecting live wildlife, such as falcon chicks to raise and train for hunting, remains prohibited in NPS areas in accordance with national or Alaska-specific NPS regulations. 36 CFR 2.2(a)(2) or 13.35.

In considering this comment, the NPS notes that a similar issue exists with respect to harvest of marine mammals by Alaska Natives under the Marine Mammal Protection Act (MMPA). The NPS concludes that ANILCA's definition of subsistence uses includes the harvest

³ See Wildlife EA.

of marine mammals by Alaskan Natives who are NPS-qualified rural residents in park areas where the take of marine mammals is authorized in accordance with the Alaska Native exemption in the Marine Mammal Protection Act and the marine mammal regulations at 50 CFR 18.23 and 18.26. The NPS has modified the definition of subsistence uses to reflect that NPS-qualified subsistence users who are eligible to harvest under the MBTA and the MMPA can do so in NPS areas open to subsistence uses.

Changes from the Proposed Rule

After taking the public comments into consideration and after additional review, the NPS made the following substantive changes from the proposed rule:

§13.420	Modified the definition of “animal parts” to clarify that this also includes parts of fish.
§13.420	Modified the definition of “handicraft” to adopt the definition under federal subsistence regulations in 50 CFR part 100.
§13.420	Modified the definition of “subsistence uses” to include the harvest of migratory birds under the MBTA and marine mammals under the MMPA.
§13.482	Included a provision to allow an NPS-qualified subsistence user to designate another NPS-qualified subsistence user to collect, on their behalf, animal parts from nonliving wildlife for making handicrafts in accordance with a permit from the superintendent. Removed the reference to nonconflicting State regulations regarding use of bear claws because federal subsistence regulations address this activity. Added a prohibition on the use of paid employees.
§13.485(b)	Removed the requirement for a written authorization to collect plants to make handicrafts for customary trade or barter. Added a prohibition on the use of paid employees.
§13.485(d)	Included a provision to allow an NPS-qualified subsistence user to designate another NPS-qualified subsistence user to collect, on their behalf, plants for making handicrafts in accordance with a permit from the superintendent.
§13.1902(d)	Included a provision to allow the superintendent of Wrangell-St. Elias

	National Park and Preserve to issue a permit to use human-produced food as bait upon a finding that such use is compatible with the park purposes and values and that the permit applicant has no reasonable access to natural bait.
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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 reports entitled “Regulatory Flexibility Threshold Analysis: Special Regulations for National Park Areas in Alaska” and “Preliminary Cost/Benefit Analysis: Special Regulations for National Park Service Areas in

Alaska” which can be viewed online at <http://parkplanning.nps.gov/akro> by clicking the link “Subsistence Uses of Horns, Antlers, Bones and Plants” and then clicking “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 effect 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 Tribes (E.O. 13175 and Department policy) and ANCSA Corporations.

The Department of the Interior strives to strengthen its government-to-government relationship with federally recognized Tribes through a commitment to consultation with Tribes and recognition of self-governance and Tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and Alaska Native Claims Settlement Act (ANCSA) Corporations consultation policy. Tribes were notified of the proposal regarding the subsistence collections provisions early in the process of developing the regulation. Because the provision on taking live wildlife is not a new prohibition, it will not have a substantial direct effect on federally recognized Tribes or ANCSA Corporation lands, water areas, or resources. The NPS concludes that the types of bait local rural residents can use for hunting bears will not have a substantial direct effect on federally recognized Tribes or ANCSA Corporation lands, water areas, or resources. This is based on previous consultation with Tribes on proposed restrictions related to taking wildlife, the limited nature of the restriction (hunting bears, including over bait, remains authorized), and the infrequent basis that local rural residents take bears over bait on NPS lands (records show three bears taken over bait by local

rural residents between 1992-2010). Most of this limited activity has occurred in Wrangell-St. Elias National Park and Preserve. Tribes associated with Wrangell-St. Elias National Park and Preserve were invited to consult on the proposed bait restriction; no Tribes requested consultation.

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

This final rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Information collection requirements associated with the requirement for the Superintendent's written authorization to collect nonedible animal parts and for the designated gatherer permit are covered under OMB Control Number 1024-0026 (expires 12/31/2016 and in accordance with 5 CFR 1320.10, the agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB). We estimate the annual burden associated with this information collection to be 2.5 hours per year. Information collection requirements associated with FSB customary and traditional use determinations have been approved under OMB Control Number 1018-0075 (expires 06/30/2019). We may not conduct or sponsor, and a person is 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. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because we reached the FONSI. The EA and amended FONSI are available online at <http://parkplanning.nps.gov/akro> by clicking the link “Subsistence Uses of Horns, Antlers, Bones and Plants” and then clicking “Document List.” The other parts of this

rule (collection/capture of live wildlife, bear baiting under federal subsistence regulations) are excluded from the requirement to prepare a detailed statement because they fall within the categorical exclusion covering modifications to existing regulations for NPS-administered areas that do not (a) increase public use to the extent of compromising the nature and character of the area or cause physical damage to it; (b) introduce non-compatible uses that might compromise the nature and characteristics of the area or cause physical damage to it; (c) conflict with adjacent ownerships or land uses; or (d) cause a nuisance to adjacent owners or occupants. (For further information see Section 3.3 of Director's Order #12 Handbook). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

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.

Drafting Information.

The primary authors of this regulation are Mary McBurney and Andee Sears of the Alaska Regional Office, National Park Service; Barbara Cellarius of Wrangell-St. Elias National Park and Preserve, National Park Service; and Jay Calhoun and Russel J. Wilson of the Division of Regulations, Washington Support Office, National Park Service.

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.

2. Amend §13.42 by adding paragraph (j) to read as follows:

§ 13.42 Taking of wildlife in national preserves.

* * * * *

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

3. Amend §13.420 by:

- a. Adding introductory text and the definitions of “Animal parts” and “Handicraft” in alphabetical order; and
- b. Revising the definition of “Subsistence uses.”

The additions and revision read as follows:

§ 13.420 Definitions.

The following definitions apply to this part:

Animal parts. As used in this part, this term means nonedible antlers, horns, bones, teeth, claws, hooves, skins, hides, fur, hair, feathers, or quills that:

- (1) Are obtained from lawfully hunted or trapped fish or wildlife;
- (2) Have been shed or discarded as a result of natural life-cycle events; or

(3) Remain on the landscape as a result of the natural mortality of fish or wildlife.

Handicraft. As used in the part, this term has the same meaning as used in federal subsistence regulations (50 CFR part 100) except that:

(1) The term also includes products made from plant materials; and

(2) The term does not include a trophy or European mount of horns or antlers.

* * * * *

Subsistence uses. As used in this part, this term means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicrafts out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and for customary trade pursuant to Title VIII of ANILCA. Harvest of migratory birds pursuant to the Migratory Bird Treaty Act (and implementing regulations at 50 CFR part 92) and marine mammals pursuant to the Marine Mammal Protection Act Act (and implementing regulations at 50 CFR 18.23 and 18.26) by qualified individuals is a subsistence use in accordance with this subpart. For the purposes of this subpart, the terms—

(1) “Family” means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) “Barter” means the exchange of handicrafts or fish or wildlife or their parts taken for subsistence uses—

(i) For other fish or game or their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) “Customary trade” means the exchange of handicrafts or furs for cash to support personal or family needs; and does not include trade which constitutes a significant commercial enterprise.

4. Amend §13.480 by:

- a. Designating the undesignated paragraph as paragraph (a).
- b. Adding paragraph (b).

The addition reads as follows:

§ 13.480 Subsistence hunting and trapping.

* * * * *

(b)(1) The following types of bait may be used to take bears for subsistence uses:

- (i) Parts of legally taken native fish or wildlife that are not required to be salvaged; or
- (ii) Remains of native fish or wildlife that died of natural causes.

(2) The use of any other type of bait to take bears for subsistence uses is prohibited except under the terms and conditions of a permit issued under paragraph (d) of § 13.1902.

5. Add §13.482 to read as follows:

§ 13.482 Subsistence collection and use of animal parts.

(a) Local rural residents may collect animal parts (excluding parts of threatened or endangered species) for subsistence uses in park areas where subsistence uses are authorized, provided that:

(1) The resident’s primary permanent residence is in an area or community with a federally recognized customary and traditional use determination for the species in the game management unit where the collecting occurs (50 CFR part 100); and

(2) The resident has written authorization from the superintendent issued under § 1.6 of

this chapter that identifies specific areas where this activity is allowed.

(3)(i) If you are a NPS-qualified subsistence user (recipient), you may designate another NPS-qualified subsistence user to collect animal parts on your behalf in accordance with this section for the following purposes:

(A) Making handicrafts for personal use, customary trade, or barter; or

(B) Making handicrafts for qualified educational or cultural programs.

(ii) The designated collector must obtain a permit from the superintendent. The designated collector may not charge the recipient for his/her services or for the collected items.

(4) The use of paid employees to collect animal parts is prohibited. This prohibition does not apply to qualified educational or cultural programs that collect animal parts to create handicrafts, provided that the resulting handicrafts are not exchanged through barter or customary trade.

(b) The superintendent may establish conditions, limits, and other restrictions on collection activities. Areas open to collections will be identified on a map posted on the park website and available at the park visitor center or park headquarters. Violating a condition, limit, or restriction is prohibited.

6. Amend §13.485 by:

a. Revising paragraph (b);

b. Redesignating paragraph (c) as paragraph (f); and

c. Adding paragraphs (c), (d), and (e).

The revision and additions read as follows:

§ 13.485 Subsistence use of timber and plant material.

* * * * *

(b) The gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the gathering of dead or downed timber for firewood for noncommercial subsistence uses, shall be allowed without a permit in park areas where subsistence uses are allowed.

(c) The gathering by local rural residents of plant materials to make handicrafts for customary trade or barter is authorized in park areas where subsistence uses are allowed in accordance with terms and conditions established by the superintendent and posted on the park website. The use of paid employees to collect plant materials is prohibited. This prohibition does not apply to qualified educational or cultural programs that collect plant materials to create handicrafts, provided that the resulting handicrafts are not exchanged through barter or customary trade.

(d)(1) If you are a NPS-qualified subsistence (recipient), you may designate another NPS-qualified subsistence user to collect plants on your behalf in accordance with this section for the following purposes:

- (i) Making handicrafts for personal use, customary trade, or barter; or
- (ii) Making handicrafts for qualified educational or cultural programs.

(2) The designated collector must obtain a permit from the superintendent. The designated collector may not charge the recipient for his/her services or for the collected items.

(e) The superintendent may establish conditions, limits, and other restrictions on gathering activities. Violating a condition, limit, or restriction is prohibited.

* * * * *

7. Amend §13.1902 by adding paragraph (d) to read as follows:

§13.1902 Subsistence.

* * * * *

(d) *Use of bait for taking bears.* (1) The superintendent may issue individual, annual permits allowing the use of human-produced food items as bait for taking bears upon a finding that:

(i) Such use is compatible with the purposes and values for which the area was established (e.g. does not create a user conflict); and

(ii) The permit applicant does not have reasonable access to natural bait that may be used under § 13.480(b)(1).

(2) Permits will identify specific locations within the park area where the bait station may be established and will not include areas where the use of such materials could create a user conflict.

Dated: December 29, 2016.

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