

# **CACFA Briefing Regarding the USFWS Proposed Rule for Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska**

## Cited Authorities

From ANILCA (16 U.S.C. §3201): authority to designate times and zones within Alaska refuges when/where no hunting or trapping “may be permitted for reasons of public safety, administration, floral and faunal protection or public use and enjoyment.”

From ANILCA Title III: common refuge purpose to “conserve fish and wildlife populations and habitats in their natural diversity.”

From the Refuge Improvement Act (16 U.S.C. §668dd(a)(4)(B)): requirement to “ensure that the biological integrity, diversity, and environmental health” of the refuge system “are maintained for the benefit of present and future generations of Americans.”

From the Wilderness Act (16 U.S.C. §1131(c)): recognizing wilderness as “an area where the earth and its community of life are untrammeled by man . . . which is protected and managed so as to preserve its natural conditions.”

## WILDLIFE-RELATED PROPOSALS

### FWS Objective

To conserve fish and wildlife populations and habitats in their natural diversity and to maintain the biological integrity, diversity and environmental health of Alaska refuges; not to emphasize management activities favoring one species to the detriment of another.

### State Objective

To manage wildlife and fisheries to provide for sustained yield, availability and maximum use consistent with the public interest.

### FWS Justification

Asserts state regulations authorize harvest with the potential to greatly increase effectiveness of take of predators and to disrupt natural processes and wildlife interactions. Asserts a conflict with FWS’ mandates to conserve wildlife and habitats in their natural diversity and to maintain biological integrity, diversity and environmental health. Asserts proposed rule maintains long-standing prohibitions.

The State is on record noting authorizations at issue were approved in a public process in response to requests by local residents regarding traditionally employed hunting practices; the authorizations are not intended to be predator control measures and have not functioned in that manner. The State does not conduct predator control on refuges. The authorizations allow surplus yield to be harvested, consistent with the Alaska constitution. As practiced, these opportunities are not an effective means of predator control.

### State Authorizations at Issue (applicable in certain specified game management units)

- In 2006, the Board of Game authorized the same-day airborne take of bears at state-permitted bait stations in certain areas.
  - o Part of a comprehensive policy to conserve bear populations and maintain appropriate predator-prey relationships.
- In 2012, the Board of Game authorized the take of wolves and coyotes during extended seasons.
  - o The allowance was requested by Alaska Peninsula residents; for coyotes, the allowance mirrors 40 other states.
- In 2013, the Board of Game authorized the take of brown bears at a state-permitted black bear bait station.
  - o The allowance was requested by local rural residents.

### FWS Proposed Rule (where authorized under state law and except as allowed per federal subsistence regulations)

- Prohibits the harvesting of cub bears or sows with cubs.
  - o Justification: particularly effective at taking predators.
  - o Exception: all harvest currently allowed under state law (customary and traditional use at den sites).
- Prohibits certain methods and means of take already prohibited under state regulations.
  - o Justification: particularly effective at taking predators (if authorized?).
- Prohibits the use of bait in harvesting any animal other than black bears and furbearers.
  - o Justification: particularly effective at taking predators; may affect visitor use on refuges.
- Requests comments on the type of bait allowed to be used for the baiting of black or brown bears.
  - o Rationale: wide range of bait types in use.
- Prohibits the same-day airborne take of bears at bait stations.
  - o Justification: particularly effective at taking predators; may affect visitor use on refuges.
- Prohibits the harvesting of wolves and coyotes during the denning season.
  - o Justification: may affect visitor use on refuges.
- Defines terms in the existing and proposed amended regulations.
  - o Justification: public interest expressed in definitions of “natural diversity” and “biological integrity, diversity and environmental health,” which are not explicitly defined in statute.
- Prohibits predator control (as defined) on Alaska refuges unless authorized by a refuge manager.
  - o Justification: conflict with FWS mandates if sole or primary basis is demand for more wildlife to harvest.
- Updates regulations on subsistence uses of fish and wildlife.
  - o Justification: accommodate federal assumption of management of subsistence hunting and fishing in 1990s.

## PROCESS-RELATED PROPOSALS

### FWS Objective

To update procedures for implementing closures or restrictions in refuges to more effectively engage and inform the public, in a fiscally sustainable manner, and improve consistency with federal subsistence closure policy and regulations.

### FWS Justification

Asserts a need to update current procedures to reflect the availability of alternative communication technologies and approaches that have emerged over the last few decades, recognizing that the Internet has become a primary method of communication with the public and is an effective tool for engaging Alaskans and the broader American public. Asserts improved consistency between subsistence and non-subsistence closure processes will minimize confusion and make it easier for the public to be involved in the process.

### Closure/Restriction Processes Under the Proposed Rule

Maintains the distinction between emergency, temporary and permanent closures, but changes the durational requirements.

- Time Limits: increases 30-day limit on emergency closures to 60 days. Removes 12-month limit on temporary closures to the take of fish and wildlife.
- Extensions: specifies that emergency closures may be extended by making them temporary or permanent closures. Removes explicit provision that no temporary closures may be extended beyond 12 months.

Adds a separate process for temporary closures or restrictions on the take of fish and wildlife.

- Requires opportunity for public comment and retains requirement for public hearing in affected area.
  - o Removes explicit requirements for public notice and hearing outside the affected area when appropriate.
- Adds requirement to consult with State and affected Tribes and Native Corporations.
- Replaces 12-month limit and prohibition on extensions with periodic reevaluation, as necessary but at least every three years, followed by a formal written finding.
- Adds provision to lift temporary closures and restrictions “as soon as practicable” if no longer needed.

Revises the process for permanent closures and restrictions.

- If related to take of fish and wildlife or use of aircraft, snowmachines, motorboats or non-motorized surface transportation:
  - o Retains requirements for public hearing in affected area and publication in the *Federal Register*.
  - o Requires opportunity for public comment.
  - o Removes explicit requirements for public notice and hearing outside the affected area when appropriate.
- If related to take of fish and wildlife, adds requirement to consult with State and affected Tribes and Native Corporations.
- For all other permanent closures and restrictions:
  - o Removes requirement for notice and public hearings in the affected vicinity and other locations as appropriate.
  - o Removes requirement for publication in the *Federal Register*.

Adds a new factor which must be considered in making a closure or restriction determination: “conservation of natural diversity, biological integrity, biological diversity, and environmental health.” Changes the requirement to hold a “hearing” into a requirement to hold a “public meeting” when determining whether to lift a closure or restriction.

### Public Notice Under the Proposed Rule

Only requires notice be provided on the FWS website; other methods of communication will only be used *if* available *and* reasonably likely to inform residents in the affected vicinity. Removes firm requirements, whenever appropriate signs are not posted, to publish in at least one newspaper, to provide for local radio broadcast and community post offices notices in the affected area and to designate closures or restrictions on a map available for public inspection. For temporary closures and restrictions, adds a requirement to maintain a list and provide annual opportunities for public review.

### Significant but Non-Obvious Change to Current Regulations

Unless the closure or restriction affects the take of fish and wildlife or the use of aircraft, snowmachines, motorboats or non-motorized surface transportation, non-subsistence uses will only be closed for 60 days, 12 months or by regulation without the requirement for public notice and hearing in the affected area. All users will have to visit the FWS website daily to check for closures or restrictions.

#### WHEN IS A CLOSURE OR RESTRICTION “EFFECTIVE” UNDER THE PROPOSED RULE?

<u>Related To</u>	<u>Emergency</u>	<u>Temporary</u>	<u>Permanent</u>
use of aircraft, snowmachine, motorboat or non-motorized surface transportation	after website post and hearing(s)	after website post and local hearing(s)	after public comment, a local hearing and <i>Federal Register</i> publication
take of fish and wildlife	upon website post and before local hearing(s)	after public comment, a local hearing and consultation with the State and Native Alaskans	after public comment, a local hearing, consultation with the State and Native Alaskans and <i>Federal Register</i> publication
other non-subsistence uses	upon website post	upon website post	[ not stated ]