

USFWS Proposed Rule on “Non-subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska”

- Restricts hunting, fishing, and trapping by rural and non-rural residents without a conservation concern.
 - o Closes all 76+ million acres in refuges to hunting, fishing, and trapping for subsistence purposes under state regulations; e.g., no participation in state subsistence fisheries if standing on refuge land.
 - o All hunting by non-federally qualified subsistence users is defined as “sport hunting,” without acknowledging state law requires a management priority for subsistence.
- Gives refuge managers exclusive authority to impose limits on seasons, bag limits, methods, and means without a conservation concern.
 - o Allows individual refuge managers to trump state regulations, including prohibiting any methods and means s/he thinks are “particularly effective” (an undefined term without criteria).
 - o Allows individual refuge managers to preempt any state harvest regulation viewed as “predator control” without regard to any anticipated change in harvest numbers.
 - Only the discretionary authorization of predator control requires a conservation concern.
- Reduces, and in some cases eliminates, existing requirements for public notice and participation.
 - o Refuges can limit or be closed to public uses without notice and hearing in the affected area.
 - Notice and hearing process only applies to closures related to the take of fish and wildlife or the use of aircraft, motorboats, snowmachines or non-motorized surface transportation.
 - o Non-Internet methods of public notice (e.g., posted signs, newspapers) will no longer be required.
- Lengthens the duration of emergency and temporary closures and allows for extensions without consultation and with limited or no public involvement.
 - o Temporary closures to the take of fish and wildlife can last up to 3 years, with the possibility of perpetual renewal, instead of a maximum of 12 months.
- Overturns Congress’ confirmation of state management of fish and wildlife in Alaska in the Statehood Act and ANILCA by authorizing discretionary review by Service staff.
 - o The proposed rule replaces Congress’ direction on refuge management in ANILCA and the Refuge Improvement Act with a 2006 Service policy.
 - o “Conservation of natural and biological diversity, biological integrity, and environmental health” is not a criteria authorized by Congress to preempt state wildlife management.
 - o The legislative history of ANILCA notes the term “natural diversity,” as used in the purposes for each Alaska refuge, was specifically not intended to prohibit predator control.
- Ignores Congress’ direction in the Refuge Improvement Act to consult with, and be consistent with, state wildlife agencies in providing for priority wildlife-dependent uses, including hunting and trapping.

Some Practical Implications If the Proposed Rule is Finalized:

- Because the proposed rule creates a new checkerboard of open/closed areas, and changes the way the public is notified, a hunter will have to check refuge websites each day and carry a GPS showing the refuge boundaries.
- The proposed rule creates an undefined and subjective basis for closing refuges to hunting, fishing and trapping allowed under state regulations, but does not provide criteria to guide the Service or the public.
- There would no longer be any certainty in successfully petitioning the Board of Game to authorize a particular harvest, season, method or means, since it can be preempted by the Service on refuge lands.
 - o Predator control is defined as the intent to reduce predator populations to benefit prey species, but no deference is given to the State’s actual intent in granting an authorization.
- Family, friends and community members who are not federally-qualified subsistence users may not be able to harvest under state regulations along with federally-qualified subsistence users, not even to practice cultural traditions, including where the Federal Subsistence Board has not closed the area to non-eligible users.