

## **CACFA Briefing Regarding the Final National Park Service Rule for Hunting and Trapping in National Preserves in Alaska**

### Cited Authorities

From the NPS Organic Act (54 U.S.C. §100101): authority to regulate use of the National Park System to conserve wildlife and to provide for the enjoyment of wildlife “in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations” except “as directly and specifically provided by Congress.”

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

### WILDLIFE-RELATED REGULATIONS

#### NPS Objective (from policy and statutory interpretation)

To preserve naturally functioning ecosystems and processes, including natural abundance and diversity of native wildlife populations.

#### State Objective (from the state constitution and statutory interpretation)

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

#### NPS Justification

Asserts certain state regulations intend or are reasonably likely to alter or manipulate wildlife behaviors and populations for harvest purposes, which conflicts with NPS’ mandate (in statute and management policies) to manage for natural ecosystems, processes, behaviors and wildlife populations, as well as the preservation of naturally functioning predator and prey populations. Asserts need to prevent historically prohibited hunting practices from being authorized in national preserves. Not based on wildlife population levels.

The State is on record noting the 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 NPS lands. The authorizations allow surplus yield to be harvested, consistent with the constitution. As practiced, the prohibited opportunities are not an effective means of predator control.

#### NPS Regulations for Alaska Allow:

- Use of native species as bait for fishing in accordance with state law.
  - o Justification: authorization is appropriate for Alaska and requires exemption under federal law.
- Use of fish or fish parts as bait if lawfully harvested or naturally dead, unmoved and not required to be salvaged.
  - o Justification: responding to public comment on the proposed rule; consistent with state law.
- Harvest of muskrats at pushups or feeding houses.
  - o Justification: proposed rule unintentionally prohibited this state-authorized activity.

#### NPS Regulations for Alaska Prohibit State-Authorized: (unless otherwise noted, specific justification was not apparent)

- Use of poison or other substance that kills or temporarily incapacitates wildlife consistent with 5 AAC 92.080(2).
- Use of a motorboat or motorized land vehicle to harvest game consistent with 5 AAC 92.080(4) and 92.085(9), (12).
  - o Note: this includes prohibiting state allowances for persons with disabilities.
- Use of scent lures where and when allowed as an exception to the state prohibition on using chemicals.
- Use of killer style traps with an inside jaw spread less than 13 inches unless for trapping (unless trapping bears or ungulates).
- Harvest of brown bears by Alaska residents using artificial light at den sites.
  - o Justification: state authorization was intended to reduce predators; method is not appropriate “sport” hunting practice, which is all ANILCA authorizes.
- Use of ground-based radio communications to locate bison unless approved in writing by the Regional Director.
- Harvest of caribou while swimming.
  - o Justification: method is not appropriate “sport” hunting practice (not fair chase), which is all ANILCA authorizes.
- Use of bait in harvesting bears under a state permit.
  - o Justification: promote public safety and maintain natural foraging and feeding behaviors; newly prohibited take of black bears over bait is reasonably foreseeable and logical outgrowth of the proposed rule.
- Use of dogs to harvest black bears under a state permit.
  - o Justification: method is not appropriate “sport” hunting practice, which is all ANILCA authorizes.
- Use of nets in harvesting any species of bear or ungulate.
- Harvest of wolves and coyotes during the denning season.
  - o Justification: state authorization was intended to reduce predators; protect wolves during vulnerable period.
- Harvest of cub bears or female bears with cubs.
  - o Justification: state authorization was intended to reduce predators.
- Harvest or action with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes in order to increase harvest of ungulates by humans.
  - o Justification: inconsistent with 2006 management policies implementing the NPS Organic Act.
  - o Note: the authorization is not adopted on NPS lands immediately on passage, may not accompany public notice.

## PROCESS-RELATED REGULATIONS

### NPS Objective

To simplify and update procedures for closing or restricting an activity in park areas, create consistency with other NPS units outside Alaska and Alaska State Parks and make §13.50 the required process for all closures or restrictions in Alaska (unless there are more specific procedures stated elsewhere in law or regulation).

### NPS Justification

Asserts a need to eliminate confusion about applicability of §13.50. Asserts a need to update provisions to reflect federal assumption of subsistence management and regulation. Asserts public will benefit from aligning procedures with other NPS units and state parks. Asserts no legal requirement to base closures or restrictions on biological considerations. Asserts no legal requirement to take public comment on closures or restrictions except in specific situations, and that action may be necessary to protect wildlife or public safety before there is an opportunity for public comment or a hearing. Asserts maintenance of superintendents' long established authority to make management decisions for NPS units based upon certain criteria; recognizes superintendents as subject-matter experts that need to be able to take action and respond to changing circumstances in a park unit. Asserts using the Internet will make it easier for some segments of the American public, regardless of residency, to provide input on proposed management actions for NPS units in Alaska. Asserts categories distinguishing permanent and temporary closures or restrictions have been problematic, difficult to implement, overly rigid, complicated and unnecessarily compromising of an ability to protect resources and provide for public use and enjoyment. Asserts criteria-based framework allows managers to be more flexible and adapt to changing circumstances.

### Types of Closures:

#### Former Regulations

- 1) Emergency
- 2) Temporary
- 3) Permanent
- 4) Subsistence Uses of Fish and Wildlife

#### New Regulations

- 1) Emergency
- 2) Emergency and Related to Take of Fish or Wildlife
- 3) Non-Emergency
- 4) Non-Emergency and Related to Take of Fish or Wildlife
- 5) Related to Take of Wildlife and Prohibited Under §13.42(f)
- 6) Eligible for Rulemaking
- 7) Subsistence Uses of Fish and Wildlife
- 8) Subsistence Activities

### New Procedures for Closure or Restriction or Relaxation or Termination

- Emergencies
  - o Duration: until the emergency is resolved (stated in preamble but not provided in final rule)
  - o Notice: posted on each park's website (stated in preamble but not provided in final rule)
- Emergencies Related to Take of Fish or Wildlife
  - o Duration: ≤60 days; must follow process for Non-Emergencies Related to Take of Fish or Wildlife to be extended
  - o Notice: same as Emergencies
- Non-Emergencies
  - o Process: written determination posted on NPS website (for non-relaxation only)
  - o Duration: indefinite
  - o Notice: written list updated annually, posted on NPS website and available at park headquarters; other methods reasonably likely to inform residents in affected vicinity provided where available
- Non-Emergencies Related to Take of Fish or Wildlife
  - o Process: written determination posted on NPS website (for non-relaxation only); consultation with the State; one or more public meetings near the affected NPS unit; public comment opportunity
  - o Duration: indefinite
  - o Notice: same as Non-Emergencies
- Related to Take of Wildlife Prohibited Under §13.42(f)
  - o Process: none; non-adoption and prohibition is automatic upon state authorization
  - o Duration: indefinite
  - o Notice: no notice of non-adoption; notice of prohibition same as Non-Emergencies
- Eligible for Rulemaking
  - o Process: published as rulemaking in the *Federal Register* on finding action is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the area; adversely affects the area's natural, aesthetic, scenic or cultural values; or requires a long-term modification in resource management objectives
  - o Duration: until repealed or amended through rulemaking
  - o Notice: presumably publication of a final rule in the *Federal Register*
- Closures Related to Subsistence Uses of Fish and Wildlife or Restrictions on Subsistence Activities
  - o Process: finding action is necessary for reasons of public safety, administration or to ensure the continued viability of a fish or wildlife population; consultation with the State and Federal Subsistence Board; for non-emergencies, public hearing near affected NPS unit
  - o Duration: so long as reasonably necessary to achieve the purposes of the action
  - o Notice: same as existing regulations at §13.490(c)