

CACFA Briefing Regarding the NPS Proposed Rulemaking for Hunting and Trapping in National Preserves in Alaska

NPS Authority (from ANILCA §1313)

Secretary of the Interior may designate zones and time periods within National Preserves where/when no hunting or trapping may be permitted for reasons of floral and faunal protection or public use and enjoyment.

WILDLIFE-RELATED PROPOSALS

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 (from the proposed rule and associated environmental assessment (EA))

Asserts state regulations authorize harvest intended to alter or manipulate natural predator-prey dynamics and associated natural ecological processes to increase human harvest of ungulates. Asserts a conflict with NPS' mandate to manage for natural ecosystems, processes, behaviors and populations, as well as policies applicable to NPS areas that require the preservation of naturally functioning predators and prey populations. Asserts NPS regulations would maintain long-standing state sport hunting and trapping prohibitions.

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, these opportunities are not an effective means of predator control.

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

- In the mid-1980s, the Board of Game authorized the take of caribou while swimming in certain areas.
 - o This allowance was requested by local rural residents.
- In 2008, the Board of Game authorized the take of black bears, including sows with cubs, using artificial light at den sites.
 - o This allowance was requested by local rural residents and is recognized as a traditional subsistence practice.
- 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 This allowance was requested by local rural residents.
 - o Also authorized under federal subsistence regulations in 2014 following a request by local rural residents.

NPS Proposed Rule (applicable in specified National Preserves, aligning with state authorizations)

- Prohibits the take of caribou while swimming.
 - o Justification: none; the EA notes this will avoid competition between sport hunters and local federally qualified subsistence users (no present conflicts between the groups are identified or described and none have been reported).
 - o Note: this may preclude the taking of an animal on state land (navigable waters).
- Prohibits the take of brown bears using artificial light at den sites.
 - o Justification: general (no predator control); the EA notes this will increase bear-viewing opportunities by non-hunting visitors since animals would not be harvested and removed.
- Prohibits the harvesting of wolves and coyotes during the denning season.
 - o Justification: pelts have little trophy, economic or subsistence value (a value judgment lacking documentation).
- Prohibits the harvesting of brown bears at bait stations.
 - o Justification: general (no predator control); the EA notes this will promote public safety and natural foraging and feeding behaviors (no documentation supporting this assumption was provided).
- Prohibits the use of remote control devices (drones) to spot wildlife.
 - o Justification: none
 - o Note: this is already prohibited by state regulations.
- Prohibits the use of any electronic devices not approved by the NPS Regional Director.
 - o Justification: none
 - o Note: various devices are allowed under state regulations, except for use in hunting moose.
- Prohibits intentionally obstructing or hindering persons actively engaged in hunting or trapping.
 - o Justification: adopt existing state prohibitions as federal law; prevent frustration of lawful hunting and trapping.
- Allows the use of native species to be used as bait for fishing in accordance with state law.
 - o Justification: Alaska-specific exemption from a national prohibition without merit under these circumstances.
- Clarifies that predator control activities (as defined) are not allowed on NPS lands in Alaska.
 - o Justification: inconsistent with 2006 management policies implementing the NPS Organic Act.
- Requests comments on the practice of taking black bears over bait and the state-permitted use of dogs in hunting black bears.
 - o Justification: [for baiting] food-conditioned bears more likely to be public safety risk; [for dogs] none.

PROCESS-RELATED PROPOSALS

NPS Objective (from the proposed rule)

To update procedures for implementing closures or restrictions in park areas, including taking fish and wildlife for sport purposes, to more effectively engage the public in a fiscally sustainable manner.

NPS Justification (from the proposed rule)

Asserts a need to update current procedures to reflect the availability of alternative communication technologies and approaches that have emerged over the last three decades, recognizing that the internet has become a primary method of communication with the public and can be a more effective tool for engaging Alaskans and the broader American public. Asserts a need to simplify categories of restrictions by adopting a closure process similar to the national process applied outside Alaska.

Emergency/Other Closures

The proposed rule would eliminate the existing distinction between emergency, temporary and permanent closures to non-subsistence harvest of fish and wildlife. The proposed rule would enact the following:

- Time Limits: 60 days for emergency closures. All closures reviewed at least annually.
- Public Notice: emergency closures will be effective after posting on individual park websites. A list of all closures will be available at individual park headquarters.
 - o Additional means of notice, including newspapers, internet, email lists, radio or the posting of signs in the affected vicinity “will also be provided where available.” (see below)
- Consultation/Opportunities for Comment: prior to adopting any non-emergency closure or restriction.
- Closure criteria: activity is incompatible with the purposes for which the park area was established.
 - o Factors for making this determination include, but are not limited to: public health and safety; protection of resources, cultural or scientific values; subsistence; conservation of threatened or endangered species; and, protecting integrity of naturally functioning ecosystems and wildlife behavior.
- Rulemaking: closures will go through the rulemaking process if they: are of a nature, magnitude and duration resulting in a significant alteration of public use patterns; 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.

Public Notice

The proposed rule 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*.” 79 Fed. Reg. 52595, 52598 (Sept. 4, 2014) (emphasis added). To my knowledge, there are 32 newspapers in Alaska, of which: 12 are based in Southcentral, 23 are published weekly or less often, and at least 5 are online-only.

The proposed rule also recognizes 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*.” *Id.* (emphasis added). No guidance or justification is provided to clarify when an outreach method is considered appropriate. Even though the proposed rule notes current regulations also provide for radio broadcast and post office notices, no commitment is made to continuing those outreach methods.

Built-In Discretion

The proposed rule would prohibit “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.” *Id.* at 52597 (emphasis added). Including the word “potential” means any harvest which might alter predator-prey dynamics could be prohibited by the NPS, which would apply to any conceivable harvest of either predators or prey. While the NPS has the authority to close specific areas to hunting and trapping under ANILCA § 1313, the proposed rule at 13 CFR §13.42(f) *automatically* prohibits any state-authorized harvest that has this “potential.” No public hearing is required, and the undefined public comment opportunity will be hampered by the fact the regulations *automatically* prohibit any harvest the NPS, in its discretion, chooses to close on these grounds.

The rule allows the NPS complete discretion to foreclose state-authorized harvests, devices and activities, even though the State’s authorization accompanies a thorough public process. The criteria for closures, and for closures that must go to rulemaking, are inherently discretionary. The NPS could make *any* activity fit the criteria for closure and/or not fit the criteria for rulemaking; the proposed rule provides no concrete guidance or parameters, even in the narrative accompanying the draft regulations.

Proposed Closure Process for Alaska v. National Closure Process

The proposed rule’s closure criteria and process are based on the national closure process at 36 CFR 1.5; however, the national process requires a written determination to justify the action, which must identify the reason(s) for the closure and explain why less restrictive measures are insufficient. This written determination is *not required* under the proposed rule for Alaska.

Current Regulations v. Proposed Regulations

The following requirements under the current rule have been *removed* in the proposed rule: to hold public hearings; to hold public hearings in the affected area; and, consultation with affected user groups. The proposed public comment period has no requirements.