



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Fish and Game
Department of Natural Resources
Department of Environmental
Conservation**

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June 20, 2025

Gregory Zerzan
U.S. Department of the Interior
Acting Solicitor, Office of the Solicitor
1849 C Street NW
Washington, DC 20240

Submitted online at [regulations.gov](https://www.regulations.gov)

Re: DOI Regulatory Reform RFI (Docket DOI-2025-0005)

Dear Mr. Zerzan,

The President and the Secretary have laid out a clear vision for unlocking the resource potential of federal lands across our country, and particularly in Alaska. We very much appreciate the Department seeking information to achieve these goals. Accordingly, the State of Alaska (State) has completed an initial review of existing U.S. Department of Interior (DOI) regulations for modification or repeal. This submittal is in response to the Request for Information published in the Federal Register on May 20, 2025, as Docket No. DOI-2025-0005. This list is not exhaustive, given the broad range of regulations and policies which affect land management in Alaska, and the State would welcome opportunities to discuss these or other modifications to regulations that may be imposing undue burdens on development of Alaska's extraordinary resource potential.

These comments incorporate input from the Departments of Natural Resources (DNR), Fish and Game (ADF&G), and Environmental Conservation (DEC).

The State suggests the following regulations stymie fish and wildlife and land management favorable to the responsible, balanced resource development envisioned by Congress when it passed the landmark Alaska National Interest Lands Conservation Act (ANILCA) in 1980. That management balance not only provides lands for conservation but intended to support the State and its people in meeting their economic and social needs. In alignment with the President's Executive Order (EO) 14153, Unleashing Alaska's Extraordinary Resource Potential, modifying or rescinding these regulations would further development of resources essential to national security and Alaska's economy. Greater detail on these items is offered as an appendix to this letter; suggested actions are offered in summarized comments below.

Bureau of Land Management (BLM)

- Rescind 43 CFR Parts 1600 and 6100 – Conservation and Landscape Health Rule. Promulgated by BLM in 2024, this rule changes the interpretation of the Federal Land Policy and Management Act (FLMPA) by reinterpreting the term “use” under FLPMA, to include conservation as a “use on par with other uses” despite the fact that the term “conservation” does not appear in FLPMA’s multiple use mandate.¹ The rule brought non-use and preservation of lands into BLM’s jurisdiction, traditionally a role played by the national parks and wildlife refuges – with clear Congressional direction and designation – rather than multiple use agencies such as BLM and the U.S. Forest Service.
- Rescind BLM Instruction Memorandum (IM 2023-013) – Designations in Resource Management Plans and Amendments. This policy was implemented to provide interim guidance prioritizing the designation and protection of areas of critical environmental concern (ACEC) through the land use process. It supported the provisions included in the yet to be promulgated Conservation and Landscape Health Rule. As discussed, the Conservation and Landscape Health Rule, promulgated on May 9, 2024, goes beyond the provisions of FLPMA.

National Park Service (NPS)

- Evaluate 36 CFR Part 13 -- National Park System Units in Alaska. The State supports the intended reinstatement of the 2020 final rule entitled “Alaska, Hunting and Trapping in National Preserves” 85 Fed. Reg. 35181 (June 9, 2020) as required under EO 14153, but unresolved issues remain in 36 CFR Part 13. Especially problematic are the sections regarding how the NPS will close an area or restrict an activity in Alaska parks and preserves (Sections 13.50 and 13.490), which conflict with ANILCA Section 1313’s mandate to allow the taking of fish and wildlife for sport, subsistence, and trapping. It is essential to restore language and requirements that will provide adequate public notice and hearings in affected areas prior to closing areas or restricting uses.
- Many current provisions unnecessarily restrict, without cause, traditional activities; conflict with State hunting and fishing regulations; and impose unnecessary permit burdens on subsistence users.
 - Rescind 36 CFR 13.40(d) – Use of native species as bait
 - Rescind 36 CFR 13.40(e) – Closures and restrictions
 - Replace current 36 CFR 13.50 – Closure and restriction procedures
 - Repeal 36 CFR 13.42(j) – Taking of wildlife in national preserves
 - Repeal current 36 CFR 13.420 – Definitions for “Subsistence uses” and “Customary trade”– Return these definitions to the pre-2017 language
 - Repeal 36 CFR 13.480(b) - Subsistence hunting and trapping
 - Repeal 36 CFR 13.482 - Subsistence collection and use of animal parts
 - Repeal 36 CFR 13.485(b), (c), (d), and (e)
 - Repeal 36 CFR 13.490 - Closure to subsistence use of fish and wildlife
 - Repeal 36 CFR 1902(d) – Wrangell-St. Elias

¹ 43 U.S.C. § 1702(c)

- The current versions of these provisions are unnecessary and unjustified, and unduly restrict traditional activities and impose permit requirements, directly conflicting with State management and regulations without cause.
- To prevent the future undermining of ANILCA's protections, include specific provisions within the preamble of rules or regulations:
 - The Compendia process in 36 CFR 1.7(b) cannot be used by Superintendents in Alaska to restrict public uses related to or regulate take of fish and wildlife;
 - Fishing methods in Alaska are State regulated, not subject to national prohibitions at 36 CFR 2;
 - Requiring early consultation with the State wildlife agency and document steps to minimize any impact to State management and ANILCA-protected public uses, using steps in EO 13132 and 43 CFR Part 24;
 - Prohibit administrative interpretations and the use of “categorical exclusion” to preempt State statutory authorities and change regulations for administrative efficiency except as explicitly granted in ANILCA.

Federal Subsistence Board (FSB) Regulations promulgated by the USFWS and the NPS

- Rescind majority of 50 CFR Part 100 and 36 CFR Part 242 as unjustified. Repeal all regulations outside of closure and restriction regulations as this is the only authority ANILCA provides the Secretaries.

United States Fish and Wildlife Service (USFWS)

- Refuge-specific: Modify the regulations at 50 CFR 36.39 for Kenai and Arctic National Wildlife Refuges as outlined in greater detail in this letter’s appendix.
- Review and clarify the Compatibility Determination (CD) processes used in Alaska to review transportation and utility system (TUS) permits; follow the procedures for TUS applications as required by ANILCA Title XI and implementing DOI regulations at 43 CFR Part 36.
 - FWS’ 2024 revised regulations in 50 CFR 29 and 50 CFR 26 presume right-of-way actions are inconsistent unless strict mitigation and habitat maintenance conditions can be satisfied and are inconsistent with ANILCA Section 1104(a). Alaska should be exempted from these regulations.

Multi-agency Issues

- Federal expectations for temporary water systems. The BLM and NPS often require public water system standards for short-term systems (e.g., wildland fire camps) that do not meet the federal definition under the Safe Drinking Water Act (SDWA). This creates unnecessary compliance burdens and confusion for unregulated systems. DOI should consider internal guidance to align expectations with SDWA definitions and support risk-based, fit-for-purpose approaches for temporary drinking water use.
- TUS Systems In and Across, and Access Into, CSUs in Alaska. 43 CFR 36.8(b) (Administrative appeals) does not allow for an administrative appeal for a denial of a TUS application when an area involved is within the National Wilderness Preservation System. Suggest that there be an allowance for an administrative appeal for a denial issued under provisions of 36.7(b).

- Access to Inholdings. 43 CFR 36.10(e) provides criteria by which a right-of-way permit to an inholding within a CSU may be denied based on an agency's assessment. Suggest removing language that gives agencies broad latitude to restrict route(s) and method(s) used to access inholdings within CSUs.
- Special Access. 43 CFR 36.11(a)(2) defines "adequate snow cover" as a minimum depth of 6-12 inches. Windy regions such as the tundra can have highly variable levels of snow cover, and local users already have a vested interest in maintaining their equipment by selecting appropriate snow conditions and routes. Suggest removing the 6-12" definition of adequate snow cover and allowing for user discretion.
- Aircraft Special Access. 43 CFR 36.11(f)(1) has resulted in onerous restrictions to aircraft use in CSUs. Suggest removing regulation stating that fixed-wing aircraft use can be prohibited or otherwise restricted by the appropriate Federal agency.

Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA)

The State has flagged several issues with the implementation of the ESA and the MMPA.

- Promote state involvement in status review teams and Section 7 consultations. Revise ESA regulations (50 CFR § 424) as noted in detailed comments.
- Establish a reasonable and consistent standard for ESA listing petitions and 90-day findings. The regulations describing petitions and 90-day findings (50 CFR § 424.14) should be revised to raise the bar of "substantial scientific or commercial information" and thus limit the volume of petitions and positive 90-day findings.
- Eliminate the blanket 4(d) rule (50 CFR §§ 17.31 and 17.71).
- Reduce mandatory designation of critical habitat. Existing regulations (50 CFR § 424.12(a)(1)) clearly outline several mechanisms that provide the Secretary discretion relative to designation of critical habitat, yet the Services still treat critical habitat designation as mandatory.
- Limit designation of critical habitat outside of currently occupied area. 50 CFR § 424.12(b)(2) should be revised to allow for the designation of critical habitat outside of the area currently occupied by a listed species only when truly necessary to avoid extinction. Critical habitat already designated for species needs to be readdressed to remove areas not used by the species (*i.e.*, polar bears) and focus on "geographical area occupied by the species."
- Establish reasonable recovery objectives for listed species. Recovery Plans need to be written or revised with recovery objectives that are achievable and compatible with regulatory criteria for delisting (*i.e.*, "the species has recovered to the point at which it no longer meets the definition of an endangered species or a threatened species," 50 CFR 424.11(e)(2)).
- Redefine "foreseeable future" (50 CFR § 424.11(d)) to establish a scientifically defensible framework for the term "foreseeable future." better aligned with the statutory intent of the ESA.
- Regulations applying to the ESA Section 10(j) rule for the designation of non-essential and experimental populations (50 CFR § 17.80-83) should be revised to allow state management of experimental populations to avoid federalization of the states' management role.

- Separate administration of the ESA and MMPA regulatory programs. The Services improperly merged interpretation of the ESA and MMPA regulations while expanding the scope of each — including recovery planning and permitting under ESA Section 7.
- Review ESA listing (62 FR 31748, 50 CFR § 17.95b) for Steller’s Eider (*Polysticta stelleri*).
- Review critical habitat designation for polar bear (50 CFR § 17.95a).
- Modify language in the MMPA regarding: “optimum sustainable population” (16 U.S.C. § 1362(9)).
- Modify language: “potential biological removal” (PBR, 16 U.S.C. § 1362(20)).
- Establish standards on data adequacy and assumptions in MMPA implementation. Revise regulations, policies, and guidance to ensure that adequate data are collected and objectively analyzed before implementing changes under the MMPA that restrict the use of natural resources.
- Allow states to authorize intentional take of marine mammals.
- Ensure Marine Mammal Commission members are knowledgeable of natural resource use and recognize the importance of managing marine mammals as a functional part of the ecosystem to ensure compliance with the President’s E.O.s and statutes (16 U.S.C. § 1401)
- Enforce Marine Mammal Commission member term limits as required by statute (16 U.S.C. § 1401).
- Remove emphasis on modelling of climate impacts over conducting population surveys. Marine surveys are important to ensure MMPA implementation is consistent with the President’s Executive Order 14276 (Restoring American Seafood Competitiveness).

United States Forest Service (USFS)

- Roadless Rule (USFS): Although the Roadless Rule is under the purview of the Department of Agriculture rather than DOI, this rule has restricted access to and harvest of timber resources in the National Forest System lands in Alaska. This rule should be changed or rescinded to allow access to timber resources, and the DOI should assess how they can assess access and harvest of timber on other federal lands, and collaborate with the USFS as necessary.

Environmental Protection Agency (EPA)

Though not within the umbrella of the DOI, EPA regulations interplay with land management and resource development, and improved processes at the DOI could improve the function of these processes overall. To the extent that these administrative actions could be assessed, please consider:

- Prevention of Significant Deterioration (PSD) Permitting. 40 CFR 52.21(p) is an EPA regulation which requires consultation with Federal Land Managers (FLMs) often under the DOI. The length of comments or limitations on the FLM's role could be considered to ensure that DOI submissions are appropriately scoped.
- Regional Haze. 40 CFR 51.308(i)(2) is an EPA regulation which requires engagement with FLMs often under the DOI. The engagement must be early enough that the FLM can meaningfully inform the State's decision on the long-term strategy at least 120 days prior to holding any public hearing or public comment. Limitations on the FLM's role could be considered.

General policy concerns

Implementation of laws and regulations by DOI agencies has been a hurdle for projects in numerous ways across Alaska. Although some regulations and policies provide beneficial guidance or timelines for review, at times, limited implementation has resulted in challenges to projects. For example:

- ANILCA Title XI calls for agencies to review applications for Transportation and Utility Systems (TUSs) within a nine-month period, but this timeline is consistently disregarded.
- NPS, USFWS, and USFS manage some areas as “eligible” for wilderness or wild and scenic river designations as though they were Congressionally designated Wilderness or wild and scenic rivers, despite this being contrary to ANILCA Section 1317, which provided a one-time wilderness review process in the 1980s after the passage of ANILCA. As no additional areas have been designated as wilderness by Congress, no “eligible” wilderness or wild and scenic rivers exist in Alaska (outside of Congressionally designated Wilderness Study Areas). Lands considered “eligible” by the agencies have been managed in more restrictive manners than appropriate, which leads to restriction of activities or rejection of projects on Alaskan public lands that would normally be approvable.
- Buffers set through land use planning, such as “visual buffers” on the Iditarod National Historic Trail and other CSUs, can result in the rejection of projects on Alaskan public lands that would normally be approvable. Agencies should clarify their authority for expanding management restrictions beyond the boundaries of designated lands. If these are policy actions rather than statutory, these restrictions should be lifted.

We also request DOI agencies refocus their energies to comply with the direction provided in 43 CFR Part 24 on working with state Fish and Game agencies. It is especially important that the State and federal agencies coordinate on management actions, particularly those affecting wildlife population goals and objectives. In Alaska, federal agencies frequently use broad, discretionary interpretations of their policies to justify restrictions of State authorized hunting and trapping seasons, bag limits and management actions, often leaving little recourse for elevation and resolution outside of litigation. This is not indicative of a cooperative process but a process in which the States are held subservient to the federal agencies.

National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) Implementation Within DOI Agencies

- Streamline NEPA: For large projects, federal Environmental Impact Statement (EIS) reviews often delay timelines far beyond what’s needed for state permitting. For example, the Record of Decision, which normally supports the State’s requirement to make Antidegradation determinations, can take years to issue. Further, permitting often cannot proceed until the route or extent of the project is defined in the selection of the Least Environmentally Damaging Practicable Alternative (LEDPA). In NEPA the LEDPA and ROD typically act as serial project hurdles, with little opportunity for parallel permit development until those key NEPA processes come to a final conclusion. Streamlining the NEPA process to develop key decision points sooner will shorten the project timeline for nearly all permitting agencies involved at the federal and state level.
- Establish consistent, defensible procedures for implementing NHPA compliance in the State, possibly through development of a Programmatic Agreement, in consultation with regional agency heads and the Alaska State Historic Preservation Officer.

- Establish and circulate guidance regarding the consideration and incorporation of NHPA-relevant stipulations of the Alaska Native Claims Settlement Act (ANCSA) and ANILCA in agency decision-making.
- Ensure that data sharing agreements between federal agencies and the State are established and fully implemented.
- Ensure consistent tribal consultation by creating a DOI (rather than agency) Statewide tribal liaison/liaison office to handle government-to-government consultation in Alaska in a consistent fashion, in cooperation with relevant DOI agencies during agency decision-making.

Closing

The State of Alaska is sharing these specific requests to aid in your review of current federal authorities and processes and is available to discuss how to improve these processes at any level. Please contact Cathe Heroy in the DNR Office of Project Management and Permitting at (907)269-0880 or by email at catherine.heroy@alaska.gov to coordinate any follow up discussions at the staff level.

Sincerely,



Doug Vincent-Lang
Commissioner, Alaska Department of Fish and Game



Randy Bates
Commissioner-Designee, Alaska Department of Environmental Conservation



John C. Boyle III
Commissioner, Alaska Department of Natural Resources

Appendix: Additional Details and Suggestions

In addition to rescinding or modifying regulations, DOI could review some existing policy decisions that have caused development challenges in Alaska. We offer some actions that could be taken to address those challenges.

- DOI should direct the BLM to review all existing Areas of Critical Environmental Concern (ACECs) in Alaska to ensure they are limited to areas and size where special management attention is needed to protect and prevent irreparable damage to, important historic, cultural, and scenic values, fish, or wildlife resources or other natural systems or processes; or to protect human life and safety from natural hazards. The review should ensure that identified ACEC's require special management measures to protect those value and if no management has occurred for existing ACECs without causing irreparable damage, the revocation of the existing ACECs.
- DOI decisions have failed to recognize as inholdings under ANILCA those communities that are effectively surrounded by conservation system units. ANILCA 1110(b) guarantees access to these effectively surrounded inholdings, and DOI's lack of recognition constrains their ability to gain needed infrastructure, which is directly in contrast to Congressional intent. For example, the USFWS has not recognized the communities of Kaktovik or King Cove as inholdings under ANILCA, despite the fact both communities are surrounded by CSUs in every landward direction, with no means of overland access and with unreliable and unsafe marine access. The condition of both communities meets ANILCA's requirement, and congressional intent, for "effectively surrounded." DOI's lack of recognition has constrained Kaktovik from being able to obtain high speed internet service and a winter access supply road under ANILCA 1110(b). Likewise, the State has not been able to connect its statewide transportation to King Cove, which currently ends and the all-weather at Cold Bay, by constructing a single lane gravel road through the Izembek National Wildlife Refuge to provide health services and economic opportunities to the inholding community. Such communities should be recognized as inholdings eligible for ANILCA 1110(b) access provisions.
- All DOI Agency land management plans should be reviewed to ensure the plans have minimal effects on state fish and wildlife management. Recent plans have set very high bars for justifying management action and access. Too often the degree to which a plan will affect ADF&G monitoring and survey work will depend on individual staff opinions; this is especially true in designated wilderness areas or areas managed for their wilderness characteristics.
- Re-visit management prescriptions regarding the authorization of predator control on all DOI lands in Alaska, except NPS lands.

National Park System

- 36 CFR Part 13 -- *National Park System Units in Alaska*. The State supports the intended reinstatement, by the NPS, of the 2020 final rule entitled "Alaska, Hunting and Trapping in National Preserves" 85 *Fed. Reg.* 35181 (June 9, 2020) as required under EO 14153, but unresolved issues remain in 36 CFR Part 13. Especially problematic are the sections regarding how the NPS will close an area or restrict an activity in Alaska parks and preserves (Sections 13.50 and 13.490) The current procedures laid out in regulation conflict with ANILCA Section 1313's mandate to allow the taking of fish and wildlife for

sport, subsistence, and trapping. It is essential to restore language and requirements that will provide adequate public notice and hearings in affected areas prior to closing areas or restricting uses. Many other current provisions unnecessarily restrict, without cause, traditional activities, conflict with State hunting and fishing regulations, and impose unnecessary permit burdens on subsistence users.

- Rescind 36 CFR 13.40(d). Use of native species as bait – unnecessary and unjustified. This rule restricts bait use to native species, prohibiting the use of non-native species, natural or synthetic scents, and natural or processed vegetable matter which are allowed under State fishing regulations. While State regulations (5 AAC 75.026) generally prohibit the use of sport-caught species as bait, the federal rule allows the use of native sport-caught fish, creating confusion and directly conflicting with broader state regulations. No rationale was provided as to why State regulations were not adequate for Alaska parks.
- Rescind 36 CFR 13.40(e) – Closures and restrictions – unnecessary and unjustified: This rule provides superintendents with the authority to close fishing in accordance with 36 CFR 13.50; no rationale for this change was ever provided. Previously, the take of fish in national parks in Alaska was generally allowed "in accordance with State and Federal law and regulations" consistent with ANILCA Section 1314(c)(2).
- Replace current 36 CFR 13.50 -- Closure and restriction procedures – unjustified -
- The closure processes in the current rule, do not align with the intent in ANILCA to ensure Alaska’s residents, rural and non-rural, who rely on resources located within expansive park units, are assured a voice in proposed closures and restrictions that could directly affect them. For three decades, the National Park Service (NPS) has repeatedly tried to circumvent ANILCA's mandated public process for area closures. The 2015 rule represents their third effort, granting Superintendents the power to close areas based on their own judgment of park values, without the public notice and rulemaking ANILCA requires. This change significantly diminishes public involvement in access regulations and establishes a closure process that directly conflicts with ANILCA's foundational principles for public input. We recommend replacing the current §13.50 with the closure restrictions comparable to the DOI Closure Regulations at 43 CFR 36.11(h) as a framework.
- Repeal 36 CFR 13.42(j) Taking of wildlife in national preserves – unnecessary and unjustified. Collection of falcon chicks in Natural Preserves in Alaska is a traditional activity and therefore protected by ANILCA. Removal of this subsection will allow the collection and possession of raptors in accord with the State’s falconry program which is approved by the USFWS under its Migratory Bird Treaty Act regulations.
- Repeal current 36 CFR 13.420 –Definitions for “Subsistence uses” and “Customary trade”– in the 2017 *Alaska; Subsistence Collections* final rule the NPS inexplicably redefined “subsistence uses” and limited “customary trade” to handicrafts and fur, removing the provision for additional collections “and such other activities as may be designated for a specific park area in the applicable special regulations of this part.” We request a return to the pre-2017 language.

- Repeal 36 CFR 13.480(b) - Subsistence hunting and trapping - unnecessary and unjustified. This subsection limits the type of bait that may be used by federal subsistence hunters to take bears, failing to take into consideration the limitations faced by rural subsistence users, who live off the road system, have in obtaining bait.
- Repeal 36 CFR 13.482 - Subsistence collection and use of animal parts - unnecessary and unjustified. These activities have traditionally occurred in Alaska parks and preserves. Contrary to ANILCA, no information of resource damage was provided before instituting this regulation change. By requiring subsistence users to obtain written authorization from a superintendent, who could be based in Anchorage – nowhere near where the user lives, before collection, this section effectively implements a closure to federal subsistence users who are unable to obtain written authorization in a timely manner.
- Repeal 36 CFR 13.485(b), (c), (d), and (e) – unnecessary and unjustified. These sections overregulate the collection of plant materials for handicrafts.
- Repeal 36 CFR 13.490 - unnecessary and unjustified. Closure to subsistence use of fish and wildlife. This subsection usurps the authorities of the Federal Subsistence Board and the Alaska Boards of Game and Fish who are responsible for closing areas to fish and wildlife take.
- Repeal 36 CFR 1902(d) Wrangell-St. Elias – unnecessary and unjustified. This section requires permits for subsistence trappers using certain types of bait for bear take, a requirement that closes the activity to traditional users by requiring a permit
- These provisions unduly restrict traditional activities and impose permit requirements, directly conflicting with State management and regulations without cause.

United States Fish and Wildlife Service (USFWS)

- Compatibility Determination (CD) processes: The USFWS has inappropriately used the CD process to deny some transportation and utility system (TUS) permits and must instead follow the procedures for TUS applications as required by ANILCA Title XI and implementing DOI regulations at 43 CFR Part 36. This process directs, among other requirements, the development of a National Environmental Policy Act (NEPA) document that considers alternative project designs and input from relevant agencies. Notably, the TUS process changes the compatibility standard for the TUS system such that it does not “significantly interfere with or detract from the purposes for which the area was established.”²
- Refuge-specific: Remove the regulations at 50 CFR 36.39 regarding the following issues:
 - Kenai National Wildlife Refuge
 - Trumpeter swan populations have rebounded; lake closures are no longer needed.
 - Remove the regulations which prohibit hunting brown bears over bait; ADF&G continues to see sustainable brown bear populations based on harvest numbers and have seen no evidence of a population decline.

² 43 CFR 36.2(f)

- Reopen the Skilak Wildlife Recreation Area (Skilak Loop Management Area) to hunting and trapping consistent with State management.
- Remove the requirement for a federal trapping permit in addition to a State permit. This will align refuge management with State management and reduce the regulatory burden on the public.
- Remove the firearm restrictions along the Kenai and Russian Rivers,
- Allow for increased access for the use of bicycles (to include e-bikes) and game carts, on certain additional designated trails, roads, and right of ways as shown in the 2020 Environmental Assessment, Appendix I.
- Allow the use of snowmachines, all-terrain vehicles, and utility task vehicles on certain lakes when there is adequate snow and ice cover.
- Arctic National Wildlife Refuge (ANWR)
 - Remove camelids from the ANWR Public Use regulations at 50 CFR 36.39(d), as it fails to align with State regulations.
 - Remove all designated wilderness buffers and related restrictions, such as No Surface Occupancies (NSOs) from the Arctic Refuge Comprehensive Conservation Plan (CCP), protections beyond the wilderness area boundaries are inconsistent with ANILCA.
 - Remove protections to both suitable and eligible WSRs. The minimal management standards should also be adjusted for these designated wilderness and wild and scenic river areas.
 - Ensure all ANILCA exceptions for activities in designated wilderness in Alaska are incorporated into the ANWR CCP.
 - Remove recommended wild and scenic rivers from the Coastal Plain in the 2015 Revised ANWR CCP. These should have been nullified by Public Law 115-97 (Tax Act) and ANILCA.

Endangered Species Act (ESA) regulations

The ESA has been weaponized to impede and undermine the use of natural resources in Alaska. Regulatory and policy reform is required to carry out Presidential Executive Orders 14153 (Unleashing Alaska's Extraordinary Resource Potential) and 14276 (Restoring American Seafood Competitiveness):

- *Promote state involvement in status review teams and Section 7 consultations.* Revise ESA regulations (50 CFR § 424) and policies to require formal, voting participation of state representatives on all ESA scientific review teams that assemble and evaluate scientific data, including those involved in listing, delisting, critical habitat designation, 5-year status reviews, and recovery planning. The statutory intent of the ESA is for the United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) to cooperate with states “to the maximum extent practicable” (16 U.S.C. § 1535), however in practice state perspectives are often excluded from status reviews teams or are not given appropriate consideration. Most data used for ESA actions are state generated, yet federal agencies consistently exclude or constrain states from the process of interpreting their data. Deference to federal interpretation of data should be removed, particularly for data collected by states. Inclusion of states in the review process and Section 7 consultations will ensure that local biological expertise and economic interests are adequately considered and will help ensure that ESA implementation is consistent with E.O. 14153 (Unleashing Alaska's

Extraordinary Resource Potential) and E.O. 14276 (Restoring American Seafood Competitiveness).

- *Establish a reasonable and consistent standard for ESA listing petitions and 90-day findings.* Firm and reasonable standards should be established in regulation for review of publicly submitted ESA petitions and for 90-day findings. The “low bar” for evaluating petitions and inconsistent application of standards enables environmental groups to flood agencies with unnecessary listing reviews that create regulatory uncertainty and are costly to evaluate. The current ESA regulations encourage subjective actions, wholly disconnected from the statutory text and intent of the ESA, and place logistical burdens on resource development. The regulations describing petitions and 90-day findings (50 CFR § 424.14) should be revised to raise the bar of “substantial scientific or commercial information” and thus limit the volume of petitions and positive 90-day findings. The current subjective interpretation of these regulations is inconsistent with the statutory intent of the ESA (i.e. to prevent extinction of imperiled species) and the President’s E.O.s. For example, NMFS accepted a petition to list Gulf of Alaska Chinook salmon under the ESA despite the agency acknowledging the petition “identified numerous factual errors, omissions, incomplete references, and unsupported assertions and conclusions within the petition.”³
- *Eliminate the blanket 4(d) rule (50 CFR §§ 17.31 and 17.71).* The “blanket rule” under Section 4(d)—which automatically applies all Section 9 protections to species newly listed as threatened, in disregard of the statutory distinction between threatened and endangered species listings—should be eliminated.
- *Reduce mandatory designation of critical habitat. Existing regulations (50 CFR § 424.12(a)(1))* clearly outline several mechanisms that provide the Secretary discretion relative to designation of critical habitat, yet the Services still treat critical habitat designation as mandatory. These existing regulations that promote discretionary designation of critical habitat should be properly implemented for new species listings and additional criteria added to this section of the ESA regulations to reduce mandatory critical habitat designations, especially when the designation of critical habitat will provide little to no benefit to species’ recovery. Critical habitat designations should be limited to areas critically important to avoid extinction and the size of critical habitat designations capped on a quantifiable standard. Massive critical habitat designations have been made for species that are habitat generalists, and for areas that are not currently occupied by the listed species or peripherally used areas, and considering the areas to be “potential future habitat,” which is not consistent with the statutory intent of preventing extinction (16 U.S.C. § 1532).
- *Limit designation of critical habitat outside of currently occupied area.* 50 CFR § 424.12(b)(2) should be revised to allow for the designation of critical habitat outside of the area currently occupied by a listed species only when truly necessary to avoid extinction. For example, there are concerns that the Services have unbounded discretion for designating exceptionally large areas as critical habitat (i.e., critical habitat listed for ringed seals that is larger than the geographic area of Texas). Critical habitat already designated for species needs to be readdressed to remove areas not used by the species (i.e., polar bears) and focus on “geographical area occupied by the species.” These efforts should include the requirement

³ National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce. 90-Day Finding on a Petition to List Gulf of Alaska Chinook Salmon as Threatened or Endangered Under the Endangered Species Act. May 24, 2024. 89 Fed. Reg. at 45817.

for the Services to consult with the affected states prior to proposing critical habitat designations.

- *Establish reasonable recovery objectives for listed species.* Under the ESA statute the recovery standard is the removal of the risk of extinction (16 U.S.C. § 1532). Recovery Plans need to be written or revised with recovery objectives that are achievable and compatible with regulatory criteria for delisting (*i.e.*, “the species has recovered to the point at which it no longer meets the definition of an endangered species or a threatened species,” 50 CFR 424.11(e)(2)). Many Recovery Plans make it nearly impossible to delist a species and therefore require non-federal entities to bear significant regulatory burdens in perpetuity (e.g., Section 7 consultations) for species no longer at risk of extinction. Recovery objectives should be set to remove the risk of extinction and consider human co-habitation in its contemporary form, not to rebuild populations to historical levels.
- *Redefine “foreseeable future” (50 CFR § 424.11(d))* – ESA regulations need to be revised to establish a scientifically defensible framework for the term “foreseeable future.” Listings and critical habitat designations have been made based on unreliable long-term climate change models due to an ambiguous regulatory definition of “foreseeable future,” including some projections by the Services using habitat conditions as far as 100 years in the future. These models are often based on unreasonable assumptions about how species may respond to changes without considering humans as part of the ecosystem, which are inconsistent with presidential E.O. 14303 (Restoring Gold Standard Science). “Foreseeable future” should be redefined as: *to the extent that scientific models can reliably predict with a high degree of certainty using generally accepted methodologies, not to exceed 20 years.* This definition is better aligned with the statutory intent of the ESA.
- *Allow State management of designated non-essential and experimental populations.* Regulations applying to the Section 10(j) rule for the designation of non-essential and experimental populations (50 CFR § 17.80-83) should be revised to allow state management of experimental populations to avoid federalization of the states’ management role. The reintroduction of an animal to the landscape to promote conservation should not become a liability of potential regulatory burdens and lost management authority, which are disincentives to such reintroductions. For example, the State of Alaska struggled to establish a reasonable 10(j) rule for wood bison and was very concerned by statements during the prior administration that the USFWS was interested in altering the 10(j) rule in ways that would limit the State’s management authority for reintroduced populations.
- *Separate administration of the ESA and MMPA regulatory programs.* The intertwined regulations of the ESA and MMPA add burdens under each act. The Services improperly merged interpretation of the ESA and MMPA regulations while expanding the scope of each — including recovery planning and permitting under ESA Section 7. For example, under the ESA the recovery standard is the removal of the risk of extinction. However, the Services have set the recovery objective to mirror those of the MMPA which are focused on recovery to *optimal* population levels. This makes it nearly impossible to delist a species and requires Section 7 consultations for species no longer at risk of extinction.
- *Review ESA listing (62 FR 31748, 50 CFR § 17.95b) for Steller’s Eider (*Polysticta stelleri*).* This listing creates regulatory burdens on development projects without providing meaningful conservation benefits, since the species does not require such measures to prevent extinction. The listing is also inconsistent with Congressional guidance outlined in Senate Report 96-151, which recommends that the authority to list distinct vertebrate

population segments (DPS) be used “sparingly.” The justification for listing the Alaska-breeding DPS is weak and refutable and is based on historical range contraction, which is not supported by solid evidence. There is not clear evidence that the historical abundance of the Alaska-breeding population exceeded current population estimates. Additionally, the population is not expected to meet the criteria for listing as endangered in the foreseeable future. The purpose of ESA listing is to prevent extinction—not to restore species or populations to historical levels of abundance, which is a goal more appropriately addressed through state-led conservation efforts.

- *Review critical habitat designation for polar bear (50 CFR § 17.95a).* The area currently designated as polar bear critical habitat is expansive and should be reviewed with the aim of minimizing unnecessary regulatory burdens on natural resources extraction and development. Only the geographical area occupied and critical for preventing extinction should be designated as critical habitat.

Marine Mammal Protection Act (MMPA) regulations

The MMPA is being used to shut down, block, and undermine the use of natural resources in Alaska and therefore regulatory and policy reform is required to carry out the President’s Executive Orders 14153 (Unleashing Alaska’s Extraordinary Resource Potential) and 14276 (Restoring American Seafood Competitiveness):

- *Modify language: “optimum sustainable population” (16 U.S.C. § 1362(9)).* Under the MMPA, the Services set unreasonable goals for species restoration and regulations need to be revised to target appropriate recovery objectives. The MMPA pursues a species’ “optimum sustainable population,” but the Services define this goal without considering humans as part of the ecosystem (as required by the statutory definition of the term, which includes “the health of the ecosystem,” 16 U.S.C. § 1362(20)). The MMPA includes multiple precautionary provisions that further prioritize marine mammals over the use of all other natural resources. Clear regulatory standards and definitions are a necessity to foster resource development while achieving the purpose of the MMPA with objective, fact-based implementation.
 - Specifically, whenever the “optimum sustainable population” of a species is considered, such a calculation should include human co-habitation in its contemporary form, and recovery objectives for depleted stocks should be set to maintain the species as a part of the ecosystem, not rebuild the population to historical levels — the latter is a state responsibility.
- *Modify language: “potential biological removal” (PBR, 16 U.S.C. § 1362(20)).* The MMPA outlines PBR as the number of animals that can be removed from a population while sustaining an optimal population. The MMPA regulations need to be revised to ensure the calculation of PBR uses a sustained yield framework, rather than the current conservative framework. The “best population size” should be used for management decisions, rather than the highly conservative “minimum population size” metric, which unnecessarily constrains activities. In particular, the Services should revise how they implement the recovery factor in the calculation of PBR (16 U.S.C. § 1362(20)), including making necessary changes to agency guidance documents to align with the statutory intent of the MMPA and the need to consider human use of other natural resources.
- *Establish standards on data adequacy and assumptions in MMPA implementation.* The Services should revise regulations, policies, and guidance to ensure that adequate data are

collected and objectively analyzed before implementing changes under the MMPA that restrict the use of natural resources. Too often, decisions are based on biased assumptions and inadequate data, resulting in regulations that disproportionately impact natural resource use in Alaska. For example, inadequate sampling and questionable assumptions about harbor porpoise distribution in Southeast Alaska led NMFS to subdivide one stock into three, including the designation of one as a “stock of concern.” Similarly, USFWS models to estimate polar bear incidental take on the North Slope rely on assumptions that significantly overestimate polar bear take from human activities and therefore impose unnecessary constraints on industry. The MMPA is already a highly conservative statute; layering additional, unsupported conservatism onto its implementation is not scientifically justified and does not improve conservation outcomes for marine mammals.

- *Allow states to authorize intentional take of marine mammals.* MMPA regulations should be revised to allow states to authorize the intentional take of marine mammals within a sustained yield framework, especially when marine mammals are having strong negative effects on other natural resources such as fisheries or ESA listed species. Allowing state-managed intentional take under strict biological criteria would provide an ecosystem-based approach to management that incorporates human use of other natural resources (e.g. fisheries) while maintaining the core conservation intent of the MMPA.
- *Ensure Marine Mammal Commission members are knowledgeable of natural resource use.* Existing Marine Mammal Commission members need to recognize the importance of managing marine mammals as a functional part of the ecosystem to ensure compliance with the President’s E.O.s and to comply with statute (*i.e.*, appointees shall be “individuals knowledgeable in the fields of marine ecology and resource management,” 16 U.S.C. § 1401)
- *Enforce Marine Mammal Commission member term limits as required by statute (16 U.S.C. § 1401).*
- *Remove emphasis on modelling of climate impacts.* The Services’ guidelines and policies need to be revised to recognize the need for increased marine survey effort and to place less emphasis on modelling of climate impacts. Marine surveys provide essential information necessary to maintain current levels of seafood production and are typically conducted through cooperative efforts between the Services and the states. Marine surveys are important to ensure MMPA implementation is consistent with the President’s Executive Order 14276 (Restoring American Seafood Competitiveness).