

National Park Service
U.S. Department of the Interior



Alaska Regional Office
Interior Region 11 – Alaska

Finding of No Significant Impact

*Revisiting Sport Hunting and Trapping on National Park System
Preserves in Alaska*

JULY 2024

1 Introduction

In compliance with the National Environmental Policy Act (NEPA), the National Park Service (NPS) released an Environmental Assessment (EA) in January 2023 (hereafter, the “January 2023 EA”), and, following public comments, made revisions to the document and has issued a Revised EA to examine alternative actions and environmental impacts associated with proposed rulemaking to prohibit certain sport hunting and trapping practices (herein referred to as “harvest practices” or “harvest methods”). This rulemaking applies to all NPS national preserves in Alaska.

The NPS has prepared this Finding of No Significant Impact (FONSI) for the “Revisiting Sport Hunting and Trapping on National Park System Preserves in Alaska” Revised EA. The statements and conclusions reached in this FONSI are based on documentation and analysis provided in the Revised EA, the Response to Comments (Appendix A), the Non-Impairment Determination (Appendix B), and the associated project decision file. The Revised EA contains additional information on the current state of the resources analyzed and the impact analysis for each of the alternatives analyzed. The Revised EA is hereby incorporated by reference into this FONSI, and relevant sections are summarized below.

1.1 Purpose and Need for Action

The NPS proposed through rulemaking in 2023 to prohibit certain sport hunting and trapping practices or methods that were previously prohibited in a rulemaking process in 2015 and then removed from prohibition in 2020, in all NPS national preserves in Alaska (“the preserves”) (Figure 1). These earlier rulemaking processes are referred to as the 2015 Rule and the 2020 Rule, respectively.

The need for the revision of the rule is that the NPS has determined that the 2020 Rule is not compatible with generally accepted notions of “sport” hunting and is in tension with NPS management policies. The purpose of taking action is to implement a regulation regarding sport hunting and trapping practices in NPS preserves in Alaska that is consistent with applicable NPS laws and NPS policies.

The proposed regulation disclosed in the Revised EA and described in this FONSI reconsiders three topics in the 2020 Rule: (1) bear baiting; (2) State of Alaska (“the State”) law addressing predator harvest; and (3) the meaning and scope of hunting for “sport purposes” under ANILCA.

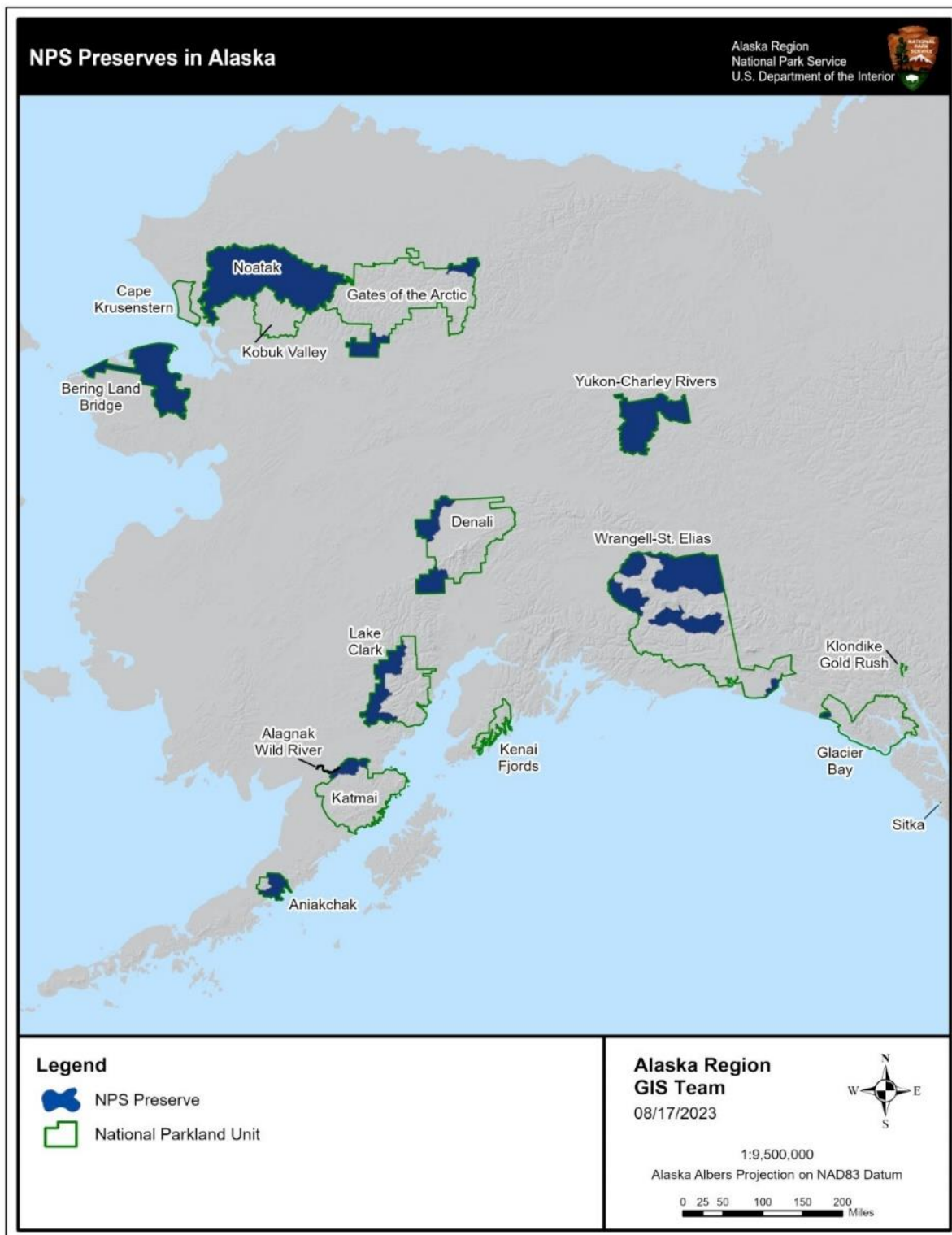


Figure 1: NPS Preserves in Alaska

1.2 Public Involvement

The January 2023 EA (NPS 2023) and the proposed regulation were available for a 60-day public comment period from January 9 to March 27, 2023. An NPS news release on January 5, 2023, announced the public review. The NPS published a notice in the National Parks Traveler on January 6, 2023, and in the Anchorage Daily News on January 12, 2023, to announce availability of the EA and rule. The NPS extended the public comment period on the EA and the rule 17 days beyond the initial 60-day period in response to public comments asking for an extension.

Public comments were received through the NPS Planning, Environment & Public Comment (PEPC) website and the Federal eRulemaking Portal (<https://parkplanning.nps.gov/wildliferule2023> and <https://www.regulations.gov/>). There were 179 comments received on the EA and 18,067 comments received on the regulation. The NPS considers all comments received during the comment period; standard NPS practice is to respond to substantive comments that are submitted during the public review period for EAs (43 CFR 46.305(a)(1)) (NPS 2015, pp. 64-66). Based on substantive public comments received, the NPS wrote the Revised EA which analyzed a new alternative (Revised Preferred Alternative); analyzed public safety as its own resource (rather than as part of wildlife); and described two new alternatives that were considered but dismissed (Allow Limited Bear Baiting and Have Greater Alignment with State Regulations; Emphasize Cultural Ties).

2 Selected Alternative and Rationale for Decision

2.1 Selected Alternative

The NPS has selected certain actions analyzed under Alternative 2: January 2023 Proposed Action, and Alternative 3: Revised Preferred Alternative of the Revised EA, hereafter referred to collectively as the “selected action” or “selected alternative” for implementation. The selected action involves a subset of components that were fully analyzed under Alternative 2 and Alternative 3. Under the selected alternative, the NPS will:

- Prohibit through rulemaking bear baiting in the preserves (Alternatives 2 and 3).
- Include language in the preamble to the rule that it will continue to follow its policy (NPS 2006) of prohibiting predator control or predator control on the preserves (Alternatives 2 and 3).
- Expand the interpretation of the term “sport” in this rule from previous rulemaking. The NPS will include the expanded definition of sport in the preamble to the rule (Alternative 3).¹
- Revise the definition of “trapping” in 36 Code of Federal Regulations (CFR) Part 13 to clarify that trapping only includes activities that use a “trap” as that term is defined in 36 CFR Part 13. The proposed revision will resolve any question about whether trapping can

¹ See also Appendix A of the Revised EA for further discussion on the definition of sport hunting under ANILCA.

include any method of taking furbearers under a trapping license, which could include the use of firearms depending upon the terms of the license (Alternatives 2 and 3).

- Allow the humane dispatch of a trapped animal via firearm. The NPS will clarify conditions that allow the humane dispatch of a trapped animal taken in conjunction with a trapping license via firearm during an open trapping season for that species. Allowed conditions to use a firearm in conjunction with trapping include when an animal is: (1) ensnared in an intact trap; (2) ensnared by a trap that is no longer anchored; or (3) mortally wounded by a trap but has broken free from the trap. Free-ranging furbearers may not be harvested with a firearm under a trapping license. Free-ranging furbearers may be harvested with a firearm under a hunting license during an open hunting season for the harvested species.

2.2 Rationale for Decision

This FONSI is not the final agency action for those elements of the selected action which require promulgation of regulations to be effective, and promulgation of such regulations will constitute the final agency action for those elements of the selected action.

The selected action addresses three topics that were considered in the 2015 and 2020 rules: (1) bear baiting; (2) State of Alaska (“the State”) law addressing predator harvest; and (3) the meaning and scope of hunting for “sport purposes” under ANILCA. After reconsidering these topics, the NPS has selected the action that prohibits bear baiting based primarily on public safety concerns and new factual information pertaining to the risk posed to the visiting public, and expands the interpretation of “sport” in this rule from previous rulemaking. The selected action also addresses trapping definition clarification.

The selected action is not in tension with NPS policy, as the 2020 Rule was, and is an improvement over the 2020 Rule by being more consistent with NPS policies to protect wildlife and promote visitor safety. Further rationale is provided by topic below.

2.2.1 Bear Baiting

Between the 2020 Rule and this proposed rule, NPS has determined changes to key conclusions. The NPS has closely reviewed data and expert opinions that come to different conclusions than those found in the 2020 Rule related to public safety and bear baiting. In the FONSI for the 2020 Rule (NPS 2019), it states that (emphasis added):

when managed correctly, **there is no evidence to suggest that black bears exposed to baits are destined to become problem bears.** The [2020] EA supporting the current rule clarifies that food-conditioned bears are those that become habituated to humans first, then learn to associate food with humans and thereby become a potential nuisance and public safety risk (Herrero 2002). Therefore, **baiting that is conducted in a manner consistent with required mitigations (e.g., signage, setback, cleanup) is unlikely to result in food conditioning.**

In winter 2022-2023, 28 scientists and managers from the North American Bear Expert Team of the International Union for Conservation of Nature (IUCN) were queried about bear baiting (Trujillo et al. in prep.). None of these queried scientists and managers worked for NPS. There was unanimous agreement that baiting bears with large quantities of human food was functionally equivalent to feeding bears, and 26 experts also agreed that this bait resulted in a fixed resource that may be defended by a bear similar to defending a carcass. For natural foods, 25 experts agreed that natural foods such as ungulate carcasses, salmon, and berries at the bait stations could also result in a similar defended fixed resource. 24 of the 28 experts disagreed that public safety concerns were resolved by stipulations for bait stations located one-half mile from a trail or a road, and 21 of the 28 experts also disagreed that stipulating bait stations a mile from a cabin or other dwelling resolved public safety or property damage concerns. Most (22 of the 28) technical experts agreed that bear baiting will increase the likelihood of defense of life and property kills of bears. Thus, unlike the 2020 Rule FONSI conclusion, the majority of these scientists agreed that bear baiting is likely to result in food conditioning even with stipulations. As the 2020 Rule FONSI indicates above, those food-conditioned bears “thereby become a potential nuisance and public safety risk.”

Considering the potential for significant human injury or even death, these experts considered the overall risk of bear baiting to the visiting public to be moderate to high. These findings generally agree with the universal recognition in the field of bear management that food conditioned bears result in increased bear mortality and heightened risk to public safety and property. The findings also are consistent with the State’s management plan for Denali State Park (ADNR 2006). The management plan expresses concern that bear baiting “teaches bears to associate humans with food sources” and states that bear baiting is in direct conflict with recreational, non-hunting uses of the park. The plan further notes that bear baiting has “the potential for creating serious human-bear conflicts, by encouraging bears to associate campgrounds and other human congregation points with food sources.”

Currently, the peak visitor season in Alaska is June through August. This heightened risk to public safety and property from bear baiting, combined with the expectation that the peak visitor season is expected to expand into May and September for some Alaskan park units (Albano et al. 2013), most likely increases the potential for bear-human conflicts from the anticipated increase in visitor numbers in months that have historically not had much visitation. Recognizing this future scenario, the NPS has selected the action alternative that will best meet the purpose and need to balance recreational opportunities while protecting natural resource and public safety.

In addition to the public safety concerns, NPS also closely examined bear baiting and how it changes natural behavior. By design, baiting of bears alters their natural behavior to increase their predictability and facilitate harvest. This behavioral alteration directly conflicts with NPS policy to maintain natural processes and wildlife populations, including behaviors. The 28 experts from the North American Bear Expert Team of the IUCN were further queried about how baiting affected natural bear behavior (Trujillo et al. in prep.). Of the 28 experts, 27 agreed that baiting bears using processed foods such as dog food or pastries may alter natural bear behavior with 25 experts agreeing that it would alter bear behavior beyond the immediate baiting season. For natural foods such as carcasses, salmon, or berries used at bait stations, 25 experts agreed it would alter natural bear

behavior while 22 experts agreed it would alter bear behavior beyond the immediate baiting season. There was unanimous opinion that the processed foods at bait stations have the potential to impact ecosystem components beyond bears (for example, on non-target species such as foxes and wolves). Most experts (22 out of 28) agreed that baiting bears with processed foods would lead to the killing of bears in defense of life or property.

The selected action proposes a rule that prohibits bear baiting in national preserves in Alaska. The selected action meets the purpose and need by addressing public safety concerns regarding bear baiting and consistency with NPS management policies that require the NPS to manage park lands for natural processes and wildlife behaviors. Bait that hunters typically use to attract bears includes processed foods like bread, pastries, dog food, and bacon grease. The NPS mission is broad and includes measures to promote the safety of those who visit System units (see 2006 NPS Management Policies, Section 8.2.5) as well to protect natural wildlife populations (see 2006 NPS Management Policies, Section 4.4.2). This proposed rule will lower the probability of visitors encountering a bait station where bears may attack to defend a food source. Further, this proposed rule will lower the risk that bears will associate food at bait stations with humans and become conditioned to eating human-produced foods, thereby creating a public safety concern. This action to prohibit baiting is supported by these two primary risk factors and other considerations that are discussed below.

Primary Risk Factor One: Bears Defending a Food Source

The risks caused by humans feeding bears (including baiting them with food) are widely recognized (Glitzenstein and Fritschie 1995, Herrero 2018, ADNR 2006). Bears are more likely to attack when defending a food source, putting visitors who encounter a bear at or near a bait station or a kill site at significant risk (Glitzenstein and Fritschie 1995, Herrero 2018). Visitors to national preserves in Alaska may inadvertently encounter bears and bait stations while engaging in sightseeing, hiking, boating, hunting, photography, fishing, and a range of other activities. This is because despite the vast, relatively undeveloped nature of these national preserves, most visitation occurs near roads, trails, waterways, or other encampments (e.g., cabins, residences, communities). Establishing and maintaining a bait station requires the transport of supplies, including bait, barrels, tree stands, and game cameras. The same roads, trails, and waterways used by visitors are, therefore, also used by those setting up a bait station. Thus, despite the vast landscapes, bear baiting and many other visitor activities are concentrated around the same limited access points. Processed foods are most commonly used for bait because they are convenient to obtain and are attractive to bears. Processed foods do not degrade quickly nor are they rapidly or easily broken down by insects and microbes. As a result, they persist on the landscape along with the public safety risk of bears defending a food source.

The NPS recognizes that there are restrictions in State law intended to mitigate the risks described above. Bait stations are prohibited within ¼ mile of a road or trail and within one mile of a dwelling, cabin, campground, or other recreational facility. State regulations also require bait station areas to be signed so that the public is aware that a bait station exists. Although these mitigation measures may reduce the immediate risk of visitors approaching a bear defending bait, NPS records indicate that bait stations established at Wrangell-St. Elias National Preserve often do not comply with the State's

minimum distance requirements. Further, these requirements do not mitigate the risk of other adverse outcomes associated with baiting that are discussed below.

Primary Risk Factor Two: Habituated and Food-Conditioned Bears

Another aspect of bear baiting that poses a public safety and property risk is the possibility that bears become habituated to humans through exposure to human scents at bait stations and then become food conditioned, meaning they learn to associate humans with a food reward (bait). This is particularly true of processed foods that are not part of a bear's natural diet because virtually all encounters with processed foods include exposure to human scent.

It is well understood that habituated and food-conditioned bears pose a heightened public safety risk (Glitzenstein and Fritschie 1995, Herrero 2018). The published works of Stephen Herrero, a recognized authority on human-bear conflicts and bear attacks, explain the dangers from bears that are habituated to people or have learned to feed on human food; highlight that habituation combined with food-conditioning has been associated with a large number of injuries to humans; and indicate that bears may become food-conditioned from exposure to human food at bait stations.

The State's mitigation measures mentioned above, including requirements for buffers and signage, do not adequately address the risk associated with habituated and food-conditioned bears because bears range widely, having home ranges of tens to hundreds of square miles (Glitzenstein and Fritschie 1995). The buffers around roads, trails, and dwellings are therefore inconsequential for bears that feed at bait stations but are not harvested there. These bears have the potential to become habituated to humans and conditioned to human-produced foods, resulting in increased likelihood of incidents that compromise public safety, result in property damage, and threaten the lives of bears who are killed in defense of human life and property.

2.2.2 State Law Addressing Predator Harvest

NPS has also reconsidered the 2020 Rule related to predator control actions by the State and NPS policy. State and Federal wildlife management objectives are similar but not equivalent. Therefore, the NPS cannot fully rely on State management to ensure consistency with Federal law and policy. NPS policy interprets and implements the NPS Organic Act. NPS Management Policies require the NPS to manage National Park System units for natural processes, including natural wildlife fluctuations, abundances, and behaviors, and specifically prohibit the NPS from engaging in predator reduction efforts to benefit one harvested species over another or allowing others to do so on NPS lands (NPS Management Policies 2006, Ch. 4). These activities are prohibited by policy even if they do not actually reduce predator populations or increase the number of prey species available to hunters.

The intention of the State's focused predator harvests and intensive management is to target predator species (bears, wolves, and coyotes) and increase ungulate populations (moose and caribou). Such actions (also referred to as predator control) directly conflict with NPS policy to maintain natural processes and wildlife populations. Additionally, managed predator reductions to benefit prey can contribute to varied outcomes in herds including increased prey numbers, reduced local habitat

quality, signs of nutritional stress in prey, and range shifts. For example, results on caribou from State predator control actions have been seen by Alaska Department of Fish and Game (ADFG) biologists in the Forty-Mile Caribou Herd (ADFG 2022) where the herd doubled in size from 2005-2017 and then declined by more than half by 2022 likely due, in part, to nutritional stress and overgrazing in the herd's core range.

While in the FONSI for the 2020 Rule (NPS 2019), “the NPS determined that there would likely be only a low level of take for predators,” the recent State management action that occurred outside of the preserves to try to increase the Mulchatna caribou herd where 99 bears were killed over a 17-day period (ADFG 2023) is an example of the liberalized predator harvest that the State considers to be reasonable. The NPS does not consider this action by the State to be a “low level of take” and is concerned that this scale of predator control could be promoted in the preserves through state authorizations. These recent State management actions for increasing prey species by liberalizing predator control methods have further caused the NPS to reconsider the 2020 Rule. For this reason, the NPS reaffirms its policy that actions intended to reduce predator species, whether effective or not, are not allowed on lands managed by the NPS. However, the NPS does not believe it is necessary at this time to incorporate this prohibition into the regulatory text of this final rule. At this time, the NPS believes that its policy will be effective in avoiding potentially negative impacts such as a population decline resulting from sustained predator control efforts (Revised EA, Section 3.2.2). It should be noted that park superintendents in Alaska may also use this clarified policy in support of closures or other measures as appropriate. The NPS may reconsider whether this policy statement should be incorporated into regulations in the future. The selected action meets the purpose and need by improving governmental functions by ensuring that national preserves are managed in a manner that is consistent with NPS policies.

2.2.3 The Meaning and Scope of Hunting for “Sport Purposes” Under ANILCA

The interpretation of the term “sport” in this rule expands on the NPS interpretation from previous rulemaking. The NPS has re-evaluated whether it was appropriate for the 2020 Rule to change its interpretation of the term “sport” from the 2015 Rule. The 2015 Rule restricted harvest for “sport purposes” and did not address harvest for subsistence purposes. Although the phrase “sport purposes” is used in ANILCA, the statute does not define the term “sport.” The NPS concluded in the 2015 Rule that the practices of harvesting swimming caribou and taking caribou from motorboats under power were not consistent with generally accepted notions of “sport” hunting. The 2020 Rule interpreted the term “sport” in ANILCA’s authorization for harvest of wildlife for sport purposes in NPS national preserves in Alaska differently than the 2015 Rule. The NPS stated that in the absence of a statutory definition, the term “sport” merely served to distinguish sport hunting from harvest under federal subsistence regulations. Consequently, practices that may not be generally compatible with notions of “sport” – such as harvesting swimming caribou or taking cubs and pups or mothers with their young – may be used by anyone in the preserves in accordance with State law. As discussed above, the need for the revision of the rule is that the NPS has determined that the 2020 Rule is not compatible with generally accepted notions of “sport” hunting and is in tension with NPS management policies that prohibit predator control on NPS lands.

The NPS believes a more faithful interpretation of this provision is to give a meaning to the term “sport” that recognizes the decision by Congress to use this specific term in the statute. The NPS believes that the best understanding of this term is consistent with the meaning of the related term “sporting”, which incorporates principles of fairness and, in the context of wildlife harvest, fair chase. Giving "sport" this meaning also is more consistent with the overall intent of Congress to provide a preference for subsistence harvest under Title VIII of ANILCA. In contrast to harvest for sport or recreation, harvest for subsistence use is not bound by Western notions of fair chase. Rather, subsistence values an effort in support of sustenance and cultural traditions. This expanded interpretation is consistent with the 2015 Rule and NPS statements in the Federal Register concerning a regulatory action that was finalized in 1995 (60 FR 18534) to prohibit same-day-airborne hunting of various species (now codified at 36 CFR 13.42(d)). The NPS interprets the term “sport” to include the concept of fair chase as articulated by hunting organizations, as not providing an unfair advantage to the hunter and allowing the game to have a reasonable chance of escape. The selected action meets the purpose and need by improving governmental functions by ensuring that national preserves are managed in a manner that is consistent with NPS policies.

2.2.4 Trapping Definition Clarifications

Finally, the selected action proposes to revise in regulations the definition of “trapping” to clarify that trapping only includes activities that use a “trap” as that term is defined in NPS regulations. The revision in this rule resolves any question about whether trapping can include any method of taking furbearers under a trapping license, which could include the use of firearms depending upon the terms of the license. This change more closely aligns the definition of “trapping” for NPS system units in Alaska with the definition that applies to all other NPS System units (see 36 CFR 1.4). The NPS further modified the definition of trapping to clarify that a firearm can be used for humane dispatch in conjunction with a trapping license when a furbearer is (1) ensnared in an intact trap; (2) ensnared by a trap that is no longer anchored; or (3) mortally wounded by a trap but has broken free from the trap, during an open trapping season for that species. This allows the humane dispatch of a furbearer that has been caught in a trap. Free-ranging furbearers may not be harvested with a firearm under a trapping license, but may be harvested with a firearm under a hunting license during an open hunting season for the harvested species. The selected action meets the purpose and need by balancing recreational opportunities while protecting natural resource and public safety.

2.3 Other Alternatives Analyzed

The Revised EA analyzed three alternatives and their impacts on the environment, Alternative 1: No-Action, Alternative 2: January 2023 Proposed Action, and Alternative 3: Revised Preferred Alternative of the Revised EA.

2.3.1 Alternative 1: No-Action

Under this Alternative, the 2020 Rule would continue to be implemented as is under the current regulatory framework. The 2020 NPS wildlife regulations would not be amended, and all State laws and regulations that do not conflict with existing federal laws or regulations would apply on the preserves. Actions considered by the NPS to be inconsistent with the idea of “sport” hunting, such as

taking black bear cubs, and sows with cubs, with artificial light at den sites, or taking wolves and coyotes (including pups) during the denning season, would continue to be authorized by the State in certain locations on the preserves. State hunting regulations that currently prohibit acts such as shooting from or on a road, or using poison to kill or incapacitate wildlife, would not be permanently adopted and could be subject to change in the future. The interpretation of NPS policy for natural processes would include that the State would not be practicing predator control/intensive management of predators within the preserves. This alternative was not selected as the current regulatory framework would remain in tension with NPS policy, as the 2020 Rule was, and would not align with NPS policies to protect wildlife and promote visitor safety.

2.3.2 Alternative 2: January 2023 Proposed Action

Alternative 2, the proposed action in the January 2023 EA (NPS 2023), analyzed proposed actions for: prohibiting methods considered inconsistent with “sport”; and adopting in regulations a table of 14 prohibited practices. These proposed actions are briefly described below with rationale for why they were not selected.

Prohibited acts: The NPS proposed to prohibit methods considered inconsistent with “sport”, including taking big game while the animal is swimming, taking wildlife from a motorboat, taking wolves and coyotes (including pups) during their denning period (May 1-August 9), and taking cubs or female bears with cubs, on the preserves.

Prohibited practices: The NPS proposed to adopt in federal regulations the State general hunting regulations that prohibit the acts listed in Table 1.

Rationale for not selecting these proposed actions: In the selected action, the NPS does not prohibit methods considered inconsistent with “sport” and does not adopt the table of 14 prohibited practices (Table 1) (NPS 2023) and instead only prohibits the use of bait, and specifically the practice of bear baiting. Most of the practices from Table 1 are currently prohibited under state law. To the extent any of the practices are not currently allowed under state law, they typically only apply to a limited number of preserves. User groups including Alaska Native entities that commonly harvest wildlife in national preserves in Alaska expressed their belief, consistent with NPS management observations, that there is little to no demand to engage in these harvest practices in national preserves (other than limited demand to bait bears in Wrangell-St. Elias National Preserve). Also, the allowance for the practices considered inconsistent with “sport” is limited. For taking big game while an animal is swimming, this provision would have only applied on waters that are under NPS jurisdiction (see 36 CFR 1.2(f)). The NPS may reconsider taking action regarding this practice in the future.

While NPS believes these practices are generally not appropriate under the NPS management framework, the NPS has decided against taking action at this time for all the practices except using bait, specifically to take bears. The practice of bear baiting poses significant public safety concerns, which urgently requires regulatory action. Concerns with the other practices do not carry the same degree of urgency. They are either already prohibited by the state or occur on a limited basis. Additionally, park superintendents have authority to prohibit or restrict these practices if they deem it necessary.

For these reasons, the NPS has decided not to adopt regulatory prohibitions on these practices at this time. The NPS may re-evaluate regulatory action in the future.

Table 1: Proposed Prohibitions for NPS Preserves

Prohibited Acts	Exceptions
(1) Shooting from, on, or across a park road or highway.	None.
(2) Using any poison or other substance that kills or temporarily incapacitates wildlife.	None.
(3) Taking wildlife from an aircraft, off-road vehicle, motorboat, motor vehicle, or snowmachine.	If the motor has been completely shut off and progress from the motor's power has ceased.
(4) Using an aircraft, snowmachine, off-road vehicle, motorboat, or other motor vehicle to harass wildlife, including chasing, driving, herding, molesting, or otherwise disturbing wildlife.	None.
(5) Taking big game while the animal is swimming.	None.
(6) Using a machine gun, a set gun, or a shotgun larger than 10 gauge.	None.
(7) Using the aid of a pit, fire, artificial salt lick, explosive, expanding gas arrow, bomb, smoke, chemical, or a conventional steel trap with an inside jaw spread over nine inches.	Killer style traps with an inside jaw spread less than 13 inches may be used for trapping, except to take any species of bear or ungulate.
(8) Using any electronic device to take, harass, chase, drive, herd, or molest wildlife, including but not limited to: artificial light; laser sights; electronically enhanced night vision scope; any device that has been airborne, controlled remotely, and used to spot or locate game with the use of a camera, video, or other sensing device; radio or satellite communication; cellular or satellite telephone; or motion detector.	(i) Rangefinders may be used. (ii) Electronic calls may be used for game animals except moose. (iii) Artificial light may be used for the purpose of taking furbearers under a trapping license during an open season from Nov. 1 through March 31 where authorized by the State. (iv) Artificial light may be used by a tracking dog handler with one leashed dog to aid in tracking and dispatching a wounded big game animal. (v) Electronic devices approved in writing by the Regional Director.
(9) Using snares, nets, or traps to take any species of bear or ungulate.	None.
(10) Using bait.	Using bait to trap furbearers.
(11) Taking big game with the aid or use of a dog.	Leashed dog for tracking wounded big game.
(12) Taking wolves and coyotes from May 1 through August 9.	None.
(13) Taking cub bears or female bears with cubs.	None.
(14) Taking a fur animal or furbearer by disturbing or destroying a den.	Muskrat pushups or feeding houses.

2.3.3 Alternative 3: Revised Preferred Alternative

Alternative 3, the preferred alternative in the Revised EA, analyzed proposed actions for: prohibiting methods considered inconsistent with “sport” and proposed to adopt in regulations a table of 14 prohibited practices; including predator control in regulation; and requiring a finding of compatibility for new state-authorized harvest methods. These proposed actions are briefly described below with rationale for why they were not selected.

Prohibited acts: The action and rationale are the same as above under Alternative 2.

Prohibited methods: The action and rationale are the same as above under Alternative 2.

Predator control in regulation: The NPS proposed to incorporate into regulation the prohibition on predator control. Currently, the prohibition on predator control is only in NPS policy (NPS 2006), and this change would convey the rationale of the regulation and clearly articulate the prohibition on predator control in regulation.

Rational for not selecting this proposed action: The NPS decided not to incorporate the provision from NPS Management Policies (2006) regarding predator control into the regulatory text of the final rule. The NPS determined it is not necessary to repeat this prohibition at this time in the regulatory text of this final rule. The NPS may reconsider whether this policy statement should be incorporated into regulatory provisions in the future.

Finding of compatibility: The NPS proposed to require a finding of compatibility with NPS policies prior to authorizing future new State methods and means in NPS preserves. New methods of taking wildlife authorized by the State would have been prohibited unless and until the NPS Regional Director for Alaska made a written determination that such use was compatible with Federal law and policy. Currently, NPS regulations adopt State laws and regulations about hunting and trapping in national preserves unless there is a conflict with federal laws or regulations; however, there is often an initial lack of clarity on whether or not new State laws conflict.

Rationale for not selecting this proposed action: The NPS has determined that it will continue to follow its current requirement to promulgate regulations clearly prohibiting the authorized activities so that the State law authorizing them is not adopted on national preserves.

3 Significance Criteria Review

3.1 Potentially Affected Environment

The area where the proposed regulation will take effect is limited to 10 national preserve units in Alaska (including the Alagnak Wild River corridor adjacent to Katmai National Preserve) totaling approximately 20 million acres (Figure 1). Approximate preserve sizes, including acreage of designated and eligible wilderness, and some of the key species identified in ANILCA Title II for protection in these areas are summarized in Appendix B of the EA (Revised EA, p. 62).

Resources within the potentially affected environment that may be impacted include public safety; wildlife; federal subsistence use; public uses and enjoyment; and wilderness character. A summary of these impacts for all alternatives is shown in Table 3 of the Revised EA (Revised EA, pp. 44-46).

3.2 Degree of Effects of the Action

The NPS considered the following actual or potential, beneficial or adverse project effects in evaluating the degree of effects (40 CFR 1501.3(b)(2)) for this selected alternative.

3.2.1 Beneficial and Adverse, and Short-term and Long-term Effects of the Selected Alternative

No significant impacts to resources were identified that will require analysis in an environmental impact statement (EIS). Whether taken individually or as a whole, the impacts of the selected alternative; including direct, indirect, and cumulative effects; do not reach the level of a significant effect because the proposed rulemaking will formalize in regulations practices that are consistent with applicable NPS laws and policies; the anticipated impacts to the human environment are not highly uncertain or unique and do not involve unknown risks; and the anticipated impacts from implementing the selected alternative are understood based on NPS experience with the 2015 Rule. Further, most effects are primarily beneficial and the adverse effects are minor.

3.2.2 Public Safety

As discussed in Sections 3.1.3 and 3.1.4 of the Revised EA, the selected alternative will prioritize public safety by decreasing the overall risk of public safety from bear-human interactions especially to food-conditioned bears. By not allowing sport hunting bear bait stations, the public will not be interacting with bears that become food conditioned at sport hunting bear bait stations in the preserves and these bears will be less likely to associate humans with food in the preserve. Trapper safety may also benefit from this alternative as they can humanely dispatch a trapped animal with a firearm. This alternative is compatible with promoting public safety and consistent with NPS policies as preventing even one death or severe injury to the public is a meaningful potential benefit from this alternative.

When combined with the effects of the selected alternative, the effects of environmental trends and past, ongoing, and reasonably foreseeable future actions would still have the potential for adverse impacts on public safety, but to a smaller degree than what is currently allowed. Effects from climate change will likely occur such as changing timing of fish, berries, and other food sources (Taylor 2008, Deacy et al. 2017); declining fish runs (Macdonald et al. 2000, Crossin et al. 2008); and bears leaving hibernation earlier (Pigeon et al. 2016, Johnson et al. 2018). Without sport hunting bait stations in the preserve, these stressed bears will have less opportunity to be conditioned to human-associated food and will not be defending bait stations from people. While food-conditioned bears from outside the preserve may still come into the preserve, the selected alternative will still likely decrease the overall number of food-conditioned bears and reduce the threat. The selected alternative will not have significant adverse impacts to public safety, and has overall beneficial effects (Revised EA, Section 3.1.4).

3.2.3 Wildlife

As discussed in Sections 3.2.3 and 3.2.4 of the Revised EA, the selected alternative is consistent with NPS policies and promotes the maintenance of natural ecosystems, processes, and behaviors of

wildlife. Implementation of the selected action will prohibit harvest of bears over bait, although it will continue long-standing predator harvest opportunities. The humane dispatch of trapped wildlife by firearm will be an effect on the individual animal and will not affect the population. The selected alternative prevents localized impacts to wildlife from bear baiting (i.e., the feeding and conditioning of wildlife to human foods and altered wildlife behaviors) and more bears taken in defense of life and property will likely not occur at the same levels under this alternative, resulting in a beneficial impact to wildlife (Revised EA, Section 3.2.4).

Effects of environmental trends and past, ongoing, and reasonably foreseeable future actions on wildlife and habitat combined with the selected alternative are expected to be more beneficial but still expected to occur along current trajectories at the localized level (Revised EA, Section 3.2.4). In the context of these other actions and trends, the additive impacts of this alternative would not cause adverse cumulative impacts to population levels but may contribute beneficially to cumulative impacts at a localized level by not allowing the harvest of bears over bait. Beneficial direct impacts to wildlife are anticipated under the selected alternative and would not result in significant adverse cumulative effects on overall population levels.

3.2.4 Federal Subsistence Use

As discussed in Sections 3.3.3 and 3.3.4 of the Revised EA, the selected alternative will decrease competition for subsistence users by sport hunters for bears. Elimination of bear baiting for sport hunting may result in a very small increase in opportunity for federal subsistence bear harvest. Concerning black bear baiting, over an 18-year period, federally qualified subsistence hunters were found to have only harvested three black bears over bait (Hilderbrand et al. 2013). Brown bear baiting has been more recently allowed by the State for sport hunting in certain game management units and has led to an increase in bear baiting stations. The prohibition of bear baiting in preserves may have a slightly beneficial effect for subsistence users harvesting brown bears.

3.2.5 Public Uses and Enjoyment

As discussed in Sections 3.4.3 and 3.4.4 of the Revised EA, the selected alternative will support natural processes and will likely be beneficial to wildlife viewing and public safety, use, and enjoyment of Preserves. Those sport hunters who are only capable of hunting bears over bait could be adversely affected by fewer methods available to them than the no-action. Other recreational users will continue to enjoy more natural environments and ecosystems and the opportunities to observe naturally functioning ecosystems. Trappers will have a slight localized benefit to dispatch trapped wildlife.

The effects on public uses and enjoyment from environmental trends and other past, ongoing, and reasonably foreseeable future actions will be similar to the no-action alternative. Liberalized predator control on adjacent lands similar to the 2023 State action (ADFG 2023) could decrease opportunities for bear viewing as well as wolf viewing inside the preserves. Cumulative effects could result in small reductions in sport harvest of bears from preserves from no bear baiting, and potential increase of other public uses and enjoyment to observe and study wildlife in its natural conditions, although it would likely be offset by predator control actions on adjacent lands. Overall, the selected alternative

may have some minor adverse effects to sport hunters, but would have beneficial effects to bear/wildlife viewers and other visitors such as researchers, and will not have significant adverse impacts to public uses and enjoyment (Revised EA, Section 3.4.4).

3.2.6 Wilderness Character

As discussed in Sections 3.5.3 and 3.5.4 of the Revised EA, the selected alternative will preserve and improve wilderness character for natural, untrammeled, and undeveloped qualities, as well as opportunities for solitude long-term. This alternative is compatible with the maintenance of natural ecosystems, processes, and wildlife populations and behaviors. Prohibiting sport-hunting bear bait stations will preserve natural bear behavior and the natural quality of wilderness character. With the elimination of sport-hunting bear bait stations, the solitude or a primitive and unconfined type of recreation quality of wilderness character will be maintained, which could result in fewer negative encounters with wildlife or between bear hunters and other visitors to the preserve areas and will result in fewer signs of modern civilization inside wilderness (i.e., bear baiting stations). Without sport-hunting bear baiting, there will likely be less use of off-road vehicles (ORVs) nearby which could help preserve the undeveloped quality of wilderness. It is possible that the use of a firearm to dispatch a trapped animal could negatively affect solitude.

Effects of environmental trends and past, ongoing, and reasonably foreseeable future actions and the selected alternative will be more beneficial than the no-action alternative as prohibitions to bear baiting and predator control will preserve Natural, Untrammeled, and Undeveloped wilderness values as well as Other Features of Value. Solitude wilderness values will also be protected to a lesser degree. A road to the Ambler Mining District in the area of Gates of the Arctic National Preserve that is currently eligible for wilderness designation will be expected to affect the eligibility by changing the wilderness character of that area (Revised EA, Section 3.5.4). Additional negative cumulative impacts will occur in the area adjacent to the Ambler access project. Cumulative impacts are expected to cause minor degradation of wilderness character but the overall cumulative impacts under this alternative will be more beneficial when compared to the no-action alternative. The selected alternative, when combined with effects of past, ongoing, and reasonably foreseeable future actions and natural events, will likely have a larger beneficial impact on wilderness character over time. The selected alternative will not have significant adverse effects on wilderness character.

3.2.7 Effects on Public Health and Safety

The selected alternative will have beneficial effects on public health and safety (see Section 3.2.2 of this document and the Public Safety section of the Revised EA, Section 3.1.4). Some level of risk is inherent in any outdoor recreation in wildlife habitat, but risks would be lowered under the selected alternative. Bears will not be baited at sport hunting bait stations in the preserves and will not have the chance to be conditioned or habituated to human foods from these non-existent bait stations, reducing the risk of public safety from food conditioned bears. As stated above, it is well understood that habituated and food-conditioned bears pose a heightened public safety risk (Glitzenstein and Fritschie 1995, Herrero 2018); habituated and food-conditioned bears have been associated with a large number of injuries to humans. By removing sport-hunting bait stations from the preserves, NPS

is reducing these potential risks for public health and safety. Additionally, trapper safety will likely be improved as trappers can dispatch an animal that has been trapped or broken free. The selected alternative is compatible with promoting public safety and is consistent with NPS policies, and preventing one death or severe injury is a benefit to public health and safety.

Overall, the adverse impacts to public safety under current regulations will be reduced and mitigated by the selected alternative. The selected alternative will provide long-term beneficial impacts to public safety.

3.2.8 Effects that Would Violate Federal, State, Tribal, or Local Law Protecting the Environment

The selected alternative does not threaten or violate applicable federal, state, or local environmental laws or requirements imposed for the protection of the environment. A detailed discussion of the impacts to the environment resulting from the selected alternative is included in Chapter 3 of the Revised EA.

4 Consultation and Coordination

Tribal consultation with potentially affected Alaska Native Tribes and potentially affected ANCSA Corporations (collectively referred to as Tribal entities), pursuant to Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) and 512 Department Manual Chapters 4 to 7, occurred throughout the process. The NPS has considered Indigenous Knowledge in analysis of the rule in accordance with the incorporation of Secretarial Order 3403, the Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters.

The NPS reached out to Tribal entities starting in April 2022 with the information that the NPS was likely to reconsider the substance of the 2020 Rule in an upcoming proposed rule. On January 5, 2023, the NPS sent a letter inviting consultation to Tribal entities. The NPS followed this letter with calls and emails. The NPS met with every entity that requested a meeting in the venue and format of their choosing to best facilitate their meaningful engagement. Additionally, the NPS continues to call, email, attend council meetings, or otherwise interact with Tribal entities throughout the life of the project to receive feedback. The feedback provided to date has been incorporated by the NPS into the Revised EA and rule.

The NPS reached out to State and potentially affected user groups starting in April 2022 with the information that the NPS was likely to reconsider the substance of the 2020 Rule in an upcoming proposed rule. The NPS shared this information at numerous public meetings including State Board of Game (BOG) meetings, Subsistence Resource Commission (SRC) meetings, Regional Advisory Council (RAC) meetings, and Federal Subsistence Board meetings. The NPS also shared this information at professional hunting organization meetings, monthly coordination calls between the State and the DOI, and in one-on-one meetings between State and federal agency leadership in Alaska.

The NPS consulted with the State of Alaska following the publication of the proposed rule. Meetings were held in February and March 2023 between NPS and ADFG. Further, the NPS presented the proposed rule at numerous public meetings following publication of the rule, including State BOG meetings, SRC meetings, and RAC meetings.

5 Finding of No Significant Impact

Based on the information contained in the Revised EA, I have determined that the selected alternative does not constitute a federal action having a significant impact on the human environment. Therefore, an EIS will not be required.

This finding is based on consideration of Council on Environmental Quality (CEQ) criteria for significance (40 CFR 1501.3 (b)) regarding the potentially affected environment and degree of effects of the impacts described in the Revised EA.

Appendix A: Response to Comments

Appendix B: Non-impairment Determination

Approved:

M. Sarah Creachbaum, Alaska Regional Director

Date

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Appendix A: Response to Public Comments

The National Park Service (NPS) reviewed all comments received during the public comment period. Similar comments are grouped by topic. A full Comment Analysis Report is available in Appendix E of the Revised Environmental Assessment (EA) (Revised EA, p. 71).

Topic: Economic Costs and Benefits

Comment 1: Commenters suggested that the economic benefit of wildlife viewing, outdoor recreation, and tourism to Alaska's state economy are greater than the economic benefit of sport hunting.

Response 1: The NPS agrees that several analyses, including ECONorthwest (2014), USDOJ-USDOC (2018), and The University of Alaska (2019), have estimated that wildlife viewing contributes more to Alaska's state economy in terms of jobs, labor income, and revenue, than hunting. However, the economic analysis for this rule evaluates costs, benefits, and impacts to small businesses relative to baseline conditions (the conditions absent the rule). The NPS does not expect the rule to affect visitation, or the number of days visitors come to national preserves to view wildlife or engage in other non-hunting recreational activities. Further, the NPS expects impacts to hunters to be small. Individuals who choose to hunt wildlife in national preserves would be mostly unaffected by the rule, and hunters that are interested in the specific practices affected by this rule could substitute many other locations in Alaska (or other seasons) in which such hunting practices are still allowed. As a result, the NPS does not expect the rule to impact small businesses or the overall state economy.

Comment 2: Commenters suggested that the intrinsic value of protecting wildlife outweighs potential costs to sport hunters.

Response 2: The NPS acknowledges that there are many ways to assess the value of wildlife. In economics, for example, value is measured by consumer surplus, which is calculated as an individual's willingness to trade off money (and thus other goods and services) for a resource or service as a measure of how much that resource or service is "worth" to that individual; how much they value it. While this is an anthropocentric concept of value based on the ways in which a resource or service benefits human well-being, it is a useful measure that allows for the comparison of benefits and costs in a consistent and well-understood metric of dollars. This is also a key component of the measure of value that Federal agencies are directed to use in cost-benefit analyses (OMB Circular A-4; OMB Circular A-94). Importantly, however, such economic values do not have to involve any human use of, or interaction with, a resource. Passive, or nonuse values, capture the values people place on the existence of wildlife or the preservation of wildlife for future generations, independent of any "use" of that wildlife. Intrinsic value, on the other hand, is an eco-centric concept reflecting the perspective that wildlife has value in its own right, regardless of its contribution to human uses or well-being (Rea and Munns, 2017). Passive use value is the most closely related economic concept to intrinsic value, but still focuses on human well-being and human-ascribed values. As noted by Rea and Munns (2017), while passive use values can be quantified monetarily through economic

valuation, there are no standard metrics or methods for describing intrinsic values. Methods to quantify intrinsic values are evolving and have not yet reached the same level of acceptance as economic valuation methods.

In the previous version of the cost-benefit analysis for this rule, the NPS included one example of relevant passive use values associated with wildlife in Alaska (bears) that could be affected by this rule. In response to these comments, the NPS has expanded the discussion by including a definition of passive use value, a definition of intrinsic value, and how the two relate. The NPS has also included additional references for passive use values and intrinsic values (Subroy et al. 2019, Rea and Munns 2017, Richardson and Looms 2009).

Comment 3: Commenters suggested that the value of a living animal spans time (e.g., through wildlife viewing) and is greater than that of the associated pelt or meat.

Response 3: The NPS is aware of a study by Elbroch et al. (2017) that compared the tourism spending and business revenue generated by one commonly seen and photographed bobcat in Yellowstone National Park to the average price of a bobcat pelt and hunting license. The NPS is also aware of several analyses that have demonstrated the importance of wildlife viewing and the greater overall contributions such tourism makes to Alaska's state economy compared to hunting.

Cost-benefit analyses of Federal regulatory actions, however, evaluate and compare specific measures of economic value referred to as consumer surplus—e.g., the value of recreational opportunities such as hunting and wildlife viewing, and passive use values associated with the preservation and avoided loss of wildlife. This is the appropriate economic measure of societal welfare, allowing for a comparison of costs and benefits in consistent terms (OMB Circular A-4; OMB Circular A-94). Economic analyses of NPS regulatory actions also evaluate impacts to small businesses associated with potential changes in park visitation.

This regulatory action is not expected to affect visitation or the number of days visitors come to national preserves to view wildlife, and as a result, is not expected to have any associated economic effects on consumer surplus or impacts to guides and other small businesses. However, this rule could have a small impact on wildlife sightings for those visitors who already come to national preserves. The NPS acknowledges that a single animal has the potential to generate wildlife viewing opportunities for many different people that spans a longer period of time and has discussed this issue in the updated cost-benefit analysis for this rule.

Topic: NPS Legal Authority

Comment 4: Commenters stated that the rule exceeds the NPS's authority under the Alaska National Interest Lands Conservation Act (ANILCA). Commenters stated that ANILCA gives sole discretion to the State to regulate harvest of wildlife for sport purposes under 16 United States Code (U.S.C.) 3202(a) and that 16 U.S.C. 3201 limits NPS authority to implementing temporary closures in specific locations.

Response 4: The NPS recognizes the State has responsibility and authority for management of fish and wildlife on national preserves in Alaska (16 U.S.C. 3202(a)). Similarly, however, the NPS has responsibility and authority over the management of these areas (16 U.S.C. 3202(b)). These principal

statements in ANILCA establish a legal framework where authority and responsibility for managing wildlife on national preserves are shared between the State and Federal governments. In a separate section of the statute, ANILCA addresses the management of wildlife on national preserves specifically (16 U.S.C. 3201). It begins by directing the NPS to administer national preserves as units of the National Park System in the same manner as national parks, provided that hunting and trapping must be allowed in accordance with State and Federal law and regulation. All units of the National Park System are governed by the NPS Organic Act, which, among other things, establishes a general mandate to conserve wildlife (54 U.S.C. 100101(a)). The NPS therefore must manage wildlife on national preserves to allow sport hunting, but in a manner that is consistent with the NPS Organic Act, and by inference NPS policies implementing the NPS Organic Act related to the taking of wildlife in System units (NPS Management Policies 2006, Section 4.4.3). ANILCA further states that the Secretary of the Interior (acting through the NPS) may promulgate regulations restricting sport hunting and trapping in national preserves after consultation with the State (16 U.S.C. 3201). This section states specifically that the NPS may designate zones where and periods when no hunting or trapping may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment (16 U.S.C. 3201). This provision does not narrow the NPS's general regulatory authority under ANILCA, 16 U.S.C. 3124, or its general authority to manage wildlife in national preserves; rather it provides specific authority for geographic or temporary closures to hunting or trapping, which complements the NPS's broader regulatory authority. ANILCA authorizes the NPS to promulgate reasonable regulations concerning the take of wildlife in national preserves that are consistent with the mandates of the NPS Organic Act. ANILCA does not require that the NPS defer to State hunting regulations in all instances. This rule does not interfere with the State's authority and responsibility to manage wildlife on national preserves. It prohibits one specific harvest practice on national preserves. The vast majority of State regulations are, and are expected to remain, the governing laws concerning sport hunting in national preserves. This rule is consistent with ANILCA by preserving the status quo that the responsibility and authority for managing wildlife on public lands in Alaska is shared between the State and Federal governments.

Comment 5: Several commenters stated that the term "sport," as used in 16 U.S.C. 3201 and elsewhere in ANILCA, only serves to differentiate between subsistence and non-subsistence take of wildlife in national preserves.

Response 5: The NPS explains the basis for its interpretation of the term "sport," and its incorporation of fair chase principles above. In short, this interpretation is more appropriate than the minimal meaning given to the term in the 2020 Rule, because it recognizes the decision by Congress to use the specific term "sport" and is therefore more consistent with principles of statutory interpretation, and it also adheres more closely to the intent of Congress to provide a preference for subsistence harvest under Title VIII of ANILCA.

Comment 6: Several commenters stated that it is inappropriate to give meaning to the term "sport" in a manner that restricts harvest by individuals for subsistence purposes under state law.

Response 6: These commenters conflate harvest for subsistence under Federal regulations implementing Title VIII of ANILCA and harvest for subsistence under state law throughout Alaska, including on national preserves. The NPS acknowledges that some individuals who harvest wildlife

in national preserves are doing so primarily for food and many may have long standing family traditions doing so. Regardless of the hunter's intent or purpose, however, and regardless of how the State of Alaska labels hunting under state law, ANILCA allows individuals to take wildlife in national preserves for two reasons only: (1) for federal subsistence uses under Title VIII; or (2) for "sport purposes" (16 U.S.C. Section 3201). It would be inappropriate for the NPS to allow harvest in national preserves for any purpose that is not identified in ANILCA.

Comment 7: One commenter stated that the NPS lacks authority to preempt state regulations for managing wildlife because of statements in 43 Code of Federal Regulations (CFR) Part 24 about state authority over fish and wildlife, including on Federal lands within a state.

Response 7: The NPS disagrees with this interpretation of 43 CFR Part 24. This part recognizes state authority over wildlife in units of the National Park System. The provisions in this part, however, are policy statements that do not state or suggest that states have plenary or exclusive authority over wildlife in System units. To the contrary, they outline a policy recognizing the shared responsibility of states and the Federal government for the management of wildlife, and specifically reaffirm Federal authority.

Comment 8: One commenter stated that because national preserve lands were withdrawn after Statehood, that NPS lacks authority to adopt the harvest restrictions in this rule. This commenter further stated that ANILCA removes the NPS's authority to promulgate this rule in 16 U.S.C. Sections 3122 and 3125.

Response 8: These comments fail to acknowledge ANILCA's recognition of the Secretary of the Interior's authority, acting through the NPS, in ANILCA (16 U.S.C. Section 3201), to restrict sport hunting and trapping in national preserves. Some of these comments acknowledge that this section allows the NPS to completely close an area to all hunting, but then argue that NPS lacks authority to close an area to a specific type of hunting (e.g., taking bears over bait). The NPS finds this argument without merit under the plain text of Section 3201 for two reasons: first, to the extent these comments argue that Section 3201 only allows complete closures, the NPS believe that these are complete closures to these specific forms of hunting, and second, the more logical reading of Section 3201 is that if the NPS can prevent a type of hunting by completely closing an area to all harvest, surely it can prevent the same activity through less-restrictive measures that fall short of a complete closure.

Comment 9: Several comments argued it is inappropriate for the NPS to manage harvest for federally qualified subsistence differently than harvest by others and specifically questioned the appropriateness of allowing federal subsistence users to bait bears with natural food items and prohibiting others from doing so under state regulations.

Response 9: The importance of subsistence is readily apparent in ANILCA. It is specifically identified as one of the primary purposes of the statute in Section 3101(c), and there is an entire title in ANILCA devoted to allowing and managing this practice, recognizing the importance of subsistence not just for food but as a cultural practice. Furthermore, the text of ANILCA requires the NPS to prioritize subsistence take in national preserves.

With respect to bear baiting specifically, there are additional reasons to treat Title VIII subsistence users differently. As mentioned elsewhere, subsistence brings a different set of values than harvest for sport purposes. In addition to valuing an economy of effort (as opposed to fair chase), subsistence values maximized use of resources. To that end, it is contrary to traditional harvest practices to use commercial food products to attract wildlife for harvest. Subsistence users traditionally used other naturally occurring items for this purpose that could not be harvested or salvaged. The NPS acknowledges that these natural items, which are authorized for federal subsistence users in national preserves, can similarly attract bears. It is reasonable to allow this practice for a priority user group that fundamentally operates under a different set of values because; 1) it occurs on such a limited scale; 2) bears are exposed to these items as part of their natural history and far less likely to associate them with humans; and 3) natural foods degrade more quickly. For these reasons, this allowance does not carry the same safety risk as the authorization for non-subsistence users.

Comment 10: Comments were received stating that NPS inappropriately described the subsistence authorization in preserves by referring to “local rural residents.”

Response 10: The NPS is not proposing to modify the existing statutory and regulatory construct pertaining to harvest of wildlife in national preserves. Under 36 CFR 13.410, subsistence uses are authorized in national preserves in Alaska by “local rural residents.”

Topic: Bear Baiting for Individuals with Disabilities

Comment 11: Commenters stated that the NPS should allow bear baiting by individuals with disabilities because it is a more efficient and accessible method of harvest.

Response 11: The NPS is primarily concerned in this rule with the risks that bear baiting poses for public safety, which are the same regardless of the abilities of the hunter.

Topic: Definition of Predator Control

Comment 12: Several commenters stated that predator harvest outside of a Board of Game (BOG)-authorized intensive management plan is not predator control, as defined under State law.

Response 12: The NPS acknowledges that the State and the NPS use different terminology for predator management. The State only considers actions implemented by plans authorized under its “intensive management” law as predator control. The term “intensive management” has no meaning under Federal law. The NPS is guided by NPS Management Policies (2006), Section 4.4.3, which prohibits the NPS from allowing others to engage in activities to reduce the numbers of native species for the purpose of increasing the numbers of harvested species (i.e., predator control) on lands managed by the NPS.

Topic: Predator Control Ban

Comment 13: Several commenters stated that predator harvest should be managed by the State to provide moose and caribou for harvest. Commenters stated that the purpose of predator harvest should be to meet harvest needs for moose and caribou and to sustain healthy populations.

Response 13: NPS Management Policies (2006), Section 4.4.3, states that activities to reduce the numbers of native species for the purpose of increasing numbers of harvested species (i.e., predator

control) are not allowed on lands managed by the NPS. This policy applies to national preserves in Alaska notwithstanding any competing purposes for such activities, such as providing a sustained yield of ungulates for human use. While NPS is not including this policy language in the text of the final rule, it remains NPS policy that activities (including by the State) to decrease the number of native species for the purpose of increasing numbers of harvested species are not allowed on NPS managed lands.

Topic: Coyotes are not Native to Alaska

Comment 14: Some commenters stated that coyotes are not native to Alaska and therefore do not deserve the same protection from harvest as other species that historically occupied the lands within the state.

Response 14: Coyotes are native to North America, and while coyotes may not have historically occupied all of their current range, their expansion most likely occurred through natural processes. Consequently, the NPS manages coyotes in the same manner as other native species consistent with NPS Management Policies (2006), Sections 4.1, 4.4.1, 4.4.1.2, and 4.4.2.

Topic: Prohibited Actions – Harvesting Swimming Caribou

Comment 15: Several commenters stated that harvesting swimming caribou is a traditional activity for people who are not federally qualified subsistence users and therefore should be allowed for those people. Commenters suggested that harvest levels for this activity are typically low and therefore have minimal impacts.

Response 15: The NPS removed this provision from the final rule. As previously noted, the allowance for this practice is limited and this provision would have only applied on waters that are under NPS jurisdiction (36 CFR 1.2(f)). The NPS may reconsider taking action regarding this practice in the future.

Topic: NPS Authority on Navigable Waterways

Comment 16: Commenters stated that the NPS lacks authority to regulate the harvest of swimming caribou or taking wildlife from motorboats on waters where the NPS lacks jurisdiction.

Response 16: The NPS removed this provision from the final rule. As previously noted, this provision would have only applied to waters that are under NPS jurisdiction (36 CFR 1.2(f)). The NPS may reconsider taking action regarding this practice in the future.

Topic: Exceptions to Prohibited Methods of Harvest

Comment 17: Commenters suggested that prohibitions on methods of harvest should not apply uniformly across the state, and that there should be exceptions or deviations for specific regions of Alaska where those activities are traditional. One commenter suggested that the superintendents of national preserves should have discretionary authority to authorize these harvest practices where they are traditional.

Response 17: Most of the methods of harvest prohibited by this rule also are generally prohibited under state law. While these practices are inconsistent with ANILCA's authorization for harvest of wildlife for sport purposes in national preserves, the NPS has decided to include in this final rule

only the prohibition on bear baiting given the significant public safety concerns. The NPS may consider addressing the other practices included in the proposed rule in the future.

Comment 18: Several commenters asked the NPS what it considers to be bait, and specifically whether it includes smokehouses and gut piles from legally harvested animals.

Response 18: The NPS considers bait to be any attractant, natural or processed, that is specifically placed on the landscape with the intent of attracting an animal to facilitate harvest. Neither a smokehouse nor a gut pile unmoved from the location of harvest will be considered bait under this rule.

Comment 19: Several commenters stated there is no evidence that identifies a public safety risk associated with bear baiting and/or that any risk that does exist can be mitigated. Commenters stated that the internal NPS query about the risks of bear baiting was insufficient.

Response 19: As discussed in detail above, bear baiting is broadly recognized in the field of bear management to pose a risk to public safety because (1) bears may defend a bait station in the same manner they would defend any other food resource; (2) food conditioning of bears may result in increased bear mortality and heightened risk to public safety and property; and (3) baiting, by its very design and intent, alters bear behavior. Due to these known risks and impacts, avoiding bears defending food resources and preventing bears from associating humans with food are central to the educational messaging of all government agencies that manage areas where bears exist. This is done to promote public safety and reduce the need to kill bears for reasons other than hunting. While mitigations to minimize the potential for negative consequences associated with bear baiting exist under State law, these mitigations do not adequately address safety concerns for the visiting public. The likelihood of a catastrophic consequence, including an injury or death, to a member of the public increases with the presence of a bait station.

Comment 20: Several commenters stated that bear baiting is a sporting practice due to the level of effort and skill required to be successful.

Response 20: The public safety considerations associated with bear baiting are independent of the skill or effort associated with the practice. Bear baiting is not consistent with promoting visitor safety in national preserves.

Topic: Consultation Process

Comment 21: Several commenters raised concerns with the level of outreach, collaboration, and consultation with the State, Tribal entities, and the public.

Response 21: In addition to extending the public comment period for the proposed rule, the NPS did considerable outreach leading up to publication of the proposed rule and during the public comment period.

In the eight months prior to the publication of the proposed rule, the NPS informed the State, Tribal entities, and potentially affected user groups that the NPS was likely to reconsider the 2020 Rule through a new rulemaking. The NPS shared this information at numerous public meetings, including at BOG meetings, Subsistence Resource Commission meetings, Federal Subsistence Regional

Advisory Council meetings, and Federal Subsistence Board meetings. The NPS shared this information at the 2022 Alaska Professional Hunters Association annual meeting that was attended by the State, on monthly coordination calls between the State and the DOI, and in one-on-one meetings between State and NPS leadership in Alaska. Beginning in April 2022, the NPS reached out to Tribes and ANCSA Corporations, and attended meetings with those groups to share information. As mentioned above, the NPS followed those efforts with a letter sent to Tribal entities inviting formal consultation. The NPS met with every Tribal entity that requested a meeting in the venue and format of their choosing to best facilitate meaningful engagement.

Following publication of the proposed rule, the NPS held three consultations meetings with the State, presented the proposed rule at numerous public meetings, including BOG meetings, Subsistence Resource Commission meetings, and Regional Advisory Council meetings.

Topic: Use of a Firearm Under a Trapping License

Comment 22: Several commenters asked the NPS to allow the use of a firearm under a trapping license to dispatch a wounded or trapped animal. Some commenters asked the NPS to allow harvest of free-ranging furbearers with a firearm under a trapping license consistent with State regulations.

Response 22: Existing NPS regulations define a trap as “a snare, trap, mesh, or other implement designed to entrap animals other than fish” and trapping as “taking furbearers under a trapping license” (36 CFR 13.1). These definitions create uncertainty about whether an individual can use a firearm to take a furbearer if authorized under a State trapping license, even though the NPS definition of a trap does not include a firearm. This rule addresses this uncertainty and in response to public comment the NPS has added an allowance in the final rule for the use of a firearm to dispatch a furbearer in limited circumstances, as explained above.

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Appendix B: Non-Impairment Determination

A non-impairment determination is made for any impacted resource analyzed in detail in the Revised Environmental Assessment (Revised EA) that is subject to the Organic Act “non-impairment” standard. The National Park Service (NPS) Organic Act of 1916 directs the NPS to "conserve the scenery, natural, and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" (54 United State Code [U.S.C.] 100101). An action constitutes impairment when its impacts “harm the integrity of park resources or values, including the opportunities that otherwise will be present for the enjoyment of those resources or values” (Section 1.4.5, NPS 2006). To determine impairment, the NPS must evaluate the “particular resources and values that will be affected; the severity, duration, and timing of the impact; the direct and indirect effects of the impact; and the cumulative effects of the impact in question and other impacts.” An impact on any park resource or value may constitute impairment, but an impact would be more likely to constitute an impairment to the extent that it affects a resource or value whose conservation is:

- Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park;
- Key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or
- Identified in the park’s general management plan or other relevant NPS planning documents as being of significance (Section 1.4.5, NPS 2006).

Resources that were carried forward for detailed analysis in the Revised EA, and for which a non-impairment determination has been made, are wildlife and federal subsistence use. This non-impairment determination does not include discussion of impacts to public safety, public uses and enjoyment, or wilderness character, as these do not constitute impacts to park resources and values and therefore are not subject to the Organic Act “non-impairment” standard.

Wildlife

The selected alternative will have beneficial impacts to wildlife resources and values. The prohibition of bear baiting in the preserves for “sport” hunting will reduce the number of human food conditioned wildlife and associated altered behaviors; therefore, fewer bears will likely be taken in defense of life and property. Humane dispatch of trapped wildlife by firearm will affect individual animals; however, it will not affect the population. Natural behaviors of wildlife and a more natural balance of predators to prey will be maintained. This alternative will not contribute to a quantifiable change in population levels-Therefore, the NPS selected alternative will not result in impairment to wildlife or habitat.

Federal Subsistence Use

The NPS Organic Act and the Alaska National Interest Lands Conservation Act (ANILCA) Sections 201, 202, and 1313 describe the purposes for which new and expanded units of the National Park System in Alaska are to be managed, including the allowance of subsistence uses and sport hunting. Furthermore, ANILCA Titles I and II provide for the maintenance of sound populations of, and habitat for, numerous specified wildlife species of inestimable value to the citizens of Alaska and the Nation.

The selected alternative will maintain opportunities for subsistence harvest of wolves, coyotes, moose, and caribou at levels similar to existing conditions. If harvests need to be reduced in the preserves for reasons independent of this decision, sport harvest will be restricted first to protect the ANILCA Section 804 subsistence priority. Therefore, the NPS selected alternative will not result in impairment to federal subsistence use.

Conclusion

The NPS has determined that implementation of the selected alternative will not constitute impairment of the resources of the parks. This conclusion is based on consideration of a thorough analysis of the environmental impacts described in the Revised EA, comments provided by the public and through consultation, and the professional judgement of the decision maker guided by the direction in NPS Management Policies 2006.

References

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