



TRUSTEES FOR ALASKA

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December 3, 2014

National Park Service
Bert Frost
Regional Director
Alaska Regional Office
240 West 5th Ave.
Anchorage, AK 99501

Submitted via regulations.gov

RE: Comments on National Park Service Proposed Rule for Hunting and Trapping in National Preserves in Alaska (Regulation Identifier Number 1024–AE21)

Dear Mr. Frost:

Trustees for Alaska submits these comments on the proposed rule (“rule”) on behalf of the National Parks Conservation Association, Denali Citizens Council, Center for Biological Diversity, The Wilderness Society, Defenders of Wildlife, Copper Country Alliance, Northern Alaska Environmental Center, Alaska Center for the Environment, Natural Resources Defense Council, and Audubon Alaska (collectively, NPCA). The National Park Service (Park Service) in Alaska is unique among the 50 states for allowing sport and subsistence hunting in the 17 million acres of national preserves added to the National Park System by ANILCA. While Congress recognized the important value of subsistence and sport hunting, it allowed both to take place only where consistent with the mandate to protect and conserve wildlife resources. State sport hunting regulations passed by the Alaska Board of Game (Board) apply on national preserves,

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but only when those regulations do not conflict with park purposes.¹ Because the Board has become increasingly aggressive in its efforts to implement predator control on federal public lands through liberalization of sport hunting and trapping regulations, the Park Service has proposed this rule to prevent application of state regulations that are incompatible with management objectives for national preserves.² NPCA supports the rule, with suggested changes described below.

I. OVER THE PAST 20 YEARS, THE BOARD HAS VASTLY EXPANDED ITS PREDATOR CONTROL PROGRAMS AND LIBERALIZED METHODS AND MEANS OF KILLING PREDATORS.

Widespread predator control programs are not new to Alaska. In the 1950s, government employees and private hunters killed thousands of wolves, earning bounties for each animal. In the 1960s, government efforts slowed, but private hunters kept wolf numbers low through the widespread use of airplanes. After aerial hunting was banned in the early 1970s, calls to revive predator control rose. But so did opposition, and programs were relatively small in scope for many years.

Then, in 1994, the Alaska Legislature passed the Intensive Management Statute (“IM law”).³ The explicit goal of the IM law is to maintain, restore, or increase the abundance of big game populations for human consumptive use.⁴ Where prey (such as moose and caribou) population levels are not considered to be high enough to meet human consumptive needs, the

¹ See 36 C.F.R. § 2.2(b)(4) (“Where hunting or trapping or both are authorized, such activities shall be conducted in accordance with Federal law and the laws of the State within those exterior boundaries a park area or a portion thereof is located. Nonconflicting State laws are adopted as a part of these regulations.”); see also 36 C.F.R. § 13.40(d)(1) (“Hunting and trapping are allowed in national preserves in accordance with applicable Federal and non-conflicting State law and regulations.”).

² Alaska; Hunting and Trapping in National Preserves, 79 Fed. Reg. 52595 (proposed Sept. 4, 2014) (to be codified at 36 C.F.R. pt. 13).

³ AS 16.05.255.

⁴ AS 16.05.255(e).

Board was legislatively prohibited from taking other conservation measures unless it also implemented “intensive management.”⁵ Although actions such as habitat improvement can be part of an intensive management plan, predator control is nearly universally adopted under these plans.

Because of the controversy generated by predator control efforts, Governor Tony Knowles, in 1995, commissioned the National Academy of Sciences to review Alaska’s programs. The academy’s National Research Council (NRC) released its review in 1997 and included recommendations to bring Alaska’s predator control programs in line with modern wildlife science.⁶ The recommendations were never wholly applied and quickly fell out of use.

After a decade largely free of major predator control actions, large-scale implementation of the IM law began in 2003 under the administration of Frank Murkowski, and has only increased in size and scope since then. The following series of maps illustrates the expansion of state designated predator control areas (PCA) in relation to national parks and preserves.⁷ The maps also show that the boundaries of most national preserves have been encroached upon and many have become virtually surrounded by PCAs in just over 14 years.

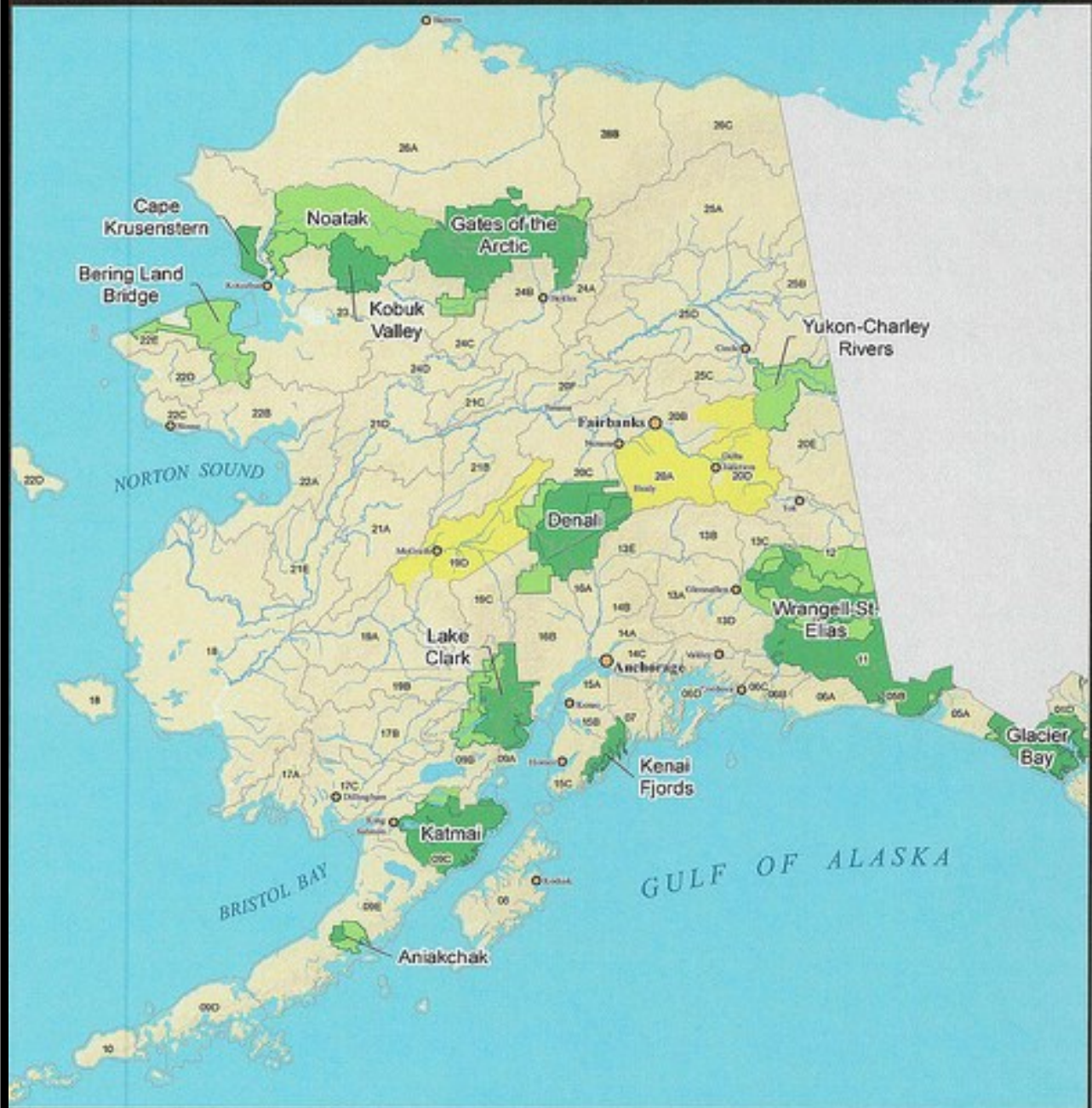
⁵ AS 16.05.255(f).

⁶ National Research Council, *Wolves, Bears, and Their Prey in Alaska* (1997).

⁷ For a history of the expansion of predator control programs in Alaska, see Victor Van Ballenberghe, *Biological Standards and Guidelines for Predator Control in Alaska: Application of the National Research Council’s Recommendations* (Nov 2004) (attached as Exhibit 1); Victor Van Ballenberghe, *Predator Control, Politics, and Wildlife Conservation in Alaska*, 42 *ALCES* 1, 1–11 (2006) (attached as Exhibit 2); Defenders of Wildlife, *Alaska’s Predator Control Programs: Managing for Abundance or Abundant Mismanagement?* (2011) (attached as Exhibit 5).

State of Alaska Predator Control Areas 2001-2002

Alaska Region
National Park Service
U.S. Department of the Interior



Legend

- GMU Sub-Unit Boundary
- National Park
- National Preserve
- Wolf
- Black Bear
- Brown Bear
- Black/Brown Bear

Notes: Areas shown are approved by State of Alaska Board of Game. See 2001-2002 Alaska Predator Control Supplement.

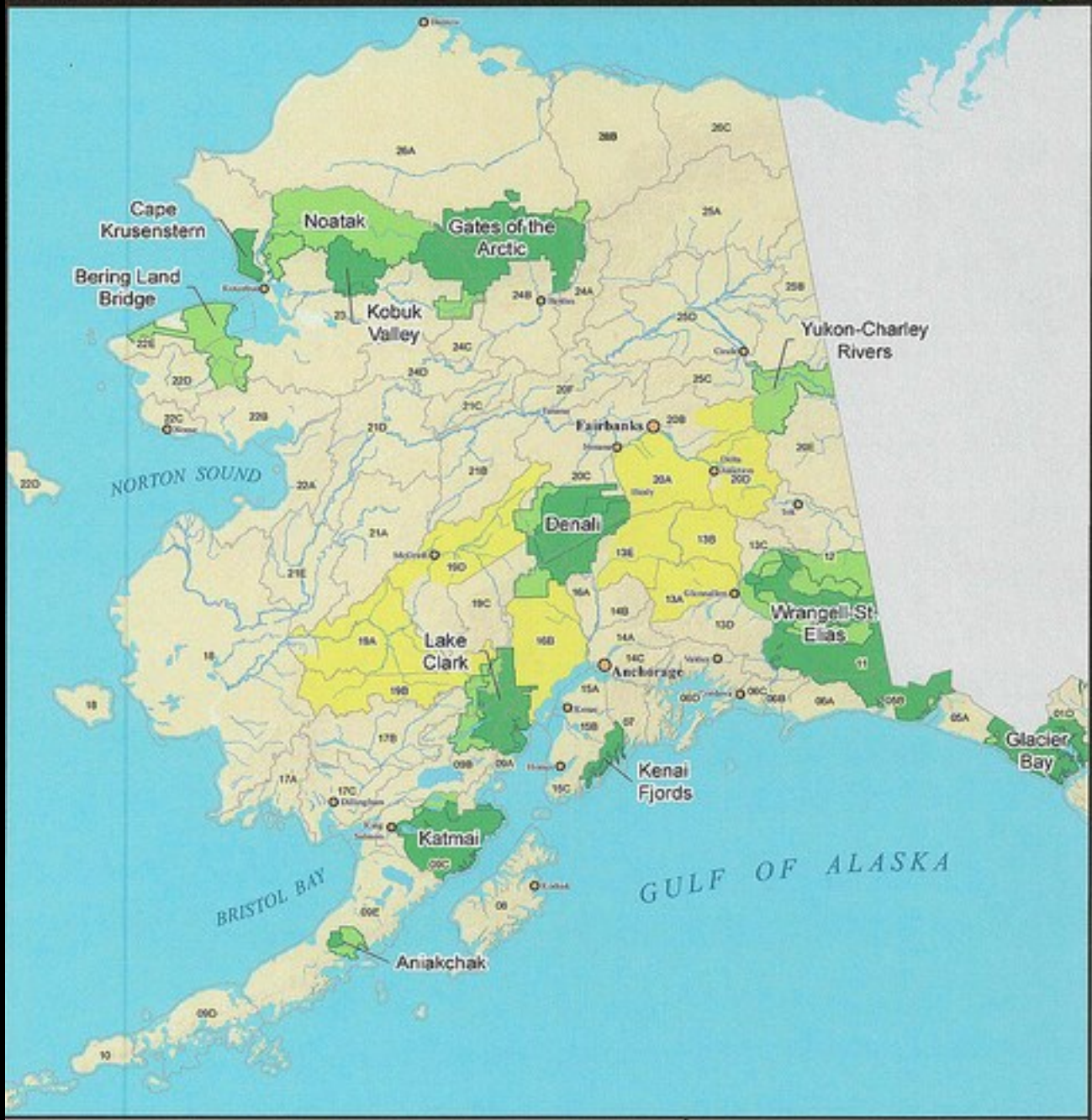
Alaska Region
GIS Team
09/09/2011



1:9,500,000
Alaska Albers Projection on NAD83 Datum
0 25 50 100 150 200 Miles

State of Alaska Predator Control Areas 2004-2005

Alaska Region
National Park Service
U.S. Department of the Interior



Legend

- GMU Sub-Unit Boundary
- National Park
- National Preserve
- Wolf
- Black Bear
- Brown Bear
- Black/Brown Bear

Notes: Areas shown are approved by State of Alaska Board of Game. See 2004-2005 Alaska Predator Control Supplement.

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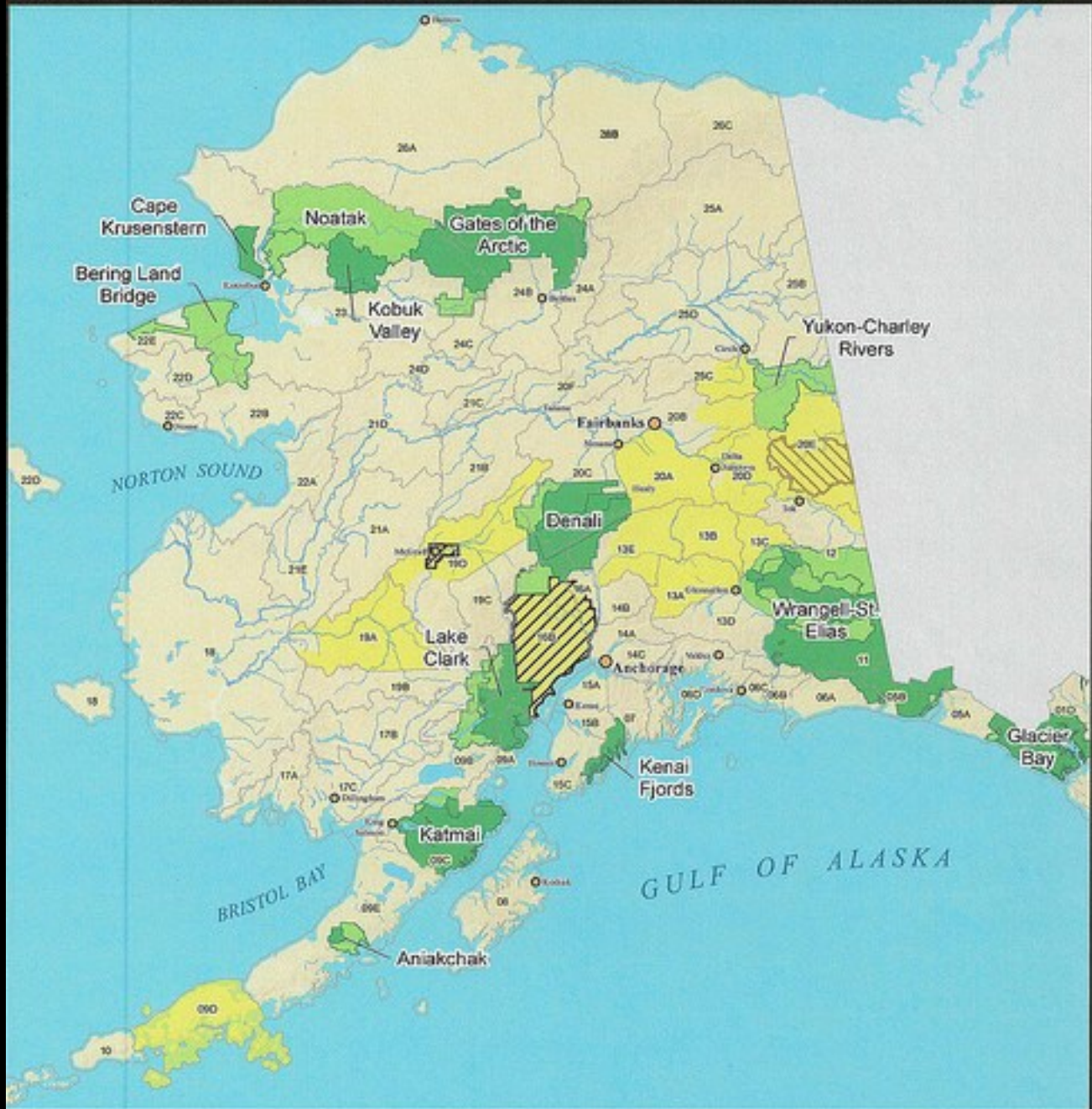
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Alaska Albers Projection on NAD83 Datum



State of Alaska Predator Control Areas 2009-2010

Alaska Region
National Park Service
U.S. Department of the Interior



Legend

- GMU Sub-Unit Boundary
- National Park
- National Preserve
- Wolf
- Black Bear
- Brown Bear
- Black/Brown Bear

Notes: Areas shown are approved by State of Alaska Board of Game. See 2009-2010 Alaska Predator Control Supplement.

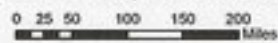
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Alaska Albers Projection on NAD83 Datum



State of Alaska Predator Control Areas 2010-2011

Alaska Region
National Park Service
U.S. Department of the Interior



Legend

- GMU Sub-Unit Boundary
- National Park
- National Preserve
- Wolf
- Black Bear
- Brown Bear
- Black/Brown Bear

Notes: Areas shown are approved by State of Alaska Board of Game. See 2010-2011 Alaska Predator Control Supplement.

Alaska Region
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09/09/2011



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Alaska Albers Projection on NAD83 Datum
0 25 50 100 150 200 Miles

State of Alaska Predator Control Areas 2013-2014

Alaska Region
National Park Service
U.S. Department of the Interior



Legend

- | | |
|-----------------------|------------------|
| GMU Sub-Unit Boundary | Wolf |
| National Park | Black Bear |
| National Preserve | Brown Bear |
| | Black/Brown Bear |

Notes: Areas shown are approved by State of Alaska Board of Game. See 2013-2014 Alaska Predator Control Supplement.

Alaska Region
GIS Team
11/07/2013



1:9,500,000
Alaska Albers Projection on NAD83 Datum
0 25 50 100 150 200 250 300 Miles

Some predator control programs — such as aerial gunning of wolves — are easily identified as intensive management. But the Board also practices intensive management by liberalizing methods and means authorized by sport hunting regulations. This has included:

- increasing bag limits and liberalizing hunting seasons for predators to increase their harvest;
- eliminating the need for hunters to obtain or purchase hunting tags or permits for predators;
- permitting the incidental taking of predators;
- authorizing same-day airborne hunting and trapping, which allows hunters to take predators the same day they've been flying; and
- allowing baiting.

The Board has been explicit that liberalizing methods and means has been done to achieve predator-reduction goals. For example, in 2004, the Board reauthorized the brown bear tag fee exemption in Units 19D, 20D, and 20E,⁸ because “moose are currently below their population or harvest objectives” and “tag fee exemptions will encourage harvesting opportunistically associated with other hunting practices.”⁹ Another proposal that year increased the wolf hunting season and bag limit in Unit 19 because doing so was “vital in reducing the predator population and helping to conserve the moose population.”¹⁰ In November 2005, the Board lengthened the brown bear season in Unit 22A because “bear predation . . . is contributing to a serious decline in moose population.”¹¹ In January 2006, the Board allowed trapping of

⁸ State hunting regulations are typically specific to particular game management units, which are geographic areas of the state. There are currently 26 units, with subunits. *See* Alaska Dep’t of Fish & Game, Game Management Unit (GMU) Information, <http://www.adfg.alaska.gov/index.cfm?adfg=huntingmaps.gmuinfo> (last visited Nov. 17, 2014).

⁹ Julie Lurman & Sanford P. Rabinowitch, *Preemption of State Wildlife Law in Alaska: Where, When, and Why*, 24 Alaska L. Rev. 145, 156 n. 49 (2007) (citing ADF&G, Summary of Actions 24, 38 (Feb. 26-March. 10, 2004) [hereinafter March 2004 Summary of Actions]) (attached as Exhibit 3).

¹⁰ *Id.*

¹¹ *Id.* (citing ADF&G, Summary of Actions 9 (Nov. 11–14, 2005) [hereinafter Nov. 2005

black bear and the sale of hides and skulls, stating: “Board members felt that allowing the sale of hides provides an opportunity to increase harvest in predator control areas.”¹² Then in March 2006, the Board eliminated brown bear tag fees in Unit 25C because “[a]dopting this proposal is consistent with the intensive management goals for the Fortymile caribou herd. Eliminating bear tag fees is another way of encouraging more brown bear harvest.”¹³ More recently, in 2011, the Board issued an emergency order to extend wolf hunting and trapping seasons in GMUs 9 and 10 to increase caribou numbers and as a way of getting around the U.S. Fish & Wildlife’s prohibition on aerial wolf control programs on Unimak Island.¹⁴ Such regulations are GMU-specific (or sometimes statewide) unless a specific exception is written into the regulations. Like the expansion of predator-control areas, the liberalization of methods and means has increased dramatically over the past twenty years.¹⁵

The Board has repeatedly refused to reduce the impact of its programs on national preserves. For example, in the spring of 2014, the radio-collared Lost Creek wolf pack left the borders of the Yukon-Charley Rivers National Preserve and was eliminated through aerial shooting by state agents implementing one of the Board’s intensive management plans. The Park Service had been studying the Lost Creek pack for seven years as part of a roughly 20-year study of wolves in the Yukon Charley National Preserve; in 2013, the agency spent about \$100,000

Summary of Actions]).

¹² *Id.* (citing ADF&G, Summary of Actions 4 (Jan. 27–29, 2006) [hereinafter Jan. 2006 Summary of Actions]).

¹³ *Id.* (ADF&G, Summary of Actions 5 (Mar. 10–21, 2006) [hereinafter Mar. 2006 Summary of Actions]).

¹⁴ ADF&G, *Hunting and Trapping Emergency Order No. 04-01-11* (Mar. 31, 2011) (attached as Exhibit 9).

¹⁵ For a history of the Board’s liberalization of brown bear hunting, see Sterling D. Miller, John W. Schoen, Jim Faro, & David R. Klein, Trends in Intensive Management of Alaska’s Grizzly Bears, 1980–2010, 75(6) *Journal of Wildlife Management* 1243 (2011) (attached as Exhibit 4).

studying wolves in the region.¹⁶ State predator control efforts killed 36 wolves in the area in one year, reducing the preserve's population by over half.¹⁷ The earlier informal agreement between ADF&G and the Park Service "to avoid eliminating entire wolf packs near the preserve, particularly collared animals . . . went by the wayside about five years ago."¹⁸ Another example is the Board's 2010 elimination of a 122 square-mile buffer adjacent to Denali National Park that protected wolves crossing its boundaries from hunting and trapping. Two years later, the wolf populations in the Park were the lowest in decades.¹⁹

Similarly, the Board has sought to liberalize methods and means of hunting methods within Preserves. For example, in 2011, the Board extended wolf hunting and trapping seasons to the end of June in three national preserves (Aniakchak, Katmai, and Lake Clark), and ADF&G issued an emergency order to implement the extended seasons immediately, without prior notice to the Park Service. ADF&G justified this by citing the need to reduce wolf predation on caribou in these game management units.²⁰

¹⁶ Krista Langlois, *Alaska's Wildlife War: The Federal Government Pushes Back as the State Ramps Up Predator Control*, High Country News, May 27, 2014, <http://z1.hcn.org/hcn/hcn/issues/46.9/alaskas-wildlife-war>.

¹⁷ Jeff Richardson, *Park Service, State Clash on Interior Wolf Killings*, Fairbanks Newsminer, Mar. 2, 2014, http://www.newsminer.com/news/local_news/park-service-state-clash-on-interior-wolf-killings/article_991925f4-a1e3-11e3-acfb-0017a43b2370.html.

¹⁸ *Id.* (internal citation and quotation omitted).

¹⁹ Krista Langlois, *Alaska's Wildlife War: The Federal Government Pushes Back as the State Ramps Up Predator Control*, High Country News, May 27, 2014, <http://z1.hcn.org/hcn/hcn/issues/46.9/alaskas-wildlife-war>.

²⁰ Joel L. Hard, *Hunting or Predator Control in Alaska Preserves*, The Wildlife Society (Sept. 16, 2014), available at http://joomla.wildlife.org/index.php?option=com_content&task=view&id=952.

II. THE PARK SERVICE HAS CLEAR STATUTORY MANDATES TO PRESERVE NATURAL, UNDISTURBED ECOSYSTEMS AND A STRONG TRADITION OF NON-INTRUSIVE WILDLIFE MANAGEMENT.

The Park Service’s Organic Act requires the Park Service to manage the National Park System to “conserve the scenery and the natural and historic objects and the wild life therein” and provide for visitor enjoyment of the same for this and future generations.²¹ The Park Service has broad discretion in determining the proper balance of uses that will protect this mandate.²²

The Park Service has a tradition of nonintervention in wildlife dynamics.²³ Starting in the late 1960s, the Park Service began following a policy of “natural regulation,” allowing wildlife populations to fluctuate without direct human intervention. By the 1980s, the agency’s policy “had evolved to emphasize maintenance of natural ecological processes as a means of managing native wildlife.”²⁴ The Park Service’s current management policies reflect this approach, and specifically prohibit the manipulation of wildlife populations to benefit human harvest of prey:

The Service does not engage in activities to reduce the numbers of native species for the purpose of increasing the numbers of harvested species (i.e., predator control), nor does the Service permit others to do so on lands managed by the National Park Service.²⁵

²¹ 16 U.S.C. § 1.

²² See, e.g., *Sierra Club v. Babbitt*, 69 F. Supp. 2d 1202, 1247 (E.D. Cal. 1999) (“[T]he Organic Act does not serve as basis for a cause of action when the issue is confined to the Agency’s exercise of discretion in attempting to balance valid, competing values.”); see also *National Wildlife Federation v. National Park Service*, 669 F. Supp. 384, 391 (D. Wyo. 1987) (“[T]he Park Service has broad discretion in determining which avenues best achieve the Organic Act’s mandate.”).

²³ Exhibit 3 at 2, n.13 (quoting Rolf O. Peterson, *Wolf-Moose Interaction on Isle Royale: The End of Natural Regulation?*, 9 *Ecological Applications* 10 (1999)).

²⁴ *Id.* at 2, n. 14 (quoting Peterson, *supra* note 23, at 10–11).

²⁵ U.S. Dep’t of Interior, National Park Service, Management Policies of 2006 at § 4.4.3 (Dec), available at <http://www.nps.gov/policy/MP2006.pdf> [hereinafter 2006 Management Policies].

Other provisions of the Management Policies require the Park Service to protect natural ecosystems and processes, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife.²⁶

When Congress passed the Alaska National Interests Lands Conservation Act (ANILCA) — which established most of the national park units in Alaska — it did not disrupt this approach to wildlife management. One of the purposes of passing ANILCA was to preserve nationally significant areas “for the benefit, use, education, and inspiration of present and future generations” and to preserve wildlife and wilderness values.²⁷ The act’s legislative history reinforces that Congress created National Park System units—including national preserves—to maintain natural, undisturbed ecosystems.²⁸

One of the reasons Congress passed ANILCA was to protect habitat for and populations of certain wildlife species.²⁹ In many of Alaska’s national preserves, predator species like wolves and brown bear are specifically listed as species that the Park Service is obligated to protect.³⁰

Congress did allow sport hunting on national preserves, unlike areas designated as national parks.³¹ But Congress expressly granted authority to the Park Service to prohibit or limit hunting and trapping in national preserves for a variety of reasons, including public safety and

²⁶ 2006 Management Policies §§ 4.1, 4.4.1, 4.4.1.4, 4.4.2.

²⁷ 16 U.S.C. 3101(a).

²⁸ *See, e.g.*, S. Rep. No. 96-413, at 137 (1979) (“Certain units have been selected because they provide undisturbed natural laboratories — among them the Noatak, Charley, and Bremner River watersheds.”).

²⁹ *See* Title II of ANILCA, Pub. L. No. 96-487, 94 Stat. 2371, 2377–2383 (1980).

³⁰ *See id.*; see also National Park Service, *Wildlife Harvest On National Park System Preserves In Alaska: Environmental Assessment*, at 12 (Sept. 2014) [hereinafter “EA”].

³¹ 16 U.S.C. § 3201 (directing that national preserves shall be managed “in the same manner as a national park . . . except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve.”).

the protection of wildlife and vegetation.³² Congress also made clear that the Park Service must place the protection of natural and healthy populations of wildlife above hunting.³³

Representative Udall emphasized this, stating that:

[T]he Secretary shall manage National Park System units in Alaska to assure the optimum functioning of entire ecological systems in undisturbed natural habitats. The standard to be met in regulating the taking of fish and wildlife and trapping is that the preeminent natural values of the Park System shall be protected in perpetuity, and shall not be jeopardized by human uses.³⁴

ANILCA does not contain any provisions allowing for intensive management practices to augment moose and caribou hunting in national preserves, and such practices are inconsistent with ANILCA's provision requiring the conservation of natural and healthy populations.³⁵

III. THE NATIONAL PARK SERVICE'S WILDLIFE POLICIES PREEMPT THE IMPLEMENTATION OF INTENSIVE MANAGEMENT ON NATIONAL PRESERVES IN ALASKA.

Manipulating natural systems and processes to achieve the State's goals, including actions to reduce or increase wildlife populations for harvest, conflict with laws and policies applicable to national preserves where the Park Service must preserve natural wildlife

³² 16 U.S.C. §3201 (“[W]ithin national preserves the Secretary may designate zones where and periods when no hunting, fishing, trapping, or entry may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment.”).

³³ 16 U.S.C. § 3125(1) (“Nothing in this title shall be construed as . . . granting any property right in any fish or wildlife or other resource of the public lands or as permitting the level of subsistence uses of fish and wildlife within a conservation system unit to be inconsistent with the conservation of healthy populations, and within a national park or monument to be inconsistent with the conservation of natural and healthy populations, of fish and wildlife.”).

³⁴ 126 Cong. Rec. H10527–10552, H10549 (Nov. 12, 1980) (Statement of Rep. Udall).

³⁵ The regulations implementing the Federal Subsistence Management Program on public lands in Alaska define the “conservation of healthy populations” as the “maintenance of fish and wildlife resources and their habitats in a condition that assures stable and continuing *natural* populations and species mix of plants and animals in relation to their ecosystem.” 50 C.F.R. § 100.4 (emphasis added).

populations.³⁶ The potential for such conflict was recognized by the Senate Committee on Energy and Natural Resources prior to the passage of ANILCA:

[i]t is contrary to the National Park System concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem, and that concept should be maintained.³⁷

The increasingly liberal methods and means the State has authorized are not consistent with the Park Service's implementation of ANILCA's authorization of sport hunting and trapping in national preserves or with the Park Service's management policies implementing the Organic Act. The Park Service recognizes in its EA that predator reduction efforts impact natural populations and reduce opportunities for visitors to view these predators:

[I]n Denali National Park . . . renewed trapping of wolves immediately north of the old park is correlated with a notable reduction in visitor viewings of wolves along the eastern half of the Denali Park Road. The percentages of visitors seeing wolves on bus trips in the area decreased from 44 percent in 2010 to 21 percent in 2011 to 12 percent in 2012 to four percent in 2013.³⁸

Many of the State's efforts to liberalize methods and means have included national preserve lands and the Board has been unwilling to exempt the preserves. For example, in 2004, the Board authorized an exemption from brown bear tag fees in units 19D and 20E that affected parts of Yukon-Charley Rivers National Preserve and Denali National Preserve.³⁹ In 2006, the Board extended the wolf hunting season for units 12, 20, and 25 to "help increase moose numbers."⁴⁰ This regulation affected Denali National Preserve, Yukon-Charley Rivers National Preserve, and Wrangell-St. Elias National Preserve. The Park Service has repeatedly asked the

³⁶ 2006 Management Policies §§ 4.1, 4.4.3.

³⁷ S. Rep. No. 96-413, at 171.

³⁸ EA at 22 (citations omitted).

³⁹ Exhibit 3 at 8 n. 86 (citing March 2004 Summary of Actions at 24, 38).

⁴⁰ *Id.* at 3 n. 90 (quoting March 2006 Summary of Actions at 18).

Board to exempt its lands from such regulations but to no avail. The Park Service states in its federal register notice that it has objected to more than 50 proposals;⁴¹ NPCA has counted 61 times that this occurred through August 2013.⁴² The following table summarizes the conflict.

National Preserve	Actions Authorized by the Board But Prohibited by Temporary Park Service Regulations	Times the Board Has Passed Regulations Over Park Service Objections⁴³	Methods and Means Currently Authorized by the Board That Conflict with Park Service Mandates
Gates of the Arctic National Preserve	<ul style="list-style-type: none"> Spotlight hunting of black bears and cubs Hunting wolves through May 31 (in GMU 24) 	17	
Yukon-Charley Rivers National Preserve	<ul style="list-style-type: none"> Bait hunting brown bears Hunting wolves through May 31 	7	
Wrangell-St. Elias National Preserve	<ul style="list-style-type: none"> Bait hunting brown bears Hunting wolves through May 31 (in GMU 12) 	12	<ul style="list-style-type: none"> Black bear baiting Bag limit of 10 wolves per day (increased from 5 wolves per season) in GMU 13C
Denali National Preserve	<ul style="list-style-type: none"> Spotlight hunting black bears and cubs Bait hunting brown bears Hunting wolves through May 31 	18	<ul style="list-style-type: none"> Black bear baiting Bag limit of 10 wolves per day (increased from 5 wolves per season) in GMUs 19C and 19D
Lake Clark National Preserve	<ul style="list-style-type: none"> Hunting wolves through May 31 in northern Lake Clark Preserve (GMU 19B) and through June 30 in southern Lake Clark Preserve (Unit 9B) 	22	<ul style="list-style-type: none"> Black bear baiting Bag limit of 10 wolves per day (increased from 5 wolves per season)
Aniakchak	<ul style="list-style-type: none"> Hunting wolves through 	14	<ul style="list-style-type: none"> Bag limit of 10

⁴¹ 79 Fed. Reg. at 52597.

⁴² See Exhibit 6 (Table showing requests from Park Service that the Board exempt national preserves from state regulations).

⁴³ This total comes to 101 because — of the 61 regulations adopted over Park Service objections — many of those regulations affected more than one specific preserve.

National Preserve	June 30		wolves per day
Katmai National Preserve	<ul style="list-style-type: none"> Hunting wolves through June 30 	11	<ul style="list-style-type: none"> Bag limit of 10 wolves per day (increased from 5 per season)

To comply with federal law and Park Service policy, the Park Service has adopted annual temporary restrictions since 2010 to prevent the application of the Board’s increasingly liberal methods and means of hunting predators.⁴⁴ These restrictions have protected fauna and provided for public use and enjoyment consistent with ANILCA.⁴⁵

The Park Service has clear authority and the duty to prohibit these conflicting state regulations. State law must yield where it conflicts with federal law. The concept of preemption is derived from the Supremacy Clause of the Constitution, which invalidates state laws that interfere with, or are contrary to, federal law.⁴⁶ Congress passed the Organic Act and ANICLA under the granted constitutional power of the Property Clause.⁴⁷ In *Kleppe v. New Mexico*, the U.S. Supreme Court recognized that Congress has the power to enact legislation respecting federal lands pursuant to the Property Clause and — when Congress does enact such legislation — it “necessarily overrides conflicting state laws under the Supremacy Clause.”⁴⁸

The Park Service has a long history of court-supported preemption of state wildlife laws where those laws conflict with the Park Service’s mission or regulations.⁴⁹ In *New Mexico State*

⁴⁴ EA at 11.

⁴⁵ See 16 U.S.C. § 3201.

⁴⁶ U.S. Const. art. VI, cl. 2; see also *Nat’l Audobon Soc’y v. Davis*, 307 F.3d 835, 851 (9th Cir. 2002).

⁴⁷ U.S. Const. art. IV, § 3, cl. 2 (“Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”).

⁴⁸ 426 U.S. 529, 543 (1976).

⁴⁹ Robert L. Glickman & George Cameron Coggins, *Modern Public Land Law* 260 (2001)

Game Commission v. Udall, the Tenth Circuit Court of Appeals found that the Park Service had the authority to remove deer from Carlsbad Caverns National Park for research purposes without seeking a permit from the state as required under New Mexico state law.⁵⁰ Similarly, in *United States v. Moore*, the court stated that “the power of the United States to regulate and protect wildlife living on the federally controlled property cannot be questioned.”⁵¹ In that case, the court found that the Park Service had the authority to prevent the state from spraying pesticides to eliminate black flies in the New River Gorge National River because the Park Service’s regulations prohibited the taking of wildlife, including black flies. Another example is *United States v. Brown*, where the State of Minnesota wanted to assert the dominance of state hunting laws on water adjacent to and surrounded by Voyageurs National Park.⁵² The court stated that “[w]here the State’s laws conflict with the . . . regulations of the National Park Service . . . the local laws must recede.”⁵³

The Park Service has adopted regulations that apply state wildlife law where there is no conflict.⁵⁴ However, the intensive management statute — and the Board’s implementation of it

(“Because the NPS Organic Act does not defer to state wildlife law, the Park Service is not constrained by that law.”); see also R. Gerald Wright, *Wildlife Management in National Parks: Questions in Search of Answers*, 9 *Ecological Applications* 30, 32 (1999) (“From its beginning, the NPS has maintained exclusive jurisdiction over the management of wildlife in parks. And, although legally contested by individual state game departments, court decisions have uniformly supported the right of the NPS to own and manage wildlife on its lands.”).

⁵⁰ 410 F.2d 1197, 1199 (1969).

⁵¹ 640 F. Supp. 164, 166 (S.D. W. VA. 1986); see also *Organized Fishermen of Fla v. Andrus*, 488 F. Supp. 1351, 1355 (S.D. Fla. 1980) (“[T]here is no question that the complete power Congress has over public lands under the Property Clause of the Constitution . . . necessarily includes the power to regulate and protect the wildlife living there.”).

⁵² 431 F. Supp. 56, 59 (D. Minn. 1976).

⁵³ *Id.* at 63; see also *Kleppe v. New Mexico*, 426 U.S. 529, 541 (1976) (holding that the argument that Congress lacks power to administer public lands contrary to state law without state consent is “without merit”).

⁵⁴ See 16 U.S.C. § 1a-6(c)(2); 16 U.S.C. § 539b(c); see also 36 C.F.R. § 13.40 (adopting non-conflicting state laws into National Park Service regulations).

— operate as an obstacle to achieving Congress’s objectives set out in ANILCA and the Organic Act. Longstanding Park Service Management Policies seek to sustain and protect natural populations and processes while avoiding artificial manipulation of species.⁵⁵ The Board, on the other hand, is charged with maintaining consistently high numbers of prey populations.⁵⁶ This does not allow for the natural populations and predator-prey processes the Park Service is charged with protecting. The IM law on its face conflicts with federal laws that specifically promote conservation of natural processes and natural and healthy populations,⁵⁷ rather than the “achieve[ment of] human consumptive use goals.”⁵⁸

IV. NPCA SUPPORTS THE PARK SERVICE’S PROPOSED REGULATION.

NPCA supports the proposed rule because it protects the purposes for which Congress created national preserves in Alaska and clarifies that inconsistent state laws are preempted. The rule accomplishes two things. First, it establishes an ongoing process for identifying conflicting state regulations, and second, it identifies list of specific prohibited activities.

A. NPCA Supports the Process for Identifying Conflicting State Regulations that the Rule Establishes.

The rule directs the Regional Director “to compile a list updated at least annually of state laws and regulations” prohibited in national preserves.⁵⁹ This will allow the Park Service to ensure that the preserves are protected from any inappropriate state regulations and to remove any ambiguity that may arise regarding what state-authorized activities are prohibited on national preserves.

⁵⁵ See 2006 Management Policies at 62.

⁵⁶ AS 16.05.255(e).

⁵⁷ See 16 U.S.C. § 3125.

⁵⁸ AS 16.05.255(e).

⁵⁹ 79 Fed. Reg. at 52600.

B. NPCA Supports the Prohibition on Bear Snaring.

The rule bans the use of snares to take bears.⁶⁰ Bear snaring, illegal in Alaska until 2010, falls under the Board's trapping regulations. It involves securing a bucket filled with bait to a tree above the ground. When the bear tries to remove its paw from the bucket, a snare is triggered. In January 2012, 77 biologists called this practice "incompatible with scientific principles and the ethics of modern wildlife management."⁶¹ The only reason to allow snaring is to efficiently kill bears, i.e., support predator control programs. As such, it should be prohibited on national preserves.

The Board allows snaring of both brown and black bears. Snaring bears had been illegal since statehood, until the Board implemented an "experimental program" for black bears in Unit 16B — across Cook Inlet from Anchorage — during the summer of 2010. That summer, 81 black bears were killed by snare and 8 brown bears were snared, 3 of which were killed, one due to severe injuries sustained by the snare. That program has continued, and has been expanded to legally include brown bears. From all methods (snaring, baiting, etc.), 319 black bears were killed in Unit 16B in 2011.⁶²

While snaring is not yet widespread in the state, given the longstanding trend toward liberalization by the Board, the Park Service should prohibit this practice on national preserves now so that the Board does not seek to implement it in the future. Also, because snaring involves bait, it should be included in the prohibition on bear baiting.

⁶⁰ *Id.* at 52601.

⁶¹ Dan Joling, *Ex-Governor Joins Opposition to Expansion of Bear Snaring*, Alaska Dispatch (Jan. 12, 2012), available at <http://www.adn.com/article/20120112/ex-governor-joins-opposition-expansion-bear-snaring>.

⁶² Tim Mowry, *Board of Game: No Interior Alaska Bear Trapping for Now*, Fairbanks Newsminer (Mar. 10, 2012), available at http://www.newsminer.com/board-of-game-no-interior-alaska-bear-trapping-for-now/article_3e4ce53c-0cdf-5f36-973f-07b1925007bb.html; see also Alaska Dispatch, *Alaska's game board turns down bear-snaring proposal* (March 10, 2012), available at <http://www.adn.com/article/alaskas-game-board-turns-down-bear-snaring-proposal>.

C. NPCA Supports the Park Service’s Proposed Regulation to Prohibit Taking Black Bear Cubs and Sows with Artificial Light at Den Sites.

The rule proposes to prohibit the use of artificial lights to take any wildlife.⁶³ Hunting bears by using artificial lights at den sites is done only to increase take and reduce bear populations, and has long been prohibited for that reason. As the Park Service has previously pointed out, “[w]hen the harvest of black bears to include sows with cubs at dens using artificial lights was initially allowed, the State’s policy (2006-164-BOG) precluded harvest of sows and cubs except when associated with predator control.”⁶⁴ Because the Board adopted this hunting practice specifically to aid predator control efforts, the Board’s intent to alter predator-prey dynamics is clear and the Park Service must prohibit the practice in national preserves.

D. NPCA Supports the Park Service’s Proposed Regulation to Prohibit Taking Brown Bears Over Bait and Strongly Encourages the Park Service to Also Ban the Taking of Black Bears Over Bait.

The rule proposes to ban the use of bait in sport hunting, except for hunting black bears, although the Park Service has specifically requested comment on including a ban on black bear baiting.⁶⁵ NPCA strongly encourages the Park Service to prohibit the baiting of both black and brown bear. Baiting bears is another way that the Board seeks to reduce predator populations to increase human harvest of caribou and moose. Because baiting is allowed solely to increase bear take, it should not be allowed in national preserves.

Bear baiting should also not be allowed in national preserves because it poses a significant threat to public safety. Access to garbage and human food is a major contributor to

⁶³ 79 Fed. Reg. at 52601.

⁶⁴ See Letter from Sue Masica, NPS Alaska Regional Director, to Cora Campbell, ADF&G Commissioner at 2 (June 3, 2013) (attached as Exhibit 10).

⁶⁵ 79 Fed. Reg. at 52597, 52601.

aggressive bear behavior toward people.⁶⁶ Most bear attacks occur in national parks where habituated bears are seeking food:

[M]ost black bear-inflicted injuries occur in national parks, typically happening in campgrounds where black bears were seeking food. At least 90% of the injuries inflicted by black bears during the period between 1960 and 1980 I attribute to bears habituated to people and conditioned to eat human foods.⁶⁷

Bears being food-conditioned has been identified as a particular problem in the Kennicott Valley of the Wrangell-St. Elias National Park & Preserve.⁶⁸ A graduate student found that the vast majority of bear-human conflicts there were “caused by the widespread availability of garbage and human food” and that this may be causing a population sink for local bear populations “due to the high quality of its natural food resources . . . and human-induced mortality of bears.”⁶⁹

Increasing the number of bears habituated to foods threatens the safety of all those visiting Alaska’s national preserves. And banning baiting of brown bears while allowing the baiting of black bears does not address or minimize this problem: brown bears will still be attracted to — and become habituated at — black bear bait stations, and may subsequently seek out human food from backpackers, campers, and others. If this behavior is aggressive enough, the bear will either be shot as a “problem bear” or a member of the public may be hurt from the bear aggressively seeking out additional human food. In 2002, a brown bear was killed in defense of life or property near a bait station in the Wrangells.⁷⁰ Once a bear becomes conditioned to human food, even “averse conditioning will likely not deter it from actively

⁶⁶ See Stephen Herrero, *Bear Attacks: Their Causes and Avoidance*, Winchester Press (1985).

⁶⁷ *Id.* at 93.

⁶⁸ James M. Wilder, *Quantifying Bear Populations and Bear-Human Conflicts Using Non-Invasive Genetic Sampling in the Kennicott Valley of Wrangell-St. Elias National Park & Preserve, Alaska* (January 2003) (excerpts attached as Exhibit 7).

⁶⁹ *Id.* at 3.

⁷⁰ NPCA, et al. to Vic Knox re: Bear Baiting (Aug. 22, 2005) (attached as Exhibit 8).

seeking human foods and garbage.”⁷¹ The Park Service recognizes this public safety risk, the risk to bears themselves from being food-conditioned, and that “natural resource agencies through North America discourage intentionally feeding bears.”⁷²

In light of this evidence, the Park Service offers no compelling reason to allow the continuation of black bear baiting in national preserves. The one justification offered by the agency is that black bear baiting has been allowed in national preserves for several decades.⁷³ But previous authorization does not alleviate the public safety concerns for allowing the practice. The Park Service emphasizes to all backcountry travelers the importance of bear safety and preventing bears from becoming habituated to food, for the safety of both the bear and person. For example, in Denali, backcountry travelers are required in many areas of the park to use bear resistant food containers ‘to prevent bears and other wildlife from obtaining and habituating to food and garbage, thus protecting wildlife and park visitors alike.’⁷⁴ These efforts are diminished when another user group is permitted to set out human garbage to attract bears. Allowing baiting simply because it has been done for many years does not change its impact to public safety or minimize its impacts to bears.

The Park Service also indicates that it views black bear baiting as less of a problem because it is relatively uncommon.⁷⁵ But even a “relatively uncommon” practice should not be

⁷¹ Exhibit 7 at 23.

⁷² 79 Fed. Reg. at 52597.

⁷³ *Id.*

⁷⁴ National Park Service, Denali National Park & Preserve 2014 Compendium at 6, available at http://www.nps.gov/akso/management/compendium_docs/2014-Final/DENA2014FinalCompendium.pdf.

⁷⁵ 79 Fed. Reg. at 52597; EA at 11 (harvest of black bears over bait has been less than 2 bears / year from 1992–2010).

allowed to continue when it poses a public safety risk by food-conditioning bears and increases the probability of food-conditioned bears being killed in defense of life and property.⁷⁶

The Park Service acknowledges the problems associated with baiting, including the conflict with NPS policy, stating:

By design, baiting of bears alters their 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. Further, conditioning bears to unnatural food items increases the likelihood that bears will become nuisance bears, and thus be destroyed outside of harvest regulations. Similarly food conditioned bears are more likely to become a public safety risk relative to non-food conditioned bears.⁷⁷

The Park Service also recognizes that removing bear baiting stations “would reduce the conditioning of bears to human foods and improve visitor safety and use of national preserve lands.”⁷⁸ This food conditioning can cause bears to “pose a nuisance or threat to visitors in the area for many years.”⁷⁹ Prohibiting bear baiting would “assure[] bears in national preserves maintain more natural foraging and feeding behaviors.”⁸⁰ Eliminating bear baiting “would result in more natural and unaltered behaviors.”⁸¹ As detailed above, the Park Service is charged with protecting these natural behaviors and placing the protection of natural processes and wildlife populations above providing opportunities for sport hunting. The Park Service can and does provide for sport hunting of black bears without the use of bait stations. For these reasons, the Park Service should prohibit the baiting of both brown and black bears.

⁷⁶ See 16 U.S.C. § 3201 (the Park Service has the authority to restrict hunting and trapping to protect public safety).

⁷⁷ EA at 15 (citations omitted).

⁷⁸ *Id.* at 10.

⁷⁹ *Id.* at 21–22.

⁸⁰ *Id.* at 17.

⁸¹ *Id.*; see also *id.* at 26 (“baiting of bears alters their behavior”).

E. NPCA Encourages the Park Service to Prohibit Allowing Hunting Black Bears with Dogs in National Preserves.

The rule proposes prohibiting taking big game with the aid or the use of a dog, except for using a leashed dog to track wounded big game and for using unleashed dogs to take black bears pursuant to a state permit.⁸² The Park Service has specifically requested comment on this issue.⁸³ NPCA encourages the Park Service to prohibit the use of dogs to take black bears in national preserves. Using dogs to hunt black bears involves letting the dogs run free to track the bear. In most National Parks, dogs are only permitted in restricted areas and must be leashed. This is because dogs, especially loose dogs, can impact wildlife. Dogs may harass or kill native wildlife that is protected within park boundaries, or may themselves be killed by park wildlife such as wolves or coyotes. Dogs also have the potential to transmit diseases to native wildlife. Allowing hunting of black bears with the use of dogs raises all of these concerns and should be prohibited.

F. NPCA Supports the Park Service’s Proposed Regulation to Prohibit the Taking of Wolves and Coyotes During the Denning Season.

The only purpose of killing wolves and coyotes during the denning season is to reduce predator populations. During this time, their pelts have little trophy, economic, or subsistence value. NPCA supports the Park Service’s proposal to prohibit taking wolves and coyotes from May 1 through August 9, but believes that the prohibition should start well before denning season and extend from early March through early August instead. The only justification for allowing the take of wolves during this period is population reduction,⁸⁴ which is prohibited on national preserves.

⁸² 79 Fed. Reg. at 52601.

⁸³ *Id.* at 52598 (“The NPS also specifically seeks comment on whether to continue to allow the practice of using dogs to hunt black bears in National Preserves.”).

⁸⁴ ADF&G emphasized this point to the Board in its comments opposing the extension of the wolf hunting season in GMU 22, stating that “[m]ost wolf hunting seasons statewide, *outside of areas with intensive management programs*, end on April 30 due to increased vulnerability

V. REQUEST FOR CLARIFICATION AND SUPPORT FOR BAN ON USE OF CHEMICAL BAIT

The rule specifically prohibits the using the aid of chemicals when sport hunting in national preserves.⁸⁵ NPCA believes that this prohibition includes a ban on the use of artificial scents, and requests that the Park Service make this clear in the final rule. The only reason to employ an artificial scent to lure in a wolf or bear is to increase hunter efficiency, i.e. predator control. In fact, the Board treats the use of scent lures as part of baiting.⁸⁶ If the rule as proposed does not include artificial scents in the prohibition, as covered by the prohibition against the use of chemicals, then the final rule should do so.

VI. CONCLUSION

NPCA supports the rest of the proposed rule's restrictions on the taking of wildlife in national preserves, and supports the rule as a whole as it will prohibit any state regulations that authorize taking of wildlife, hunting or trapping activities, or management actions that involve predator reduction efforts with the intent or potential to alter or manipulate natural predator-prey dynamics and associated ecological processes to increase human harvest of ungulates.

Sincerely,

s/ K. Strong
Katie Strong
Staff Attorney

during the denning period.” *See* Exhibit 11 at page 32–33 (emphasis added).

⁸⁵ 79 Fed. Reg. at 52601.

⁸⁶ ADF&G, *Bear Baiting Seasons and Requirements: July 1, 2013 – June 30, 2014*, www.adfg.alaska.gov/static/regulations/wildliferegulations/pdfs/bear_baiting_regs.pdf (last visited Nov. 20, 2014) (allowing the use of scent lures, “but only with a baiting permit”).