



Animal Welfare Institute

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VIA THE FEDERAL RULEMAKING PORTAL (www.regulations.gov)

National Park Service
Regional Director
Alaska Regional Office
240 West 5th Avenue
Anchorage, AK 99501

Re: Alaska: Hunting and Trapping in National Preserves, Proposed Rule (RIN 1024-AE38) and Draft Environmental Assessment on Sport Hunting and Trapping in National Preserves in Alaska.

To Whom It May Concern:

On behalf of the Animal Welfare Institute (AWI), I submit the following comments on the proposed rule and Draft Environmental Assessment (DEA) on Sport Hunting and Trapping in National Preserves in Alaska. 83 Fed. Reg. 23,621, 83 Fed. Reg. 34,094, 83 Fed. Reg. 45,203. This proposed rule only affects particularly inhumane and unethical sport hunting methods in the ten national preserves in Alaska.¹

AWI strongly rejects this proposed rule as unnecessary, illegal, and a disappointing example of the National Park Service (NPS) and the Trump administration conspiring with the State of Alaska and its Board of Game (BOG) to permit hunting methods that are inhumane, antiquated, and must not be allowed on national preserves in Alaska. Consequently, AWI supports Alternative 2, the no action alternative, as it is the only alternative that complies with federal law.

On October 23, 2015, the NPS published a final rule which prohibited several inhumane and unethical sport hunting methods (i.e., taking wildlife from an aircraft, off-road vehicle,

¹ Aniakchak National Preserve, Bering Land Bridge National Preserve, Denali National Preserve, Gates of the Arctic National Preserve, Glacier Bay National Preserve, Katmai National Preserve, Lake Clark National Preserve, Noatak National Preserve, Wrangell Saint-Elias National Preserve, and Yukon-Charley Rivers National Preserve.

motorboat, motor vehicle, or snowmachine; taking big game while the animal is swimming, using bait, taking big game with the aid or use of a dog, taking wolves or coyotes from May 1 through August 9, taking cubs bears or female bears with cubs) based on a clearly justified analysis documenting that these methods violated the Alaska National Interest Lands Conservation Act (16 U.S.C. §§ 410hh-410hh-5; 3101-3233)(ANILCA) and the NPS Organic Act (54 U.S.C. §100101 et seq. (formerly 16 U.S.C. § 1 et seq))². Less than two years later, the NPS is proposing to reverse, without any credible justification, significant elements of the final rule to appease sport hunters in Alaska, Alaska's Congressional delegation, and anti-predator interests within the Department of Interior, NPS, and Alaska Department of Fish and Game, including those serving on its BOG.

As explained below, the current decision-making process associated with the proposed rule and DEA must be terminated and the NPS must retain the 2015 final rule to comply with federal law. The current process violates federal law by:

- Failing to provide a “reasoned analysis” to justify discarding several key elements of the 2015 final rule;
- Failing to meet the basic legal standards required under the National Environmental Policy Act (NEPA), including by not: (1) disclosing all relevant information; (2) including a description of the affected environment; (3) considering a range of reasonable alternatives; (4) adequately evaluating the relevant impacts, including cumulative impacts, associated with the proposed action; and (6) evaluating the environmental impacts in an Environmental Impact Statement (EIS);
- Proposing to permit hunting methods in designated and eligible wilderness areas that would violate the Wilderness Act;

Therefore, if the NPS ignores these legal obligations and publishes a Finding of No Significant Impact (FONSI) to authorize sport hunters to use these inhumane hunting methods to kill brown and black bears, wolves, and caribou on some or all of Alaska's national preserves, it will be violating federal law.

The NPS has failed to provide a “reasoned analysis” for its change in position regarding the legality of select hunting methods in national preserves:

The 2015 rule added the following text to 36 CFR 13.

§13.42 Taking of wildlife in national preserves.

² Congress recodified the NPS Organic Act in 2016 during the centennial anniversary of the NPS.

...

(f) State of Alaska management actions or laws or regulations that authorize taking of wildlife are not adopted in park areas if they are related to predator reduction efforts. Predator reduction efforts are those with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes, in order to increase harvest of ungulates by humans.

...

(g) This paragraph applied to the taking of wildlife in park areas administered as national preserves except for subsistence uses by local rural residents pursuant to applicable Federal law and regulation. As of January 1, 2016, the following are prohibited (only those prohibited acts that the NPS proposes to permit are listed here):

(3) Taking wildlife from an aircraft, off-road vehicle, motorboat, motor vehicle, or snowmachine (unless the motor has been completely shut off and progress from the motor's power has ceased.

(5) Taking big game while the animal is swimming.

(8) Using any electronic device to take, harass, chase, drive, herd, or molest wildlife, including but not limited to: artificial light...

(10) Using bait.

(11) Taking big game with the aid or use of a dog.

(12) Taking wolves and coyotes from May 1 through August 9.

(13) Taking cub bears or female bears with cubs.

In the May 2018 proposed rule, the NPS seeks to entirely reverse select elements of these prohibited acts by deleting paragraphs (f) and (g) from 36 CFR 13.42. Specifically, the NPS now wants to permit sport hunters to: take any black bear, including cubs and sows with cubs, with artificial light at den sites; kill brown bears over bait; kill wolves and coyotes (including pups) during the denning season (between May 1 and August 9); kill swimming caribou; kill caribou from motorboats under power; kill black bears over bait; and use dogs to hunt black bears on one or more national preserves. 83 Fed Reg 23621.

Legal precedent requires that the NPS provide a "reasoned analysis" to support its proposal to reverse course and permit hunting methods that, only three years ago it identified as violating

federal law. See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 38 (1983) (“an agency changing its course must supply a reasoned analysis”). In *State Farm*, the U.S. Supreme Court noted that “an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance.” *State Farm*, 463 U.S. at 42. Courts reviewing abrupt agency changes of direction apply this principle when an agency formally rescinds or revises an existing regulation, *id.* at 42, 46, 57, and when it alters a prior interpretation of its own rules or governing statute. See, e.g., *N.Y. Pub. Interest Research Group v. Johnson*, 427 F.3d 172, 182–83 (2d Cir. 2005); *Lal v. INS*, 255 F.3d 998, 1008–09 (9th Cir. 2001) (invalidating an agency interpretation of a regulation because the agency changed course from its settled policies).

Here, where the 2018 proposed rule is a product of an administrative change, additional restrictions apply:

Where there is a policy change the record may be much more developed because the agency based its prior policy on factual findings. In that instance, an agency’s decision to change course may be arbitrary and capricious if the agency ignores or countermands its earlier factual findings without reasoned explanation for doing so. An agency cannot simply disregard contrary or inconvenient factual determinations that it made in the past, any more than it can ignore inconvenient facts when it writes on a blank slate.

FCC v. Fox TV Stations, Inc., 556 U.S. 502, 537 (2009) (when an agency adopts a new policy, more detailed justification is needed “than what would suffice for a new policy created on a blank slate . . . when its new policy rests upon factual findings that contradict those which underlay its prior policy”).

The NPS has failed to provide a “reasoned analysis” or “adequate explanation” to justify this rule change. In its 2015 rule, the NPS provided a detailed justification for its decision to restrict select hunting practices in national preserves based on ANILCA, the NPS Organic Act, and NPS management policies.

As explained by the NPS, among the express purposes of ANILCA are the “preservation of wildlife, wilderness values, and natural undisturbed, unaltered ecosystems while allowing for recreational opportunities, including sport hunting.” 80 Fed. Reg. 64,325 (citing 16 U.S.C. 3101(a)-(b)). Nevertheless, ANILCA authorizes the Secretary “within national preserves . . . (to) 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.” *Id.* at 64,326.

The legislative history of ANILCA reinforces that the purposes of NPS units are to maintain natural, undisturbed ecosystems.

Certain units have been selected because they provide undisturbed natural laboratories—among them the Noatak, Charley, and Bremner River watersheds.” ANILCA, Report of the Senate Committee on Energy and Natural Resources, Report No. 96-413 at page 137 (hereafter Senate Report). Legislative history identified Gates of the Arctic (sic), Denali, Katmai, and Glacier Bay National Parks as “large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause.” Senate Report at page 137.

Id. at 64,325.

National preserves in Alaska 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...” *Id.* That taking, as explained in ANILCA’s legislative history, provides that “the 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.” *Id.* at 64,326 (quoting 126 Cong. Rec. H10549 (Nov. 12, 1980) (Statement of Rep. Udall)). Indeed, the statutory purposes of various national preserves created by ANILCA include “the protection of populations of fish and wildlife, including specific references to predators such as brown/grizzly bears and wolves.” *Id.*

The NPS also relied on its own Organic Act to justify the final rule. That Act set forth the mandate of the NPS as follows: “to conserve the scenery, natural and historic objects, and wild life” within national parks and to provide for visitor enjoyment of the same for this and future generations. *Id.* (citing 54 U.S.C. 100101 (which formerly was 16 U.S.C. 1³)). Policies implementing the Organic Act “require the NPS to protect natural ecosystems and processes, including the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behavior of wildlife.” *Id.* (citing Management Policies 2006 §§ 4.1, 4.4.1, 4.4.1.1, and 4.4.2.). As explained by the NPS in the final rule, Congress never intended ANILCA to modify the Organic Act or its implementing policies. *Id.* (“the Committee recognizes that the policies and legal authorities of the managing agencies will determine the

³ Congress recodified the NPS Organic Act in 2016 during the centennial anniversary of the NPS.

nature and degree of management programs affecting ecological relationships, population's dynamics, and manipulations of the components of the ecosystem.”) (citing Senate Reports at pages 232-331). Notably, NPS policy is clear that “activities to reduce . . . native species for the purpose of increasing numbers of harvested species (i.e. predator control)” are not permitted on NPS lands. *Id.* (citing Management Policies 2006 § 4.4.3.).

The wildlife management framework used by the State of Alaska is entirely based on the concept of sustained yield which is defined under state law to mean “the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game.” *Id.* (citing Alaska Statutes §16.05.225(k)(5)). To satisfy this requirement the BOG adopts “regulations to provide for intensive management programs to restore the abundance or productivity of identified big game prey populations as necessary to achieve human consumptive use goals.” *Id.* (citing Alaska Statutes § 16.05.225(e)). Such management is, however, inconsistent with NPS policies which do not permit the manipulation of natural systems and processes, including through actions to reduce or increase wildlife populations, to facilitate killing. *Id.* (referencing, for example, Management Policies 2006 §§ 4.1, 4.4.3.). The NPS notes that Congress recognized the potential for such conflict between the Organic Act and NPS policies and state management directives prior to passage of ANILCA:

It is contrary to the National Park Service 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.

Id. (quoting Senate Report at page 171).

To further justify its decision to ban these inhumane and unethical hunting practices from national preserves in Alaska, the NPS explained how the State of Alaska has liberalized methods of hunting and trapping wildlife over the last several years including by extending season lengths to increase opportunities to kill predators. These decisions have also permitted the following: taking any black bear, including cubs and sows with cubs, with artificial light at den sites; killing brown bears over bait (which often includes dog food, bacon/meat grease, donuts, and other human food sources); and killing wolves and coyotes (including pups) during the denning season when their pelts have little trophy, economic, or subsistence value. *Id.* The NPS expresses concern that “additional liberalizations by the State that are inconsistent with NPS management directives, policies, and federal law are anticipated in the future.” *Id.*

The NPS also explains how, over the past 10 years, it has objected to more than 50 BOG proposals to liberalize predator killing in areas that included national preserves and that each time the BOG “has been unwilling to exclude national preserves from State regulations designed to manipulate predator/prey dynamics for human consumptive use goals.” In responding to such concerns, the BOG recommended that the NPS use its “own authority to ensure national preserves are management in a manner consistent with federal law and NPS policy.” *Id.* (citing to a statement of BOG Chairman Judkins to Superintendent Dudgeon, BOG Public Meeting in Fairbanks, Alaska (February 27, 2010)). The 2015 final rule was promulgated, in part, in response to this recommendation.

In proposing to reverse the 2015 rule, the NPS provided various justifications for its about face. As explained below, none of these justifications withstand even minimal analysis and do not satisfy the NPS’s legal obligation to provide a “reasoned analysis” for the proposed rule change. Specifically, the NPS provided the following justifications:

- (1) Referring to Secretarial Orders (SO) 3347 and 3356 (both of which were signed after the final rule was published).

Analysis: SO 3347 which was signed on March 2, 2017 creates a reporting mechanism to ensure the implementation of Executive Order 13443 (Facilitation of Hunting Heritage and Wildlife Conservation, August 16, 2007) and ultimately seeks input from the Wildlife and Hunting Heritage Conservation Council and the Sport Fishing and Boating Partnership Council to “identify specific actions to expand access significantly for recreational hunting and fishing on public lands as may be appropriate.” SO 3347 at 2. The last clause “as may be appropriate” indicates that the expansion of recreational hunting and fishing on public lands was not intended to be without restraint or restriction. This text was likely included due to prohibitions in federal law against hunting on certain federal lands, particularly lands administered by the NPS.

Executive Order 13443, signed by President George W. Bush, includes a provision directing agencies to “manage wildlife and wildlife habitats on public lands in a manner that expands and enhances hunting opportunities, including through the use of hunting in wildlife management planning.” EO 13443 at Sec. 2(c). The EO, however, makes clear that federal activities associated with promoting hunting opportunities must be “consistent with agency missions.” *Id.* at Sec. 2.

SO 3356, signed on September 15, 2017, is similar to SO 3347 as it refers to the implementation of EO 13443. It is, however, slightly more prescriptive as it calls on the

Department of the Interior to “identify within 30 days, specific actions concerning recreational hunting and fishing on public lands and waters, habitat improvement, predator management, and access to public lands and waters.” Nevertheless, other than including directives seeking input from the agencies, including the NPS, on the potential for the expansion of hunting opportunities on agency lands, there’s nothing in SO 3356 that implicitly or explicitly requires the NPS to reauthorize the use of the prohibited hunting methods on national preserves in Alaska.

While there is nothing in EO 13443 or SO 3347 or 3356 that the NPS can rely on to provide a “reasoned analysis” for its change of policy in regard to the sport hunting methods that it now wants to permit to be used on national preserves in Alaska. Even if such explicit instruction was provided, federal law continues to take precedence meaning that, in this case, ANILCA and the NPS Organic Act would continue to provide the legal authorization, or lack thereof, for the hunting methods permissible for use on national preserves.

- (2) Claiming that states have primary jurisdiction to management wildlife throughout their state (while also noting the broad discretion that the NPS has in managing wildlife on national preserves under applicable laws, policies, and regulations.

Analysis: As noted in the 2015 final rule in response to comments suggesting that the NPS did not have the authority to supersede state wildlife regulations, the NPS explained that:

Under the Property and Supremacy Clauses of the U.S. Constitution, State wildlife laws that conflict with NPS’s efforts to carry out its statutory mandates are preempted. *See., e.g., Kleppe v. New Mexico*, 426 U.S. 529 (1976); *Hunt v. United States*, 278 U.S. 96 (1928); *New Mexico State Game Commission v. Udall*, 410 F.2d 1197 (10th Cir.), *cert. denied*; *New Mexico State Game Commission v. Hickel*, 396 U.S. 961 (1969); *United States v. Brown*, 552 F.2d 817 (8th Cir. 1977).

80 Fed. Reg. 64,332.

Since, as explained by the NPS, some state authorized hunting and trapping practices are not consistent with the NPS implementation of its Organic Act and ANILCA, the final rule is an “appropriate exercise of the authority affirmed by the case cited above.” *Id.*

- (3) Claiming that the reinstatement of the prohibited predator hunting methods is consistent with NPS policies that prohibit activities that reduce the numbers of native species for the purpose of increasing the numbers of harvested species.

Analysis: The NPS provides no substantive analysis to justify this claim and/or to explain how predator hunting methods that it deemed to be prohibited in 2015 as being inconsistent with NPS policies are now consistent with said policies even though the policies themselves have not been amended. The State of Alaska and its BOG have been engaged in efforts to reduce predator numbers to increase populations of more popular and lucrative game animals since at least 1994 when the Alaska State Legislature passed what was described as an “intensive management law.” This law directed the BOG to review moose and caribou populations in the state to determine which populations were most important for high levels of killing by hunters, to determine which populations were depleted, and to implement management plans for those populations; plans that nearly universally included predator control (Kennedy and Fiorino 2011).⁴

While the State of Alaska and NPS may believe that the hunting methods prohibited in 2015 are not intended to increase the killing of predators in order to increase the number of other species that hunters like to kill, there’s nearly 25 years of evidence in the form of BOG decisions (many of which the NPS actively opposed due to their conflict with NPS laws and policies) that are intended to facilitate the killing of predators.

- (4) Finding that the 2015 rule’s discussion of an action’s “intent or potential” to manipulate predator dynamics goes beyond the plain language of Management Policies 2006 section 4.4.3.

Analysis: This is correct. NPS Management Policy 4.4.3 does not refer to the intent or potential for an action to manipulate predator dynamics. Instead, the policy is crystal clear that the NPS does not permit the manipulation of predator dynamics to increase the abundance of other species.

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.

⁴ Kennedy, C., and T. Fiorino. 2011. Alaska’s Predator Control Program. Managing for Abundance of Abundant Mismanagement? Defenders of Wildlife.

NPS Management Policy 4.4.3.

The NPS should have been more direct in the 2015 rule in explaining its policy against predator control, which is clearly why the State of Alaska and its BOG is allowing sport hunting methods that facilitate, expand, and simplify the killing of predators. Just because the State of Alaska claims that its interest in repealing the 2015 rule is not for the purpose of predator control does not make it so.

- (5) Reporting that the State of Alaska disputes the NPS conclusion that the hunting methods in question are intended for predator control when, instead, they are provided to increase hunter opportunities to kill wolves, coyotes, bears, and other species.

Analysis: There's no question that repealing the prohibitions on certain sport hunting methods contained in the 2015 final rule will increase hunter opportunities to kill wolves, coyotes, bears, and other species. However, there is incontrovertible evidence that the State of Alaska and its BOG have routinely made wildlife management decisions that are intended to reduce predator numbers to increase the number and availability of prey species, namely ungulates, for the benefit of Alaska's sport and subsistence hunters. Just because the State of Alaska claims that repealing the prohibition on sport hunting methods would increase hunter opportunities does not undermine or render meaningless that the hunting methods in question, which the state has authorized to be used throughout Alaska on lands under the state's jurisdiction, are not intended for predator control.

- (6) Asserting, as reported by the State of Alaska, that any effects to the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitats, genetics, and behaviors of wildlife by permitting the prohibited hunting methods "are likely negligible." 83 Fed. Reg. 23,622.

Analysis: NPS management policies that promote the natural abundances, diversities, distributions, densities, age-class distributions, populations, habitat, genetics, and behaviors of wildlife are not based on some level of impact, be it major or negligible. Consequently, the State of Alaska's suggestion that the impacts of the reinstatement of these inhumane and unethical sport hunting practices "are likely negligible" is irrelevant. The impacts either exist or they do not exist and, if the latter, they should not be permitted unless there are other factors that allow for or warrant the impacts.

(7) Noting there is no definition of “sport hunting” in applicable federal law or regulation.

Analysis: The fact that there is no definition of “sport hunting” in any applicable federal law or regulation is irrelevant and has no bearing on the NPS claims in the 2015 rules that certain inhumane and unethical sport hunting methods violate federal law.

(8) Agreeing with the State of Alaska that baiting of bears does cause them to become food-conditioned and, therefore, increases safety concerns.

Analysis: This conclusion is entirely inconsistent with the NPS finding in its 2015 final rule and NPS has failed to provide any substantive evidence or analysis to justify this change in position save for simply agreeing with the State of Alaska that its authorization of baiting for bears has led to no public safety concerns. The NPS has failed to engage in any independent analysis of the state’s claim. For example, it has not examined incidents of bear-human conflicts throughout the state, including incidents where bears (black and/or brown) were killed to resolve such conflicts, to determine if they may have been wholly or partially caused by baiting. As explained by the NPS in the 2015 final rule:

By design, baiting typically uses human or pet food to alter the natural behavior of bears to predictably attract them to a specific location for harvest. Land and wildlife management agencies strive to eliminate the feeding of bears through individual and collective educational efforts, due to the increased likelihood that food conditions bears are killed by agency personnel or the public in defense of life or property. Food-conditioned bears are also believed more likely to cause human injury. To that end, NPS regulations prohibit feeding wildlife and the practice of baiting is at odds with this.

80 Fed. Reg. 64,335-64,336.

Furthermore, given the practical realities of establishing and maintaining bear baiting sites, it is inevitable, as the NPS concedes in the 2015 final rule, that baiting can pose risks to public safety.

Bait stations tends to be located in accessible areas due to the infrastructure (typically a 55 gallon drum) and quantity (including weight) of bait used to engage in this activity and the frequency with which the stations must be replenished. Because of the accessibility of these areas, they are typically used by

multiple user groups, which contribute to the public safety concerns associated with baiting.

Id. at 64,336.

As the foregoing demonstrates, the arguments used by the NPS to explain why select sport hunting methods proposed for reinstatement on national preserves are consistent with federal law are baseless and certainly cannot meet the “reasoned analysis” standard required by law. If the NPS wants to permit these inhumane and unethical sport hunting methods on national preserves in Alaska it should work with Congress to amend the enabling legislation for each preserve (where necessary), the NPS Organic Act, and ANILCA instead of circumventing the need for statutory reform by attempting to achieve such reform through rulemaking.

The DEA fails to satisfy the legal requirements under NEPA:

Regulations implementing NEPA promulgated by the Council on Environmental Quality (40 CFR 1500 *et seq.*) require that agencies “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” *Id.* at 1500.1(b). The information is intended to evaluate the environmental impacts of a proposed agency action on the quality of the human environment. Impacts include those that are direct, indirect, and cumulative (*see id.* at 1508.8 and 1508.7) and the “human environment” must be “interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.” *Id.* at 1508.14. Ultimately, “the NEPA process is intended to help public officials make decisions based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” *Id.* at 1500.1(c).

The information disclosed in a NEPA document “must be of high quality” and “accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” *Id.* at 1500.1(b).

Such information is included in an EA or EIS. An EA can be prepared when “necessary under the procedures adopted by individual agencies to supplement these regulations...” *id.* at 1501.3(a) and can be used to determine “whether to prepare an environmental impact statement.” *Id.* at 1501.4(c). In addition to evaluating the environmental impacts of an agency’s proposed action, NEPA documents must “assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” *Id.* at 1500.2(e).

The DEA fails to meet many of the requirements imposed by NEPA.

The NPS failed to disclose all relevant data or include a summary of the affected environment in the DEA:

The information disclosed in the DEA is woefully deficient. This prevents the public from meaningfully participating in the decision-making process or agency officials from making an informed decision.

For example, the NPS included no description of the affected environment in the DEA.⁵ The establishment of the baseline conditions of the affected environment is a fundamental requirement of the NEPA process. Without establishing the baseline conditions which exist in the vicinity ... before [the project] begins, there is simply no way to determine what effect the proposed [project] will have on the environment and, consequently, no way to comply with NEPA. *Half Moon Bay Fisherman's Mark't Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988). Such baseline information and analysis must be part of any environmental review and be subject to public review and comment under NEPA. The lack of an adequate baseline analysis fatally flaws an EIS or EA. *Northern Plains v. Surf. Transp. Brd.*, 668 F.3d 1067, 1083 (9th Cir. 2011). “[W]ithout [baseline] data, an agency cannot carefully consider information about significant environment impacts. Thus, the agency fail[s] to consider an important aspect of the problem, resulting in an arbitrary and capricious decision.” *Id.* at 1085.

Furthermore, despite the fact that the proposed rule would impact 10 national preserves in Alaska, other than identifying the 10 preserves and including general information about the geographic size of and presence of large mammals in each, no other information is disclosed. There is no information about the history of each preserve, their purposes, missions, wildlife species composition and diversity, visitor use data, and recreational uses.

The NPS fails to disclose or describe the relevant planning documents for each preserve (e.g, preserve-specific Foundation Statements⁶ and General Management Plans⁷ (GMPs)) and, in

⁵ See also, Describing the Affected Environment, Chapter 4 The NEPA Process for Environmental Assessments and Environmental Impact Statements, National Park Service NEPA Handbook, 2015.

⁶ See NPS Management Policies 2006 at 2.2: “The planning process begins with the development of a foundation statement that is based on the park’s enabling legislation or presidential proclamation and that documents the park purpose, significance, fundamental resources and values and primary interpretive themes.”

⁷ See NPS Management Policies 2006 at 2.2: “This is a broad umbrella document that sets the long-term goals for the park based on the foundation statement. The general management plan (1) clearly defines the desired natural and cultural resource conditions to be achieved and maintained over time; (2) clearly defines the necessary conditions for visitors to understand, enjoy, and appreciate the park’s significant resources, and (3) identifies the kinds and levels of

particular, whether those critical park planning documents even authorize the hunting methods which were prohibited in 2015 and the NPS is now proposing to permit in the preserves. Considering that Foundation Statements and GMPs dictate preserve-specific purposes, objectives, and long-term management goals – representing the building blocks for all subsequent planning and management decisions in each preserve, this information must be disclosed as it documents: the desired conditions for the natural and cultural resources in each preserve and how such conditions are to be maintained; how each preserve is to be understood, enjoyed, and appreciated; what management activities, visitor uses, and developments will be permitted in each preserve to maintain its desired conditions; and what indicators will be used to ensure that the desired conditions are being met.

Given the hierarchical structure of the NPS planning process, Foundation Statements are developed first and become the cornerstone of other planning documents including, in order, GMPs, Program Management Plans, Strategic Plans, Implementation Plans, Annual Performance Plans, and Annual Performance Reports. NPS Management Policies 2006 at 2.2. While Foundation Statements can remain valid for decades, GMPs are subject to periodic review and, except where conditions remain substantially unchanged, may need to be reviewed and replaced every 10 to 15 years. NPS Management Policies at 2.3.1.12.

A review of the Foundation Statements and GMPs for the 10 national preserves in Alaska reveals that the preserve-specific Foundation Statements were published between 2009 and 2014 while most of the preserve-specific GMPs were published between 1984 and 1986.⁸ Despite the fact that Foundation Statements are intended to underlie GMPs, only the Lake Clark National Preserve GMP has been updated (in 2014) after the Foundation Statement was completed in 2009. For Denali National Preserve, a consolidated GMP was published in 2014 but it did not include an actual update to the preserve's 1986 GMP.

management activities, visitor use, and development that are appropriate for maintaining the desired conditions; and (4) identifies indicators and standards for maintaining the desired conditions.” See also NPS Management Policies at 2.3.1 for additional information about GMPs.

⁸ The dates that the Foundation Statement and GMPs were published for each national preserve in Alaska are: Aniakchak National Preserve (Foundation Statement 2009, GMP 1986); Bering Land Bridge National Preserve (Foundation Statement 2009, GMP 1986); Denali National Preserve (Foundation Statement 2014, GMP 1986, Consolidated GMP 2014); Gates of Arctic National Preserve (Foundation Statement 2009; GMP 1986); Glacier Bay National Preserve (Foundation Statement 2010, GMP 1984); Katmai National Preserve (Foundation Statement 2009, GMP 1986); Lake Clark National Preserve (Foundation Statement 2009, GMP 2014); Noatak National Preserve (Foundation Statement 2009; GMP 1986); Wrangell-Saint Elias National Preserve (Foundation Statement 2010, GMP 1986); Yukon-Charley Rivers National Preserve (Foundation Statement 1985, GMP 2012).

Notably, many (if not all) of the older GMPs include the following text which raises questions as to whether the inhumane and unethical hunting methods that the NPS is attempting to permit to be used in the preserves are consistent with the GMPs:

It is the intent of the Committee (the Senate Committee on Energy and Natural Resources) that certain traditional National Park Service management values be maintained. It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park Service concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity, and ecological integrity of native animals as part of their ecosystem, and the Committee intends that that concept be maintained (Senate Report 96-413, p. 171).

The DEA also includes information about the take of some wildlife species (e.g., black and brown bears, wolves, caribou). This information may include data for specific Game Management Units (GMUs), the proportion of some GMUs that overlap with national preserves, and various explanations, most of which are entirely unsupported by any credible evidence, provided by the State of Alaska to discount concerns about the impact of select hunting methods on predators and other wildlife. However, the DEA provides no preserve-specific data. Such data should have included, but would not be limited to:

- Known or estimated size of bear, wolf, or other wildlife species populations on each preserve;
- Population trend data;
- Species density data;
- Species-specific habitat use and movement data;
- Information about species-specific habitat quality or quantity;
- Data on the number of animals taken by sport or subsistence hunters annually and over time;
- Information about wildlife-human conflicts;
- Information about preserve and species-specific bag limits or kill quotas for any wildlife species, including predators imposed by the State of Alaska;
- Information about preserve and species-specific bag limits or kill quotas for any wildlife species, including predators imposed by the Federal Subsistence Board;

- Information about any cultural or ethnographic resources on the national preserves;⁹
- Information about other anthropogenic or natural threats to wildlife on each preserve (e.g., disease, climate change, pollution, intra or interspecific predation rates).

Without such information, including no description of the affected environment, the public cannot provide any meaningful input on the potential environmental impacts associated with the proposed action. Here, since the proposal will likely increase the killing of predators and caribou on one or more national preserves, population demographic data and kill statistics are essential to evaluate the environmental impacts of the proposal. Assurances from the NPS or the State of Alaska that such impacts will be negligible, minimal, or unnoticeable are neither satisfactory to assuage concerns about the impact of the proposed rule on wildlife nor do they meet NEPA requirements.

The NPS failed to consider a reasonable range of alternatives in the DEA:

The “heart” of the NEPA process is an agency’s duty to consider “alternatives to the proposed action” and to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. §§ 4332(2)(C)(iii), 4332(2)(E). The CEQ regulations require agencies to “identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment. 40 C.F.R. § 1500.2(e).

In the DEA, the NPS evaluated only two alternatives – the proposed action and the no action alternative. Consequently, the public and decision-makers are left with two options – the proposal to repeal two important provisions that protect wildlife on national preserves or to take no action and to leave intact the 2015 final rule.

There were several other reasonable alternatives that should have been seriously considered and evaluated in the DEA. While AWI may not have endorsed these other alternatives, they could have included alternatives that:

- Repeal 36 CFR 13.42 paragraphs (f) and (g) only on non-wilderness lands within each preserve;

⁹ The failure to include information about cultural and/or ethnographic resources on the national preserves or to analyze if/how these resources may be affected by the proposed action violates NPS Management Policies (*see, e.g.*, Section 5 et seq.) and the National Historic Preservation Act (54 U.S.C. §300101 et seq.) including its Section 106 consultation procedures.

- Repeal 36 CFR 13.42 paragraphs (f) and (g) on select preserves (e.g., those located adjacent to or near non-rural areas in the state) while retaining the full protections for wildlife in the other preserves; and
- Retain 36 CFR 13.42 paragraph (g) as amended to eliminate specific prohibitions against select hunting methods.¹⁰

Any of these alternatives may have placated the State of Alaska and its allies while minimizing the adverse effect of the proposed action on the quality of the human environment; the very standard for determining if an alternative is reasonable.

The NPS failed to fully evaluate all relevant impacts including cumulative impacts in the DEA:

The failure of the NPS to disclose all relevant information in the DEA substantially compromises the quality of the analysis included in the DEA thereby significantly hindering the ability of the public to both evaluate that analysis and to provide meaningful public comments in response.

The analysis that is included in the DEA, which is limited to assessing the impact of the proposed action on wildlife, subsistence use, public use, and wilderness values, is deficient and often fails to provide any credible evidence to substantiate stated claims, makes population level conclusions instead of evaluating the impacts on the target species within each preserve, and relies, without any apparent question or evaluation, on claims made by the State of Alaska.

For example, the State of Alaska claims that, except in areas with relatively high human populations, the increased hunting of predators will neither reduce predator populations nor increase prey populations. DEA at 5. This claim is supported by a “personal communication” with a B. Dale. The NPS goes on to note that, where wolf kills exceeded 40 percent of the population two years in a row, the population declined while, when the kill rate was less than 35 percent, wolf numbers increased. While this claim may be true, it is meaningless in the context of the DEA since the NPS has failed to provide any information about preserve-specific wolf

¹⁰ This suggested alternative would ensure that a number of hunting practices and methods that the NPS banned in 2015 from being allowed on national preserves (e.g., shooting from, on, or across a park road or highway; using any poison or other substance that kills or temporarily incapacitates wildlife; taking wildlife from an aircraft, off-road vehicle, motor vehicle, or snowmachine; using a machine gun, a set gun, or a shotgun larger than 10 gauge) would remain in place instead of eliminating all of these prohibitions altogether by repealing 36 C.F.R. § 13.42(g). In the DEA, the NPS attempts to justify the full repeal of this provision by claiming that these other practices (those not explicitly under review in the proposed rule) are banned under state law anyway despite past NPS concerns that the State of Alaska is anticipated to further liberalize its hunting rules, including predator hunting rules, in the future (*see* 80 Fed. Reg. at 64,326).

population estimates and/or data on the level of take by hunters, including sport and subsistence hunters. Without such data it is impossible to assess how the proposed action may affect wolves or other predators on national preserves.

The State of Alaska asserts that the hunting of brown bears will not impact moose populations. DEA at 5. This is supported by the State's analysis of moose cow:calf ratios in various areas where brown bear hunting regulations have been liberalized where there was no effect on the survival of moose neonates. Again, this may be true but without additional information about the abundance of other predators at these study sites, data documenting any change in abundance as brown bear kills increase, or disclosure of other factors that may cause the mortality of moose neonates (i.e., declining habitat conditions, disease, climate change), this assertion cannot be evaluated.

For wolves, it is anticipated that more wolves will be killed if the season on national preserves is expanded to include May 1 through August 9 (during the denning period), the increase in wolf kills is expected to be small with little to no population-level effects. DEA at 6. The NPS draws the same conclusion regarding the hunting of black and brown bears over bait – that there will be no population level impacts. DEA at 6,7. Again, these claims are impossible to evaluate since no data are provided on preserve-specific wolf or black/brown bear population numbers or estimates.

While it may be true that no population level effects are expected, this is not the proper scale of evaluation. Given the relatively small proportion of lands in Alaska that are national preserves, suggesting that the take of wolves under the proposed rule on national preserves will have no expected population-level effects is as obvious as concluding that the removal of a single gumball from a full gumball machine will not drastically reduce the number of gumballs in the machine. In this case, for wolves, bears, and other wildlife, the analysis must be at the preserve level and a separate analysis must be provided for each preserve.

In regard to any public safety concerns associated with bear baiting, the NPS seemingly accepts the State of Alaska's claim that it has registered thousands of black bear bait stations per year for many years, and has not detected problems that could be directly attributed to the practice of bear baiting. DEA at 7. This claim is not substantiated with any citation to any study but, instead, seems to simply fit the narrative developed by the NPS and State of Alaska to permit the use of these inhumane and unethical sport hunting methods, including bear baiting, on national preserves by eliminating any prospect of an adverse impact on public safety. If the NPS had complied with NEPA, it would have subjected the state's claim to scrutiny by, for example, examining reported bear-human conflict incidents in Alaska to determine if any may have had as its origins a bear that had become food-conditioned as a result of bait.

While other examples from the DEA could be described, in regard to the potential impact of the proposed action on subsistence use (which is considered a priority use on national preserves), the NPS claims that the possibility of an adverse impact on subsistence use (i.e., a need to reduce subsistence use opportunities for hunting predators if predator numbers are reduced by sport hunters) is unlikely since the State of Alaska would act to prevent such impacts. This assurance is based on the fact that the State of Alaska manages wildlife under the sustained yield principle and since the state has assured the NPS that if kills became unsustainable the Alaska Department of Fish and Game would recommend to its BOG to either close the season or take other measures to reduce the kills. DEA at 11.

Remarkably, this is the same sustained yield management scheme that the NPS found to result in management actions that violated federal law in its 2015 final rule (80 Fed. Reg. 64,326) and the same BOG that, since at least 2005, has refused to amend its predator management decision even when the NPS reports that they would violate federal law regarding the take of wildlife on national preserves. *Id.* Consequently, far from providing any actual assurance of state action in response to unsustainable take levels, the NPS is simply colluding with the State of Alaska and its BOG to permit the expansion of the BOG's anti-predator agenda via sport hunting on national preserves.

The lack of disclosure and deficiency in the analysis also compromises the ability of the public to effectively evaluate the NPS assessment of cumulative impacts. While the NPS concedes that some of the cumulative impacts will be adverse, its failure to disclose all relevant information about past, present, and reasonably foreseeable threats to wildlife on national preserves, including threats that are not subject to NPS discretion, violates NEPA. Furthermore, its lack of any substantive analysis of such cumulative impacts (versus engaging in mere speculation of such impacts as is presently the case) prevents full evaluation of such cumulative impacts as required by law.

The NPS must evaluate the environmental impacts of the proposed action in an EIS:

In determining whether to prepare an EIS to evaluate the environmental impacts of a proposed action, an agency is required to determine how significantly the impacts of the proposed action will affect the quality of the human environment. Under NEPA, this determination requires consideration of both the context and intensity of the impacts. 40 C.F.R. § 1508.27. The "context" of an impact can range from society as a whole to the affected region, affected interests, and the local environment. *Id.* at 1508.27(a). In this case, the context of the impacts are not limited to a single preserve but will effect 10 national preserves spread throughout Alaska including many that are part of or adjacent to some of America's largest and most biologically and ecologically intact national parks.

“Intensity” under NEPA refers to the severity of impact. *Id.* at 1508.27(b). NEPA implementing regulations identify 10 factors that agencies are required to consider in evaluating the intensity of an impact. If a proposed action satisfies any one of these factors, the agency is required to prepare an EIS. In this case, the proposed action meets or exceeds (or may meet and exceed in regard to factors 8 and 9) each of the ten factors as summarized below.

- (1) Impacts that may be both beneficial and adverse.

Analysis: The State of Alaska claims that the impacts of the propose action will be beneficial by providing additional opportunities for hunters in Alaska to kill black and brown bears, wolves, coyotes, and other wildlife on national preserves while the NPS concedes that impacts to wildlife, at least cumulatively with other past, present, and foreseeable impacts, will be adverse.

- (2) The degree to which the proposed action affects public health or safety.

Analysis: The State of Alaska discounts any possibility of permitting increased take of bears over bait in national preserves to result in any increase in concerns for public safety as a result of bears becoming food-conditioned. This is flatly inconsistent with the scientific literature (*see e.g.*, Herrero 1970, 1976, 2002; Masse et al. 2014) and flies in the face of recommendations made by most wildlife agencies about securing garbage and otherwise taking precautions to avoid bears becoming conditioned to human foods to protect public safety.

- (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

Analysis: While the impact of the proposed action on historic or cultural resources are unclear since the NPS failed to disclose such information, many of the national preserves in Alaska are part of or adjacent to national park lands.

- (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

Analysis: The very fact that the NPS is attempting to reverse a rule prohibiting select hunting methods that was only finalized in 2015 reflects the level of controversy associated with these hunting methods and the applicability of federal law in determining

what hunting methods are permissible on national preserves. The State of Alaska claims that the impacts of the proposed action on wildlife “are likely to be negligible” (83 Fed. Reg. 23,622) while the DEA is replete with examples where the NPS defers to the opinions of the State of Alaska in regard to the impacts of the proposed action instead of providing its own substantive analysis and conclusions.

- (5) The degree to which the possible effects on the human environment are highly unknown or involve unique or unknown risks.

Analysis: As noted previously, the State of Alaska claims that the impacts of the proposed action on wildlife “are likely to be negligible” which suggests a level of uncertainty in qualifying the risks associated with the proposed action. Furthermore, in the DEA, the NPS relies on the Alaska Department of Fish and Game and its Board of Game to take action to address any evidence of the unsustainable take of wildlife (DEA at 11). Such reliance is risky and may result in unknown effects considering that the BOG has ignored NPS objections since at least 2005 on over 50 proposals to liberalize predator killing on national preserves and refusing to exclude preserves from state regulations intended to manipulate predator/prey dynamics for human consumptive use goals which violate federal law. 80 Fed. Reg. 64,326. Given this history, it is even more remarkable that the NPS is now embracing the state’s assurances despite the NPS anticipating that the state will approve additional liberalizations of predator hunting rules that are inconsistent with federal law and policies in the future. *Id.*

- (6) The degree to which the action may establish a precedent for future actions with significant effects.

Analysis: The NPS reported that it anticipates the State of Alaska further liberalizing its hunting laws which could, if the proposed rule is finalized, increase adverse impacts on wildlife on national preserves. By capitulating to the interest of the State of Alaska and its allies by repealing the regulatory provisions banning certain inhumane and unethical hunting practices, the NPS is compromising its authority to impose restrictions on select hunting methods on national preserves thereby creating a precedent that may exacerbate impacts to wildlife on those preserves if Alaska continues to enact state regulations that are anti-predator.

- (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

Analysis: The NPS concedes in the DEA that the cumulative impacts of the proposed action when considered in relation to past, present, and reasonably foreseeable future actions would be adverse to wildlife, wildlife habitat, and wilderness areas. DEA at 9, 18.

- (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

Analysis: It is unclear if the impacts of the proposed action would satisfy or exceed this significance factor since the NPS failed to include any information about the impacts of the proposed action on cultural or ethnographic resources within national preserves in Alaska.

- (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act.

Analysis: It is unclear if the impacts of the proposed action would satisfy or exceed this significance factor since the NPS failed to include any information about the impacts of the proposed action on endangered or threatened species or their critical habitat.

- (10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Analysis: As noted throughout this comment letter, the proposed rule to reinstate select sport hunting methods previously banned by the NPS on national preserves violates federal laws including ANILCA and the NPS Organic Act.

40 C.F.R. § 1508.27(b). “An action may be ‘significant’ if one of these factors is met.” *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1220 (9th Cir. 2008). Furthermore, “[a] determination that significant effects on the human environment will in fact occur is not essential” for an EIS to be required; “[i]f substantial questions are raised whether a project *may* have a significant effect upon the human environment, an EIS must be prepared.” *Sierra Club v. U.S. Forest Serv.*, 843 F.2d 1190, 1193 (9th Cir. 1988) (emphasis added); *see also Steamboaters v. F.E.R.C.*, 759 F.2d 1382, 1393 (9th Cir. 1985) (an agency “must supply a convincing statement of reasons why potential effects are insignificant.”).

Considering how the proposed rule meets or exceeds (or may meet or exceed in regard to factors 8 and 9) each of the NEPA significance factors, the NPS must not issue a FONSI and, instead, proceed with the preparation of an EIS to fully and comprehensively evaluate the direct, indirect,

and cumulative impacts of the proposed action (and all reasonable alternatives) on the environment.

Permitting inhumane and unethical sport hunting methods within designated and eligible wilderness areas on national preserves violates the Wilderness Act:

In 1964, the Wilderness Act was passed and signed into law to ensure that, despite America's increasing human population, expanding settlement, and increasing mechanization, the identification of wilderness areas, lands preserved and protected in their natural condition, for the benefit of future generations. 16 U.S.C. § 1131-1136, Section 2(a). To do this, Congress established a National Wilderness Preservation System composed of federally owned areas designated as "wilderness areas" which must be administered "for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness." *Id.*

As specified in the law:

A wilderness, in contrast with those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

Id. at Section 2(c).

Each agency, except as otherwise provide in the Act, is "responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character." *Id.* at Section 4(b). In doing so, the Act includes the following prohibition of certain uses:

Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and except as necessary to meet minimum requirements for the

administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.

Id. at Section 4(c).

As noted in the DEA, eight of the ten national preserves in Alaska have substantial areas of designated or eligible wilderness. See Table 1 (copied from DEA, Appendix D).

National Preserve	Total Acres	Designated Wilderness Acres ¹¹	Eligible Wilderness Acres
Aniakchak	458,124	0	TBD
Bering Land Bridge	2,632,522	0	2,509,360
Denali	1,304,242	0	TBD
Gates of the Arctic	948,203	0	914,000
Glacier Bay	58,406	0	100
Katmai	359,819	60,000	268,000
Lake Clark	1,294,116	348,000	903,000
Noatak	6,548,727	5,821,000	759,000
Wrangell-Saint Elias	4,306,002	1,866,000	2,249,000
Yukon-Charley	2,236,875	0	1,815,000

As indicated in the DEA, “NPS Management Policies 6.3.1 require the NPS to preserve wilderness character of lands in any category of wilderness. Section 701 of ANILCA designated wilderness areas in National Park System units in Alaska, including parts of national preserves. There are five tangible qualities of wilderness character . . . : (1) untrammeled; (2) natural; (3) undeveloped; (4) opportunities for solitude or primitive and unconfined recreation; and (5) other features of historical, scientific, educational and scenic value.” DEA at 17.

Without any substantive analysis, the NPS dismisses from serious consideration in the DEA the potential adverse impact of the proposed action on the opportunities for solitude or primitive and unconfined recreation claiming that such impacts would be minimal based on the sheer size of the national preserves in Alaska. It makes the same finding in regard to the potential impact of

¹¹ Rounded to the nearest 1,000 acres. TBD indicates the acres are to be determined. The 100 eligible acres in Glacier Bay would be contiguous with designated wilderness in the park. Estimated eligible areas for Noatak and Yukon-Charley are from the 1986 GMPs and are not yet updated.

the proposed action on other features of wilderness areas including their historical, scientific, educational and scenic value. *Id.*

For the other qualities (untrammelled, natural, and undeveloped nature of a wilderness area), the NPS describes these characteristics as:

Untrammelled. The Wilderness Act states that wilderness is “an area where the earth and its community of life are untrammelled by man,” that “generally appears to have been affected primarily by the forces of nature” and “retain[s] its primeval character and influence.”

Natural. The Wilderness Act states that wilderness is “protected and managed so as to preserve its natural conditions.”

Undeveloped. The Wilderness Act states that wilderness is “an area of undeveloped Federal land ... without permanent improvements or human habitation,” “where man himself is a visitor who does not remain” and “with the imprint of man’s work substantially unnoticeable.”

Id.

In evaluating the impact of the proposed action on these characteristics, the NPS concluded that there would be adverse impacts. Adverse impacts to the untrammelled nature of wilderness areas would be caused by the intentional control and manipulation of wildlife. For the natural characteristics of such areas, adverse impacts would be caused by altering the take of predators thereby reducing predator numbers while increasing the number of prey species and by modifying wildlife behavior as a result of using bait to kill bears. Finally, the undeveloped value of wilderness areas would be adversely impacted by the increase in the number of bear baiting stations given the debris associated with such stations which “could be highly visible and a clear sign of human modification and occupation of the area.”

Such adverse impacts are not permissible under the Wilderness Act and provide increased support for consideration of an alternative that, at a minimum, prohibited these inhumane and unethical hunting methods from being permitted in designated or eligible wilderness areas within the national preserves.

Conclusion:

As document above, the NPS cannot proceed with the current decision-making process. To comply with federal law, the NPS should terminate the process entirely and leave intact the 2015 final rule.

If, instead, it is determined to repeal the 2015 rule and replacing it with a new rule that will permit various inhumane and unethical hunting practices on national preserves in Alaska, it must suspend any further consideration of the proposed rule while it prepares an EIS to fully and comprehensively evaluate the impacts of the proposed action on the environment. Should it do this, the EIS (or, in the alternative, a much more substantive EA) must include consideration of a reasonable range of alternatives, not simply the action and no-action alternative as was subject to analysis, albeit inadequate, in the DEA.

Once the EIS process is complete, the NPS should then – and only then – publish a proposed rule to amend its regulations (if appropriate) which must contain the required “reasoned analysis” to explain its change in position if the NPS intends to permit sport hunting methods that it previously prohibited as being in violation of federal laws and NPS policies.

Furthermore, under no circumstances should the NPS permit the restoration of the inhumane and unethical hunting methods on designated and eligible wilderness areas within the national preserves in Alaska as this would be a clear violation of the Wilderness Act.

Thank you for considering this information. Should you have any questions about this comment letter or require additional information, please contact me at dj@awionline.org or, by telephone, at 609-601-2875.

Sincerely,

A handwritten signature in black ink, appearing to read "D.J. Schubert". The signature is fluid and cursive, with a large initial "D" and "J".

DJ Schubert
Wildlife Biologist