

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 13****RIN 1024-AC25****Alaska; Hunting Regulations****AGENCY:** National Park Service, Interior.**ACTION:** Final rule.

**SUMMARY:** This rule prohibits hunting in National Park Service (NPS) areas in Alaska on the same day in which a hunter has flown in an aircraft. The rule as originally proposed (59 FR 58804) also included a clarification of the NPS restriction on use of firearms and other weapons by trappers. This final rule addresses only the Same-Day-Airborne Hunting portion of the proposed rule. The clarification of the language regarding trapping and the use of firearms under a trapping license will be addressed under a separate document with an extended comment period.

**EFFECTIVE DATE:** April 11, 1995.

**ADDRESSES:** Comments should be addressed to Robert D. Barbee, Regional Director, National Park Service, 2525 Gambell Street, Anchorage, AK 99503-2892 (Fax 907-257-2533).

**FOR FURTHER INFORMATION CONTACT:** Paul Hunter, National Park Service, Alaska Regional Office, 2525 Gambell Street, Anchorage, AK 99503-2892 (Telephone 907-257-2646; Fax 907-257-2410).

**SUPPLEMENTARY INFORMATION:****Background**

The National Park Service "Organic Act" (16 U.S.C. 1, *et seq.*) provides authority for the management of NPS areas in accordance with the fundamental purposes established for each area. The basic purpose established by the Organic Act is " \* \* \* to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations". In addition, each area established may also have other legislatively designated purposes.

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA, 16 U.S.C. 3101) which established new, and added to existing, NPS units in Alaska. Sections 201 and 202 of ANILCA established purposes for which each NPS unit will be managed. Section 203 of ANILCA directs that these new and additional areas are to be administered according to the NPS

"Organic Act" and the other applicable provisions of ANILCA. Also, Section 1313 of ANILCA directs that National Preserves in Alaska will be administered and managed in the same way as a national park except as otherwise provided in ANILCA. Section 1110 provides for the use of airplanes in NPS areas subject to reasonable regulation to protect the natural and other values of the areas. The intent of Congress to allow hunting and trapping in specified NPS areas in Alaska is implemented through Title 36 part 13 of the Code of Federal Regulations (CFR).

**Hunting and Trapping in NPS Areas in Alaska**

Prior to 1975, same-day-airborne taking of wildlife was allowed in Alaska by State regulation. Starting in 1975, the State began prohibiting same-day-airborne hunting of many species of wildlife while continuing to allow for same-day-airborne land and shoot trapping. Because wolves may be taken under State law with either a hunting or trapping license, and State law provides for taking by firearm with a trapping license, wolves could still be taken by the land and shoot method on the same-day-airborne despite the prohibition for same-day-airborne hunting.

On June 17, 1981, Federal regulations (36 CFR Part 13) were adopted for NPS areas in Alaska, including a regulation (36 CFR 13.1(u)) which limited trapping in NPS areas to taking by snares, traps, mesh, or other implements designed to entrap animals. As a result, use of a firearm under the State authorization for land and shoot trapping was precluded in NPS areas.

From 1981 until 1986, NPS managers operated on the assumption that the State prohibition of same-day-airborne hunting and the NPS prohibition of use of a firearm for trapping eliminated the possibility of land-and-shoot taking of wolves and most other wildlife in NPS areas. However, at the January 1986 Board of Game meetings, the NPS learned that State wildlife managers were unaware of the NPS trapping restriction and that State tagging records indicated that as many as 20 wolves may have been taken in NPS preserves by the land-and-shoot trapping method during that season. Shortly thereafter, the NPS Regional Director met with the Commissioner of the State Department of Fish and Game to explain the NPS trapping regulation. This was followed with a letter dated February 14, 1986, to the Commissioner formally conveying the NPS prohibition of firearm use for trapping.

In 1987, the State Board of Game revised same-day-airborne provisions

for wolves by eliminating the previous allowance for trapping and establishing such an allowance for hunting. This action had implications for national preserves in Alaska where same-day-airborne takings were previously prohibited by the NPS preclusion of use of firearms for trapping. This was the first time that wolves could legally be taken on the same-day-airborne in NPS areas in Alaska.

In response to the State change in same-day-airborne taking rules for wolves, the NPS adopted an emergency one-year regulation from November, 1988 to November, 1989, prohibiting same-day-airborne hunting of wolves in NPS preserves. At the same time, the NPS began drafting a proposed rule for permanent adoption. The proposed rule was published in the **Federal Register** on June 9, 1989 (54 FR 24852). Written comments were accepted and public hearings were held in sixteen communities during the Summer of 1989. After analyzing the public comments, the NPS in 1990 prepared, but did not publish, a final rule.

However, as a result of consultations between the State of Alaska and the NPS, the State agreed to exclude the NPS preserves from the State regulation allowing same-day-airborne hunting of wolves. State regulations were changed in August, 1990 to specifically exclude same-day-airborne hunting allowances in national preserves. On October 30, 1990, the NPS published a Notice in the **Federal Register** (55 FR 45663) announcing the exception for the preserves.

In 1992 the State Board of Game again prohibited same-day-airborne hunting of wolves statewide and did not reauthorize same-day-airborne land and shoot trapping. Consequently, for about one year, same-day-airborne taking of wolves in Alaska was not allowed under either a State hunting or trapping license. Then in 1993, the State Board of Game reauthorized same-day-airborne land and shoot trapping of wolves. This action essentially returned same-day-airborne taking of wildlife to the pre-1987 status when it was allowed for trapping but not hunting.

While the 1993 State action did not directly impact the NPS, it did result in a strong public reaction that, because of the perception that the State action did affect NPS areas, included many requests that the NPS move ahead with the rulemaking that was first proposed in 1989. Consequently, the 1989 proposed rule was revised and published in the **Federal Register** on November 15, 1994 (59 FR 58804), with the intent of accomplishing the following:

1. Prohibit same-day-airborne taking of fifteen designated wildlife species.
2. Satisfy statutory mandates to provide for hunting and trapping in specified NPS areas in Alaska.
3. Maintain compatibility between hunting and trapping activities and statutory purposes.
4. Provide more effective and consistent enforcement of State and Federal hunting and trapping laws and regulations.

In consideration of NPS law and policy, and Federal Airborne Hunting Act purposes and enforceability, the NPS has determined that this final rule will reduce the incidence of aircraft harassment of wildlife and the potential for aircraft assisted taking of wildlife in units of the NPS.

#### **Summary of Comments Received in 1989**

The original proposed rule (54 FR 24852) afforded the public a comment period of 60 days (extended to 70 days). During the comment period, public meetings were held in Alaska in Anchorage, King Salmon, Wasilla, Chignik, McGrath, Fairbanks, Glennallen, Eagle, Kenai, Bettles, Iliamna, Yakutat, Kotzebue, Juneau, and Nome, as well as in Washington, D.C. Ninety-three oral comments were recorded at the public meetings and 1,312 written comments were received prior to the end of the comment period.

#### **Summary of 1994 Comments**

The revised proposed rule (59 FR 58804) had a 30-day public comment period. During the comment period public hearings were held in Anchorage and Fairbanks at which sixteen persons presented oral comments. The NPS also received ninety letters, cards, and facsimile comments within the official comment period.

After considering all public comments from both comment periods, the NPS has decided to proceed with a final rule on the same-day-airborne portion of the revised proposed rule. The clarification of the trapping portion of the proposed rule will be covered under a separate document with an extended comment period.

#### **Analysis of Comments**

##### **1. Widespread Support for the Proposed Regulations**

Analysis of supporting views is consolidated in this paragraph because the various supporting comments generally repeat the reasons presented by the NPS in the published Proposed Rule documents (54 FR 24852 and 59 FR 58804). Overall, the comments

supported the prohibition of same-day-airborne land-and-shoot hunting. The NPS received a total of 1,405 comments (1,312 written and ninety-three oral) during the 1989 comment period, and 106 (ninety written and sixteen oral) during the 1994 comment period. Ninety-three percent (1,406 comments) favored the proposed rule and seven percent (105 comments) opposed the rule.

##### **2. Opinions of Alaska Residents Were Seriously Considered**

Several commenters who oppose the proposed rule expressed their belief that the NPS ignores opinions of Alaska residents and relies on comments from outside Alaska. While most opposition to the proposed rule came from Alaska residents, more than two-thirds of the comments from Alaska support the proposed rule. Alaska residents submitted a total of 322 comments, with sixty-nine percent favoring the proposed rule and thirty-one percent opposed.

The NPS considered all public opinions and views on the proposed rule and did not disregard opinions of Alaskan residents. In fact, special attention was given to comments and concerns received from Alaskans. The decision to extend the comment period for the trapping clarification portion of the proposed rule was a direct result of requests from Alaska residents involved with trapping activities, local governmental bodies, members of local advisory groups, Native organizations, and individual Alaska residents. Even so, while the response from Alaska residents was mixed, a significant majority of commenting Alaskans, including many uniquely knowledgeable persons such as hunting guides, hunters, pilots, and representatives of local rural residents directly affected by same-day-airborne taking of wildlife, support the same-day-airborne rule.

##### **3. The Proposed Rule Would Not Violate the Special Aircraft Access Provisions of ANILCA**

Several commenters expressed concern that the proposed rule violates the procedure for implementing restrictions on aircraft access under Section 1110 of ANILCA. This section of ANILCA, among other things, limits the restrictions that may be placed on aircraft access for traditional activities. After carefully reviewing the potential applicability of Section 1110 to the proposed same-day-airborne rule, it was concluded early in the rulemaking process that the regulation does not restrict aircraft access for hunting, trapping, fishing or any other traditional

activity permitted by ANILCA or other law. Furthermore, at the time ANILCA was passed, same-day-airborne taking of wildlife was a widely restricted hunting method under State law, as it is today. However, even if found to be an aircraft access restriction as certain commenters asserted, the NPS believes that the administrative process used for this rule would meet the requirements established for adoption of such restrictions.

##### **4. The State of Alaska's Authority to Regulate the Taking of Fish and Wildlife Is Limited by Federal Law**

Many of those opposing the rule commented that the State either has or should have sole authority to regulate the taking of fish and wildlife in Alaska. The proposed rule is seen as unauthorized and unwarranted Federal interference with the State's jurisdiction over fish and wildlife. While this argument is often raised as an objection to Federal actions regarding fish and wildlife management, the NPS is legally obligated to manage the NPS areas in Alaska in accordance with statutory mandates and purposes. While the NPS follows State law to the fullest extent possible in the management of fish and wildlife, there are situations in which there is a conflict between State law and Congressional mandates for Federal areas. Federal subsistence law under ANILCA is perhaps the most well-known example of such a conflict in Alaska, but there are other examples of which the same-day-airborne method of taking in NPS areas is one. The NPS has been able, over the years, to manage within the State framework for same-day-airborne taking of wildlife as described above. However, changes in the State approach to wildlife management and corresponding adjustments in the application of same-day-airborne rules threaten to violate the separate and distinct Federal mandates established for NPS areas.

This rulemaking recognizes that State and Federal mandates differ in this case and adopts a separate Federal rule for NPS areas that complies with applicable Federal law and policy for park areas. The NPS remains committed to managing fish and wildlife in a way that avoids unnecessary interference with State management of resident wildlife resources.

##### **5. The Proposed Rule Is Not Based on a Biological Problem**

Many commenters stated that there is not a biological basis for the proposed regulation because wildlife populations are generally healthy and are managed by the State to maintain continued

viability of populations. The NPS acknowledges that the proposed rule is not based on biological concerns for the health of wildlife populations and such reasons have not been used as a justification for the rulemaking. The reasons stated in the two **Federal Register** publications of the proposed rule, and above in this document, are the basis for this rule. Existing closure regulations under both State and Federal law appear to be sufficient to protect wildlife when biological data indicates this is necessary, and this rule should not be interpreted as suggesting that State wildlife management is in any way deficient in this regard.

#### **Immediate Effective Date**

The final rule establishes a prohibition on hunting on the same day in which the hunter has flown on an aircraft. The rule is based upon the determination that activities such as those allowed under State authorizations for same-day-airborne taking of wildlife conflict with NPS management mandates and policies, and invite enforcement problems with the Federal Airborne Hunting Act. The rule is intended to reduce the incidence of aircraft harassment of wildlife and to reduce the potential for aircraft assisted taking of wildlife. The rationale for the rule is more fully discussed at 59 FR 58804.

In accordance with the Administrative Procedure Act (APA) (5 U.S.C. 553(d)(3)), the NPS has determined that publishing this final rule 30 days prior to the rule becoming effective could result in public confusion resulting from reliance on the January 13, 1995, State of Alaska authorization of same-day-airborne caribou hunting in several NPS areas that will be closed to such hunting by this rule. Therefore, in accordance with 5 U.S.C. 553(d)(3), the NPS finds good cause to make this rule effective on the date published in the **Federal Register**.

#### **Drafting Information**

The primary authors of this regulation are Lou Waller, John Hiscock, Steve Shackleton and Paul Hunter of the NPS Alaska Regional Office.

#### **Paperwork Reduction Act**

This rulemaking does not contain information collection requirements that

require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

#### **Compliance With Other Laws**

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

- (a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;
- (b) Introduce incompatible uses that may compromise the nature and characteristics of the area, or cause physical damage to it;
- (c) Conflict with adjacent ownerships or land uses;
- (d) Cause a nuisance to adjacent owners or occupants; or
- (e) Affect the State hunting population generally.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

The rule has been evaluated in accordance with Section 810 of ANILCA and the NPS has determined there will be no significant restriction on subsistence uses. It is worthy of note that the Federal Subsistence Board has prohibited same-day-airborne taking of ungulates (except deer), bear, wolves, wolverines and furbearers for subsistence uses on all Federal public lands in Alaska (50 CFR Part 100).

#### **List of Subjects in 36 CFR Part 13**

Alaska, National Parks, Reporting and record keeping requirements.

In consideration of the foregoing, 36 CFR Chapter I, Part 13 is amended as follows:

#### **PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA**

1. The authority citation for part 13 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Section 13.65(b) also issued under 16 U.S.C. 1361, 1531.

2. Section 13.21 is amended by removing and reserving paragraph (a), and revising paragraphs (d) and (e), to read as follows:

##### **§ 13.21 Taking of fish and wildlife.**

(a) [Reserved]

\* \* \* \* \*

(d) *Hunting and trapping.* (1) Hunting and trapping are allowed in national preserves in accordance with applicable Federal and non-conflicting State law and regulations.

(2) Violating a provision of either Federal or non-conflicting State law or regulation is prohibited.

(3) Engaging in trapping activities as the employee of another person is prohibited.

(4) It shall be unlawful for a person having been airborne to use a firearm or any other weapon to take or assist in taking any species of bear, caribou, Sitka black-tailed deer, elk, coyote, arctic and red fox, mountain goat, moose, Dall sheep, lynx, bison, musk ox, wolf and wolverine until after 3 a.m. on the day following the day in which the flying occurred. This prohibition does not apply to flights on regularly scheduled commercial airlines between regularly maintained public airports.

(e) *Closures and restrictions.* The Superintendent may prohibit or restrict the non-subsistence taking of fish or wildlife in accordance with the provisions of § 13.30 of this chapter. Except in emergency conditions, such restrictions shall take effect only after the Superintendent has consulted with the appropriate State agency having responsibility over fishing, hunting, or trapping and representatives of affected users.

Dated: March 12, 1995.

**George T. Frampton, Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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