

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Parts 32 and 36**

[Docket No. FWS-R7-NWRS-2014-0005;  
FF07R00000 FXRS12610700000 156  
Obligation #4500093321]

RIN 1018-BA31

**Non-Subsistence Take of Wildlife, and  
Public Participation and Closure  
Procedures, on National Wildlife  
Refuges in Alaska**

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service or FWS), are amending regulations for National Wildlife Refuges (NWRs) in Alaska that govern predator control and public participation and closure procedures. The amendments to the regulations are designed to clarify how our existing mandates for the conservation of natural and biological diversity, biological integrity, and environmental health on refuges in Alaska relate to predator control; prohibit several particularly effective methods and means for take of predators; and update our public participation and closure procedures. This rule does not change Federal subsistence regulations or restrict the taking of fish or wildlife for subsistence uses under Federal subsistence regulations.

**DATES:** This rule is effective September 6, 2016.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Brady, Chief of Conservation Planning and Policy, or Carol Damberg, Inventory and Monitoring Biologist, National Wildlife Refuge System, Alaska Regional Office, 1011 E. Tudor Rd., Mail Stop 211, Anchorage, AK 99503; telephone (907) 306-7448 or (907) 786-3327. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****Background***Proposed Rule and Public Comment Period*

On January 8, 2016, we published a proposed rule in the **Federal Register** (81 FR 887) to amend our regulations for refuges in Alaska to clarify how our existing mandates for the conservation of natural and biological diversity, biological integrity, and environmental health on refuges in Alaska relate to

predator control; to prohibit several particularly effective methods and means for take of predators; and to update our public participation and closure procedures. The proposed rule was initially open for public comment for 60 days, ending March 8, 2016. On February 26, 2016, we extended the comment period by 30 days, which resulted in a 90-day comment period on the proposed rule ending on April 7, 2016 (see 81 FR 9799). We invited comments through the U.S. mail or hand delivery, through the Federal eRulemaking Portal at <http://www.regulations.gov>, and at scheduled public hearings (see our announcement of the public hearings at 81 FR 886; January 8, 2016).

During the comment period, we held nine public hearings on the proposed rule (January 26, 2016, in Kotzebue, AK; February 8, 2016, in Bethel, AK; February 10, 2016, in Fairbanks, AK; February 11, 2016, in Tok, AK; February 16, 2016, in Soldotna, AK; February 18, 2016, in Anchorage, AK; March 1, 2016, in Dillingham, AK; March 2, 2016, in Kodiak, AK; and March 3, 2016, in Galena, AK). Approximately 218 individuals attended these hearings, and 104 participants provided testimony during the public hearings. We also offered to consult in person with Tribes and Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.* (ANCSA or Native), corporations and attended numerous Regional Advisory Council (RAC) meetings. Correspondence was received from 28 tribal entities (Native nonprofits, Tribal Governments, RACs) and from four ANCSA corporations. We met with eight Tribes and one ANCSA corporation that requested consultation in person or via conference call: Allakaket Council, Alatna Council, Doyon Corporation, Gwichyaa Zhee Tribal Council, Kaktovik Tribal Council, Nulato Tribe, Togiak Tribal Council, Native Village of Venetie Tribal Council, and Venetie Village Council.

We received approximately 3,643 pieces of correspondence on the proposed rule during the public comment period, and from the correspondence, we derived over 80 comment statements (a comment statement is a portion of the text within a correspondence that addresses a single subject). Correspondence included unique comment letters and form letters. Approximately 2,530 correspondence documents were form letters. Approximately 409 pieces of correspondence received provided substantive comments. Some commenters sent comments by multiple methods. We attempted to match such duplicates and count them as one

comment. Additionally, many comments were signed by more than one person. We counted a letter as a single comment, regardless of the number of signatories. A summary of comments and FWS responses is provided below in the section entitled Summary of and Response to Public Comments. After considering the public comments and conducting additional review, FWS made some changes in this final rule from that proposed. These changes are summarized below in the table entitled, Summary of primary differences between our proposed rule and this final rule.

*Federal and State Mandates for Managing Wildlife*

FWS and the State of Alaska work together to manage fish and wildlife in the National Wildlife Refuge System (NWR System). State fish and wildlife authority remains the comprehensive management backdrop in the absence of specific, overriding Federal law which exists for specific statutory purposes. As explained below, FWS has ultimate management authority over resources in the Federal NWR System pursuant to a variety of statutes. However, effective stewardship of fish and wildlife resources, various statutory provisions, and Department of the Interior policy require close cooperation with the State. Indeed, as a general rule, State regulations governing hunting and fishing on refuges in Alaska are adopted with exceptions tailored to the purpose of each refuge and the relevant Federal authority.

## 1. Federal Authorities

FWS has various mandates it must adhere to in managing the National Wildlife Refuge System (NWR System). There are three statutes in particular that provide direction and authority specific to NWRs in Alaska: The 1980 Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3111-3126); the National Wildlife Administration Act of 1966 (Administration Act) as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) (16 U.S.C. 668dd-ee); and the 1964 Wilderness Act (16 U.S.C. 1131-1136).

The Improvement Act provides that ANILCA controls if there is a conflict between the two. ANILCA added approximately 54 million acres of land to the NWR System in Alaska, by establishing new NWRs or expanding and redesignating existing NWRs. ANILCA also designated 18.7 million acres in 13 wilderness areas on refuges in Alaska as units of the National Wilderness Preservation System.

Under ANILCA, each refuge in Alaska has a list of purposes for which it was established, including the first-listed purpose to “conserve fish and wildlife populations and habitats in their natural diversity” followed by a list of representative species particular to each refuge. Kenai NWR has an additional statutory purpose to provide opportunities for fish and wildlife-oriented recreation in a manner compatible with these purposes. The other purposes established by ANILCA for Alaska refuges (except international treaty obligations) must be managed consistent with the purpose to conserve fish and wildlife populations and habitats in their natural diversity. Legislative history for ANILCA provides important guidance on the intent and meaning of the term “natural diversity.” The 1979 Senate Report on H.R. 39 (ANILCA) states that refuges represent, “the opportunity to manage these areas on a planned ecosystem-wide basis with all of their pristine ecological processes intact” (S. Rep. No. 96–413 at 174 (1979), *reprinted in* the 1980 United States Code Congressional and Administrative News (U.S.C.C.A.N.) 5118). During consideration of the concurrent resolution to correct the enrollment of H.R. 39 (ANILCA), Alaska’s U.S. Senator Ted Stevens submitted statements explaining H.R. 39 that included the following regarding “natural diversity” (126 Cong. Rec. S15131 (Dec. 1, 1980)): “Sections 302 and 303 of title III designate as a major purpose of each new or expanding refuge the conservation of fish and wildlife populations and habitats ‘in their natural diversity.’ The phrase ‘in their natural diversity’ was included in each subsection of those two sections to emphasize the importance of maintaining the flora and fauna within each refuge in a healthy condition. The term is not intended to, in any way, restrict the authority of the Fish and Wildlife Service to manipulate habitat for the benefit of fish or wildlife populations within a refuge or for the benefit of the use of such populations by man as part of the balanced management program mandated by the Alaska National Interest Lands Conservation Act and other applicable law. The term also is not intended to preclude predator control on refuge lands in appropriate instances.” Senator Stevens goes on to state, “Section 815(1) recognizes this difference by providing that the level of subsistence uses within a National Park or National Park Monument may not be inconsistent with the conservation of ‘natural and healthy’ fish and wildlife populations within the

park or monument, while within National Wildlife Refuges the level of subsistence uses of such populations may not be inconsistent with the conservation of ‘healthy’ populations.”

Nine days after ANILCA was signed into law on December 2, 1980, Congressman Morris Udall, Chairman of the Committee on Interior and Insular Affairs and Floor Manager for H.R. 39, during a speech on the floor of the House of Representatives described the source of the term “natural diversity.” He stated that the conservation of natural diversity refers to “protecting and managing all fish and wildlife populations within a particular wildlife refuge system unit in the natural ‘mix,’ not to emphasize management activities favoring one species to the detriment of another” (126 Cong. Rec. H12, 352–53 (daily ed. Dec. 11, 1980) (statement of Rep. Udall)). During this floor speech, Congressman Udall also stated that in managing for natural diversity it was the intent of Congress, “to direct the U.S. Fish and Wildlife Service to the best of its ability, . . . to manage wildlife refuges to assure that habitat diversity is maintained through natural means, avoiding artificial developments and habitat manipulation programs. . . ; to assure that wildlife refuge management fully considers the fact that humans reside permanently within the boundaries of some areas and are dependent, . . . on wildlife refuge subsistence resources; and to allow management flexibility in developing new and innovative management programs different from lower 48 standards, but in the context of maintaining natural diversity of fish and wildlife populations and their dependent habitats for the long term benefit of all citizens” (126 Cong. Rec. H12, 352–53 (daily ed. Dec. 11, 1980) (statement of Rep. Udall)).

Although the above congressional testimonies provide slightly differing views about what is encompassed by managing for natural diversity, there is a common theme to protect and maintain the flora and fauna within each refuge while providing opportunities for subsistence under Title VIII of ANILCA. This legislative history, other ANILCA background documentation, and FWS laws, mandates, and policies serve to guide refuge management to meet the natural diversity purpose language of ANILCA and were used to develop the definition of natural diversity contained in this rule.

In its ANILCA Title VIII statement of policy, Congress also stated, “nonwasteful subsistence uses of fish and wildlife and other renewable

resources [by rural residents] shall be the priority consumptive uses of all such resources on the public lands of Alaska when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population, the taking of such population for nonwasteful subsistence uses shall be given preference on the public land over other consumptive uses” (16 U.S.C. 3112(2)). This subsistence priority applies within all National Wildlife Refuges in Alaska.

All refuges in Alaska (except Kenai National Wildlife Refuge) have among their stated statutory purposes the requirement to provide the opportunity for continued subsistence use by local rural residents in a manner consistent with the conservation of fish and wildlife populations and habitats in their natural diversity and fulfilling the international treaty obligations of the United States with respect to fish and wildlife and their habitats. In a further statement of ANILCA Title VIII policy, Congress stated that “consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles and the purposes for each unit established . . . the purpose of this title [Title VIII] is to provide the opportunity for rural residents engaged in a subsistence way of life to do so” (16 U.S.C. 3112(1)). The Senate Committee on Energy and Natural Resources in its report on H.R. 39 stated that “the phrase ‘the conservation of healthy populations of fish and wildlife’ is to mean the maintenance of fish and wildlife resources in their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems, including recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem . . .” (S. Rep. No. 96–413 at 233, *reprinted in* 1980 U.S.C.C.A.N. 5177). Furthermore, Congress also expressly stated that nothing in Title VIII shall be construed as “modifying or repealing the provisions of any Federal law governing the conservation or protection of fish and wildlife, including the National Wildlife Refuge System Administration Act of 1966 . . .” (16 U.S.C. 3125(4)).

FWS recognizes the importance of the fish, wildlife, and other natural

resources in the lives and cultures of Alaska Native people(s) and rural residents, and in the lives of all Alaskans, and we continue to recognize subsistence uses of fish and wildlife and other renewable resources as the priority consumptive use on Federal lands in Alaska, which includes all NWRs in Alaska. This rule does not change the existing Federal subsistence regulations (title 36 of the Code of Federal Regulations (CFR) at part 242 (36 CFR part 242) and 50 CFR part 100) or restrict the taking of fish or wildlife for subsistence uses under the Federal subsistence regulations.

The Improvement Act states that refuges must be managed to fulfill the mission of the NWR System and purposes of the individual refuge. The Improvement Act established the mission of the NWR System, to “administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.” Section 4(a)(4)(B) of the Improvement Act states that “In administering the System, the Secretary shall . . . ensure that the biological integrity, diversity, and environmental health [BIDEH] of the System are maintained for the benefit of present and future generations of Americans . . .” (16 U.S.C. 668dd(a)(4)(B)). The FWS BIDEH policy (601 FW 3), which provides guidance for implementation of this aspect of the Improvement Act, defines biological integrity as “biotic composition, structure, and functioning at genetic, organism, and community levels comparable with historic conditions, including the natural biological processes that shape genomes, organisms, and communities.” In that policy, biological diversity is defined as “the variety of life and its processes, including the variety of living organisms, the genetic differences among them, and communities and ecosystems in which they occur.” The policy defines environmental health as the “composition, structure, and functioning of soil, water, air, and other abiotic features comparable with historic conditions, including the natural abiotic processes that shape the environment.” Abiotic features are nonliving chemical and physical features of the environment (*e.g.*, soil, air, water, temperature, etc.). The policy also defines “historic conditions” as the “composition, structure, and functioning of ecosystems resulting from natural processes that we believe,

based on sound professional judgment, were present prior to substantial human related changes to the landscape.” In implementing this policy on refuges, we favor “management that restores or mimics natural ecosystem processes or functions to achieve refuge purposes(s).” Additionally, under this policy, we “formulate refuge goals and objectives for population management by considering natural densities, social structures, and population dynamics at the refuge level” and manage populations for “natural densities and levels of variation.”

Based on the above discussion, we conclude that management in accordance with the BIDEH policy mandated by the Improvement Act is essentially the same as managing for natural diversity as mandated by ANILCA. Each mandate requires us to manage for natural diversity using minimum manipulation where possible, but also recognizes that active management may be required relative to other mandates, altered landscapes, and changing human influences. Each mandate allows appropriate management tools to remain available as needed for future refuge management. The terms biological integrity, diversity, and environmental health are defined in the BIDEH policy, which directs FWS to maintain the variety of life and its processes; to maintain biotic and abiotic compositions, structure, and functioning; and to manage populations for natural densities and levels of variation throughout the NWR System.

The Wilderness Act (16 U.S.C. 1131–1136) states that wilderness “is hereby recognized as an area where the earth and its community of life are untrammelled by man . . . which is protected and managed so as to preserve its natural conditions.” Our wilderness stewardship policy (610 FW 1) interprets “untrammelled” to be “the freedom of a landscape from the human intent to permanently intervene, alter, control, or manipulate natural conditions or processes.” The second chapter of the wilderness stewardship policy, which outlines administration and resource stewardship (610 FW 2), directs that FWS will not manipulate ecosystem processes, specifically including predator/prey fluctuations, in wilderness areas unless “necessary to accomplish the purposes of the refuge, including Wilderness Act purposes, or in cases where these processes become unnatural” (*i.e.*, disrupted predator/prey relationships, spread of invasive species, and so forth). Additionally, nothing in this rule applies to or is inconsistent with our policy that

outlines special provisions for Alaska wilderness (610 FW 5).

The overarching goal of our wildlife-dependent recreation policy is to enhance opportunities and access to quality visitor experiences on refuges and to manage the refuge to conserve fish, wildlife, plants, and their habitats (605 FW 1.6). We recognize hunting as one of many priority uses of the NWR System (when and where compatible with refuge purposes) that is a healthy, traditional outdoor pastime, deeply rooted in the American heritage (605 FW 2). As stated at 50 CFR part 36, the taking of fish and wildlife through public recreational activities, including sport hunting, is authorized on refuges in Alaska “as long as such activities are conducted in manner compatible with the purposes for which the areas were established” (50 CFR 36.31(a)).

## 2. Applicability of State Authority

In 1970, the Secretary of the Interior developed a policy statement on intergovernmental cooperation in the preservation, use, and management of fish and wildlife resources. The purpose of the policy (36 FR 21034, November 3, 1971; 43 CFR part 24) was to strengthen and support the missions of the several States and the Department of the Interior respecting fish and wildlife. Federal authority exists for specified purposes while State authority regarding fish and resident wildlife remains the comprehensive backdrop applicable in the absence of specific, overriding Federal law.

In general, the States possess broad trustee and police powers over fish and wildlife within their borders, including fish and wildlife found on Federal lands within a State. Under the Property Clause of the Constitution, Congress is given the power to “make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.” In the exercise of power under the Property Clause, Congress may choose to preempt State management of fish and wildlife on Federal lands and, in circumstances where the exercise of power under the Commerce Clause is available, Congress may choose to establish restrictions on the taking of fish and wildlife whether or not the activity occurs on Federal lands, as well as to establish restrictions on possessing, transporting, importing, or exporting fish and wildlife.

Units of the National Wildlife Refuge System constitute federally owned or controlled areas set aside primarily as conservation areas for migratory waterfowl and other species of fish or wildlife. In contrast to multiple use public lands, the conservation,

enhancement, and perpetuation of fish and wildlife is almost invariably the principal reason for the establishment of a unit of the National Wildlife Refuge System. In consequence, Federal activity respecting management of migratory waterfowl and other wildlife residing on units of the National Wildlife Refuge System involves a Federal function specifically authorized by Congress. Units of the National Wildlife Refuge System, therefore, shall be managed, to the extent practicable and compatible with the purposes for which they were established, in accordance with State laws and regulations, comprehensive plans for fish and wildlife developed by the States, and Regional Resource Plans developed by the Fish and Wildlife Service in cooperation with the States.

In Alaska, as such, sport hunting and trapping on refuges are generally regulated by the States, unless further restricted by Federal law (see 50 CFR 32.2(d)) or closures to Federal public land, such as under Federal subsistence regulations (36 CFR 242.26 or 50 CFR 100.26). In Alaska, sport hunting is commonly referred to as general hunting and trapping and includes State subsistence hunts and general permits open to both Alaska residents and nonresidents (see definition of "sport hunting" under the Regulation Promulgation section, below). These activities remain subject to Federal law, including mandates under ANILCA; the Improvement Act; and, where applicable, the Wilderness Act. Applicable directives and guidance can also be found in policies in the Service Manual at 601 FW 3 (Biological Integrity, Diversity, and Environmental Health), 605 FW 2 (Hunting), 610 FW 2 (Wilderness Administration and Resource Stewardship), and 610 FW 5 (Special Provisions for Alaska Wilderness). Additionally, the regulations at 50 CFR 36.32(a) state that the Refuge Manager "may designate areas where, and establish periods when, no taking of a particular population of fish or wildlife shall be permitted."

The State of Alaska's (State) legal framework for managing wildlife is based on a different principle than the legal framework applicable to management of the NWR system; it is based on the principle of sustained yield, which is defined by statute to mean "the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game, subject to preferences among beneficial uses, on an annual or periodic basis" (Alaska Statute (AS) 16.05.255(j)(5)). Since 1994, Alaska

State law (AS 16.05.255) has prioritized human consumptive use of ungulates—specifically moose, caribou, and deer. Known as the Intensive Management (IM) statute, the law requires the Alaska Board of Game (BOG) to designate populations of ungulates for which human consumptive use is the highest priority use and to set population and harvest objectives for those populations. To that end, the BOG must "adopt 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" (AS 16.05.255(e)). Once designated as an IM population, if either populations or harvests fail to meet management objectives, nonresident hunting must first be eliminated, followed by reductions or eliminations of resident harvest opportunities. However, under the IM statute, the BOG may not significantly reduce the harvest opportunities of an identified IM ungulate population unless it has adopted or is considering the adoption of regulations "to restore the abundance or productivity of the ungulate population through habitat enhancement, predation control, or other means" (AS 16.05.255(e)–(g) and (j)).

The BOG has adopted regulations under the IM statute that require targeted reductions of wolf, black bear, brown bear, or a combination of these in designated "predation control areas" within game management units. These State regulations are implemented through IM plans (5 Alaska Administrative Code (AAC) 92.106–5 AAC 92.127) that authorize activities including aerial shooting of wolves or bears or both by State agency personnel, trapping of wolves by paid contractors, allowance under permit for same-day airborne hunting of wolves and bears by the public, and allowance under permit for the take of any black or brown bear through baiting or snaring by the public (5 AAC 92).

Thirteen of the 16 refuges in Alaska contain lands within game management units officially designated for IM. While predator control activities occurring under the authority of an IM plan have not been permitted by FWS on any refuge in Alaska, some predator control programs and activities are being implemented in predation control areas immediately adjacent to refuges. Given the large home ranges of many species affected by IM actions, these control programs have the potential to impact wildlife resources, natural systems, and ecological processes, as well as

conservation and management of these species on adjacent refuges.

In recent years, concurrent with its adoption and implementation of IM plans for predation control areas, the BOG has also authorized measures under its general hunting and trapping regulations that potentially increase the take of predators to a degree that disrupts natural processes and wildlife interactions. Examples of these recently adopted measures, which apply beyond areas officially designated for IM, including many refuges in Alaska, are:

- Harvesting brown bears over bait at registered black bear bait stations;
- Taking wolves and coyotes (including pups) during the denning season;
- Expanding season lengths and increasing bag limits;
- Classifying black bears as both furbearers and big game species (which could allow for trapping and snaring of bears and sale of their hides and skulls); and
- Authorizing same-day airborne take of bears at registered bait stations (5 AAC 85).

Many of the recent actions by the BOG to liberalize the State's regulatory frameworks for general hunting and trapping of wolves, bears, and coyotes reverse long-standing prohibitions and restrictions on take of these wildlife species under State law. Unlike the recent practice of taking brown bears over bait, black bear baiting has been an authorized practice in Alaska since 1982, including on refuges. Black bear baiting is authorized by the State pursuant to a permit and, in some instances, a special use permit (Service Form 3–1383–G) issued by refuges. Taking of brown bears at black bear baiting stations was recently authorized under State regulations in certain game management units within the State (several of which are within refuges) and is subject to the same restrictions as black bear baiting. The State regulations prohibit setting up a bait station within 1 mile of a home or other dwelling, business, or campground, or within ¼ mile of a road or trail (5 AAC 85).

### 3. The Interplay of Federal and State Regulations at Refuges in Alaska

Implementation of IM actions under the IM statute and many of the recent liberalizations of the general hunting and trapping regulations have direct implications for the management of refuges in Alaska. The different purposes of State and Federal laws and the increased focus on predator control by the State have resulted in the need for FWS to deviate, in certain respects, from applying State regulations within

refuges. This is because predator-prey interactions represent a dynamic and foundational ecological process in Alaska's arctic and subarctic ecosystems, and are a major driver of ecosystem function. State regulations allowing activities on refuges in Alaska that are inconsistent with the conservation of fish and wildlife populations and their habitats in their natural diversity, or the maintenance of biological integrity, diversity, and environmental health, are in direct conflict with our legal mandates for administering refuges in Alaska under ANILCA, the Improvement Act, and the Wilderness Act, as well as with applicable agency policies (601 FW 3, 610 FW 2, and 605 FW 2).

In managing for natural diversity, FWS conserves, protects, and manages all fish and wildlife populations within a particular wildlife refuge system unit in the natural 'mix,' not to emphasize management activities favoring one species to the detriment of another. FWS assures that habitat diversity is maintained through natural means on refuges in Alaska, avoiding artificial developments and habitat manipulation programs, whenever possible. FWS fully recognizes and considers that rural residents use, and are often dependent on, refuge resources for subsistence purposes, and FWS manages for this use consistent with the conservation of species and habitats in their natural diversity.

This rule does not change Federal subsistence regulations (36 CFR part 242 and 50 CFR part 100) or otherwise restrict the taking of fish or wildlife for subsistence by federally qualified users under those regulations. The rule does not apply to take in defense of life and property as defined under State regulations (see 5 AAC 92.410). Hunting and trapping are priority uses of refuges in Alaska. The rule will not affect implementation of State hunting and trapping regulations that are consistent with Federal law and FWS policies on refuges, nor will it restrict hunting or trapping activities outside FWS-managed refuge lands and waters.

### **This Final Rule**

#### *Summary of Final Rule*

We developed the changes to existing refuge regulations included in our January 8, 2016, proposed rule to meet our legal mandates and to ensure consistency with policy, directives, and approved management plans.

This rule makes the following substantive changes to existing NWR regulations:

(1) We define "natural diversity" in regulation based on the legislative history from ANILCA. Natural diversity means the existence of all fish, wildlife, and plant populations within a particular wildlife refuge system unit in the natural mix and in a healthy condition for the long-term benefit of current and future generations. Managing for natural diversity includes avoiding emphasis of management activities favoring some species to the detriment of others and assuring that habitat diversity is maintained through natural means, avoiding artificial developments and habitat manipulation programs whenever possible.

(2) We prohibit predator control on refuges in Alaska, unless it is determined necessary to meet refuge purposes; is consistent with Federal laws and policy; and is based on sound science in response to a conservation concern. Demands for more wildlife for human harvest cannot be the sole or primary basis for predator control.

We define predator control as the intention to reduce the population of predators for the benefit of prey species. For clarity, this includes predator reduction practices, such as, but not limited to, those undertaken by government officials or authorized agents, aerial shooting, or same-day airborne take of predators. Other less intrusive predator reduction techniques such as, but not limited to, live trapping and transfer, authorization of particularly effective public harvest methods and means, or utilizing physical or mechanical protections (barriers, fences) are also included with exception for barriers for human life and property safety.

A Refuge Manager will authorize predator control activities on a National Wildlife Refuge in Alaska only if:

(a) Alternatives to predator control have been evaluated as a practical means of achieving management objectives;

(b) Proposed actions have been evaluated in compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);

(c) A formal refuge compatibility determination has been completed, as required by law; and

(d) The potential effects of predator control on subsistence uses and needs have been evaluated through an ANILCA section 810 analysis.

This rule ensures that take of wildlife on refuges in Alaska under State regulations and implementation of predator control is consistent with our legal mandates and policies for administration of those refuges.

(3) This rule prohibits the following practices for the taking of wildlife on Alaska National Wildlife refuges (except for subsistence uses by federally qualified subsistence users in accordance with applicable Federal laws and regulations):

- Taking black or brown bear cubs or sows with cubs (exception allowed for resident hunters to take black bear cubs or sows with cubs under customary and traditional use activities at a den site October 15–April 30 in specific game management units in accordance with State law);

- Taking brown bears over bait;
- Taking of bears using traps or snares;

- Taking wolves and coyotes during the denning season (May 1–August 9); and

- Taking bears from an aircraft or on the same day as air travel has occurred. The take of wolves or wolverines from an aircraft or on the same day as air travel has occurred is already prohibited under current refuge regulations.

FWS requested comment on the type of bait allowed to be used for the baiting of black or brown bears. Currently, State regulations, which are adopted on refuges, require the bait used at bear baiting stations to be biodegradable. People use a range of different types of bait for the baiting of bears, including parts of fish and game that are not required to be salvaged when these species are harvested, as well as human and pet food products. We received very few comments expressing opinions on appropriate baits. Based on this, we will continue to adopt State regulations.

(4) We update our regulations to reflect Federal assumption of management of subsistence hunting and fishing under Title VIII of ANILCA by the Federal Government from the State in the 1990s.

(5) As set forth in our January 8, 2016, proposed rule (81 FR 887), we remove a statement at the current 50 CFR 36.32(e) that references compliance with other mandates (such as the Airborne Hunting Act, 16 U.S.C. 742j–1) in order to reduce redundancy. The requirement for compliance with applicable State and Federal laws is set forth at 50 CFR 36.32(a) in this final rule. We also correct the regulations at 50 CFR part 36 by removing a statement set forth at the current 50 CFR 36.32(e) that references sections of subchapter C of title 50 of the CFR (regarding the taking of deprecating wildlife) that no longer exist.

(6) We amend 50 CFR 32.2(h) to state that black bear baiting is authorized in accordance with State regulations on NWRs in Alaska. This change ensures

consistency between the provisions of the national hunting regulations at 50 CFR part 32 regarding baiting in Alaska and the Alaska-specific regulations at 50 CFR part 36.

(7) We update procedures for implementing closures or restrictions on refuges, including the taking of fish and wildlife under sport hunting and trapping, to more effectively engage and inform the public and make the notice and durational provisions more consistent with procedures set forth in Federal subsistence closure policy and regulations at 36 CFR 242.19 and 50 CFR 100.19 for emergency special actions on Federal public lands in Alaska. Improved consistency between these Federal regulations and processes will help minimize confusion and make it easier for the public to be involved in the process.

The regulations provide for emergency, temporary, and permanent closures and restrictions. This rule limits emergency closures and restrictions to 60 days, and temporary closures and restrictions are limited to the minimum time necessary, and will not exceed 12 months.

This rule also updates the closures and restrictions notification procedures for refuges in Alaska to reflect the availability of alternative communications technologies and approaches that have emerged or evolved over the last few decades. These changes recognize that the Internet has become one of the primary methods to communicate with the public and is an effective tool for engaging Alaskans and the broader American public and that there are other forms of broadcast

media, beyond just the radio, that we may want to use.

The changes to the notification procedures are not intended to limit public involvement or reduce public notice; rather, we intend to engage in ways more likely to encourage public involvement and in a manner that is fiscally responsible. We recognize that in-person public meetings will continue to be the most effective way to engage Alaskans, and we intend to continue that practice. We also recognize that many individuals in rural Alaska do not have access to high speed Internet, and for that reason, we will continue to use other methods of communication, such as regional and local newspapers, posting flyers at local post offices, and radio announcements, where available to provide adequate notice.

TABLE—SUMMARY OF PRIMARY DIFFERENCES BETWEEN OUR PROPOSED RULE AND THIS FINAL RULE

What we proposed in the January 8, 2016, proposed rule (81 CFR 887)	What we are making final in this rule
<i>50 CFR 32.2(h): What are the requirements for hunting on areas of the National Wildlife Refuge System?; Use of bait</i>	
We proposed to revise this provision to add the following statement: “(Black bear baiting is authorized in accordance with State regulations on national wildlife refuges in Alaska.)”	We are revising this provision to add the following statement: “(Black bear baiting and use of bait to trap furbearers are authorized in accordance with State regulations on national wildlife refuges in Alaska.)”
<i>50 CFR 36.2: What do these terms mean? (Definitions)</i>	
We proposed to add 13 definitions to the regulations.	Of the 13 definitions proposed, we are defining 8 terms in this final rule. We are not adding definitions for “biological diversity,” “biological integrity,” “environmental health,” “historic conditions,” or “Regional Director” to the regulations in this final rule. We revised the proposed definition of “natural diversity” by removing the following: “and taking into consideration the fact that humans are dependent on wildlife refuge subsistence resources.” The definition of “natural diversity” we are adopting in this final rule reads: “Natural diversity means the existence of all fish, wildlife, and plant populations within a particular wildlife refuge system unit in the natural mix and in a healthy condition for the long-term benefit of current and future generations. Managing for natural diversity includes avoiding emphasis of management activities favoring some species to the detriment of others and assuring that habitat diversity is maintained through natural means, avoiding artificial developments and habitat manipulation programs whenever possible.”
<i>50 CFR 36.32(b): Taking of fish and wildlife; predator control prohibition</i>	
We proposed the following language to set forth when predator control is allowed on a refuge: “Predator control is prohibited on National Wildlife Refuges in Alaska, unless it is determined necessary to meet refuge purposes, Federal laws, or policy; is consistent with our mandates to manage for natural and biological diversity, biological integrity, and environmental health; and is based on sound science in response to a significant conservation concern. Demands for more wildlife for human harvest cannot be the sole or primary basis for predator control. A Refuge Manager will authorize predator control activities on a National Wildlife Refuge in Alaska only if:	We are removing the words “is consistent with our mandates to manage for natural and biological diversity, biological integrity, and environmental health” and removing the word “significant” before the words “conservation concern.” In addition, we removed the words “attempted” and “exhausted” in the first step of the process to approve predator control activities. The paragraph now reads: “Predator control is prohibited on National Wildlife Refuges in Alaska, unless it is determined necessary to meet refuge purposes, is consistent with Federal laws and policy, and is based on sound science in response to a conservation concern. Demands for more wildlife for human harvest cannot be the sole or primary basis for predator control. A Refuge Manager will authorize predator control activities on a National Wildlife Refuge in Alaska only if:
(1) Alternatives to predator control have been evaluated, attempted, and exhausted as a practical means of achieving management objectives;	(1) Alternatives to predator control have been evaluated as a practical means of achieving management objectives;

TABLE—SUMMARY OF PRIMARY DIFFERENCES BETWEEN OUR PROPOSED RULE AND THIS FINAL RULE—Continued

What we proposed in the January 8, 2016, proposed rule (81 CFR 887)	What we are making final in this rule
<p>(2) Proposed actions have been evaluated in compliance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.);</p> <p>(3) A formal refuge compatibility determination has been completed, as required by law; and</p> <p>(4) The potential effects of predator control on subsistence uses and needs have been evaluated through an ANILCA section 810 analysis.”</p> <p style="text-align: center;"><i>50 CFR 36.42(b) Public participation and closure procedures; Criteria</i></p>	<p>(2) Proposed actions have been evaluated in compliance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.);</p> <p>(3) A formal refuge compatibility determination has been completed, as required by law; and</p> <p>(4) The potential effects of predator control on subsistence uses and needs have been evaluated through an ANILCA section 810 analysis.”</p>
<i>50 CFR 36.42(c)(1), (c)(2), and (c)(3) Emergency closures or restrictions</i>	
<p>We proposed to add conservation of natural diversity, biological integrity, biological diversity, and environmental health to the list of criteria for closures.</p>	<p>We are not adding conservation of natural diversity, biological integrity, biological diversity, and environmental health to the list of criteria for closures. We are retaining the original closure criteria and regulatory language.</p>
<i>50 CFR 36.42(c)(4): Emergency closures or restrictions; time frame</i>	
<p>We did not propose any changes .....</p>	<p>In response to a comment, we are adding clarifying language, or making editorial changes, concerning notice of emergency closures or restrictions. Specifically, we are adding reference to 50 CFR 36.42(f), notice procedures, to these paragraphs of the regulations.</p>
<i>50 CFR 36.42(d)(1), (d)(2), and (d)(3): Temporary closures or restrictions</i>	
<p>We proposed that “Emergency closures or restrictions may not exceed a period of 60 days. Extensions beyond 60 days are subject to non-emergency closure procedures.”</p>	<p>We are adopting the following statement: “No emergency closure or restriction will exceed 60 days. Closures or restrictions requiring longer than 60 days will follow nonemergency closure procedures (i.e., temporary or permanent; see paragraphs (d) and (e), respectively, of this section).”</p>
<i>Proposed 50 CFR 36.42(d)(5) and (d)(6): Temporary closures or restrictions</i>	
<p>We proposed revised language concerning temporary closures or restrictions related to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation and to the taking of fish and wildlife and to other temporary closures.</p>	<p>We are adopting our proposed language with additional clarifying language, or editorial changes, concerning notice of temporary closures or restrictions. Specifically, we are adding reference to 50 CFR 36.42(f), notice procedures, to these paragraphs of the regulations.</p>
<i>50 CFR 36.42(e): Permanent closures or restrictions</i>	
<p>We proposed language concerning the time period, evaluation, and removal of temporary closures at proposed 50 CFR 36.42(d)(5). We proposed language concerning a list of closures and restrictions at proposed 50 CFR 36.42(d)(6).</p>	<p>We are not adopting proposed 50 CFR 36.42(d)(5) or (d)(6). Instead, at 50 CFR 36.42(d)(4), we retain historic temporary closure or restriction language to limit temporary closures to a maximum of 12 months; provided, however, a new temporary closure or restriction may be adopted thereafter by following the applicable procedures set forth at 50 CFR 32.42(d)(1), (d)(2), or (d)(3).</p>
<i>50 CFR 36.42(e): Permanent closures or restrictions</i>	
<p>We proposed language for permanent closures or restrictions related to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation and to the taking of fish and wildlife that read: “Permanent closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation, or taking of fish and wildlife, will be effective only after allowing for the opportunity for public comment and a public hearing in the vicinity of the area(s) affected and other locations as appropriate, and after publication in the <b>Federal Register</b>. Permanent closures or restrictions related to the taking of fish and wildlife would require consultation with the State and affected Tribes and Native Corporations.”</p>	<p>We revised the language to be consistent with 43 CFR 36.11(h)(3). The paragraph now reads: “Permanent closures or restrictions related to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation, or taking of fish and wildlife, will be effective only after notice pursuant to paragraph (f) of this section, and shall be published by rulemaking in the <b>Federal Register</b> with a minimum public comment period of 60 days and shall not be effective until after a public hearing(s) is held in the affected vicinity and other locations as appropriate. Permanent closures or restrictions related to the taking of fish and wildlife require consultation with the State and affected Tribes and Native Corporations.”</p>

(8) We codify definitions for several terms (see the Regulation Promulgation section, below). These terms include “Bait,” “Big game,” “Cub bear,” “Furbearer,” “Natural diversity,” “Predator control,” “Sport hunting,” and “Trapping.” Most of these definitions, including bait, big game,

cub bear, furbearer, and predator control, are based on existing definitions in Federal subsistence regulations or policy.

During our scoping and comment period, and through tribal consultation efforts, we heard that definitions for biological integrity, biological diversity,

natural diversity, and environmental health and the origins of these definitions are of significant interest to people. As discussed above, FWS is mandated under the Improvement Act to “ensure that the biological integrity, diversity, and environmental health [BIDEH] of the System are maintained

for the benefit of present and future generations of Americans. . .” (16 U.S.C. 668dd(a)(4)(B)). The FWS BIDEH policy (601 FW 3), which provides guidance for implementation of the Improvement Act, provides definitions for each of these terms, as well as the term “historic conditions.” As also discussed above, the definition of “natural diversity” in this rule is derived from FWS’ review of ANILCA’s legislative history and FWS’ conclusion that the concepts of natural diversity and BIDEH are essentially the same.

### Summary of and Response to Public Comments

We reviewed and considered all substantive information we received during the comment period. A summary of substantive comments and FWS responses is provided below. The previous table sets out changes we have made to the provisions of the proposed rule based on the analysis of the comments and other considerations. As comments were often similar or covered multiple topics, we have grouped comments and responses by topic areas, which generally correspond to specific sections of the January 8, 2016, proposed rule.

#### *Guiding Laws and Regulations, Native Americans, and States Rights*

(1) *Comment:* Commenters stated what we proposed is not aligned with ANILCA and gives subsistence a lower priority than other uses.

*FWS Response:* ANILCA sections 302 and 303 (with the exception of Kenai NWR) established the opportunity for subsistence uses by local residents as one of the main purposes (Refuge purposes) for which NWRs in Alaska (created or expanded by ANILCA) were established and are to be managed. The first two purposes listed for each NWR under ANILCA are: (i) To conserve fish and wildlife populations and habitats in their natural diversity, and (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats. The third purpose listed is to provide, in a manner consistent with the purposes set forth in (i) and (ii), above, the opportunity for continued subsistence uses by local residents. Although the subsistence purpose carries the same weight as the first two purposes, it is subject to consistency with the first two purposes. ANILCA makes clear that the subsistence purpose (third-listed purpose) is equally important insofar as it is consistent with the preceding purposes ((i) and (ii)). This rule is fully consistent with the purposes and requirements of ANILCA.

(2) *Comment:* Commenters expressed concerns with FWS’ definition of the term “natural diversity” and stated the FWS definition derived from the congressional testimony of Congressman Udall was not appropriate and excluded predator control as a management tool.

*FWS Response:* ANILCA does not include a definition of the term “natural diversity.” FWS’ definition was developed after carefully considering the statutory language as well as the legislative history of ANILCA. In response to public comments that our proposed discussion and definition did not fully reflect the full legislative history of ANILCA, we added a discussion concerning the portions of Alaska Senator Ted Steven’s floor statements that referenced natural diversity. In this final rule, we are defining “natural diversity” at 50 CFR 36.2 (see the Regulation Promulgation section, below). As it has since the enactment of ANILCA in 1980, FWS will continue to rely on the statutory provisions of ANILCA, its legislative history, and applicable FWS mandates, laws, and policies to guide NWR management in Alaska. FWS may authorize predator control on Alaska NWRs when it is determined to be in accordance with FWS laws, mandates, and policies. This rule identifies when we will authorize predator control and clarifies how our existing statutory mandates for the conservation of natural and biological diversity, biological integrity, and environmental health on NWRs in Alaska apply to predator control.

(3) *Comment:* Commenters stated what was proposed violates the intent of ANILCA, and they object to any action that violates the existing Master Memorandum of Understanding (MMOU) between the State and FWS. They feel the State should have primacy in regards to the management of fish and wildlife.

*FWS Response:* The State of Alaska and FWS have differing missions, goals, and objectives, and authorities are derived through State or Federal statutes, respectively. The purpose of this rule is to exercise FWS’ management authority on NWR lands in Alaska to achieve goals of ANILCA’s NWR purposes. ANILCA (1980) section 304(a) states, “Each refuge shall be administered by the Secretary . . . in accordance with the laws governing the administration of units of the NWR System and this Act.” This rule is consistent with the Administration Act, the Improvement Act, the purposes for which the NWRs were created or expanded as stated in ANILCA sections 302 and 303, and with other provisions

of ANILCA. Neither ANILCA nor the MMOU (1982, Recommitment 2006) suggests that the State has or should have primacy in the management of fish and wildlife on NWRs. The MMOU stresses cooperation between FWS and the State, “to manage fish and resident wildlife populations in their natural diversity on FWS lands.” FWS prefers to defer to the State on regulations of hunting and trapping on NWRs in Alaska, unless doing so would be inconsistent with Federal laws and policy.

(4) *Comment:* One commenter expressed concern that the proposed changes are likely not in keeping with what was intended in ANILCA (sections 101, 102). Other commenters suggested that FWS should recognize that wildness is the overarching condition that ANILCA seeks to perpetuate relative to management of NWRs.

*FWS Response:* FWS manages Alaska NWRs for the purposes expressed in section 101 of ANILCA and consistent with the definitions of terms found in section 102. The term “wildness” is not specifically used in the purposes section of ANILCA, sections 101 and 102, but it is alluded to. FWS meets the purposes of ANILCA sections 101 and 102, by managing for natural diversity on all Alaskan refuges.

(5) *Comment:* Commenters were concerned FWS was not considering the Supreme Court’s recent ruling in *Sturgeon v. Frost*, 577 U.S. (2016), which ordered the U.S. 9th Circuit of Appeals to reconsider its decision. The Supreme Court opinion stated that “Alaska is often the exception, not the rule” when it comes to Federal regulation.

*FWS Response:* FWS fully recognizes the statutory differences for management of NWRs in Alaska and those in the rest of the United States. Those differences have long been reflected in the Service’s regulations and policies. This rule complies with the applicable provisions of ANILCA, is limited in its applicability to activities occurring only on public lands administered by FWS, and is therefore fully consistent with the Supreme Court’s decision.

(6) *Comment:* One commenter expressed concern about whether the changes proposed by FWS are consistent with ANCSA and ANILCA, and suggested FWS engage with rural communities and consult with Alaska Native villages and ANCSA corporations to identify and address any issues pertaining to the proposed regulations.

*FWS Response:* Our intention in issuing the January 8, 2016, proposed

rule (81 FR 887), as well this final rule, was to ensure consistency with applicable provisions of ANCSA or ANILCA. We took public comments on the proposed rule for 90 days. This final rule modifies certain provisions of the proposed rule based on comments from the public at large, State of Alaska, rural residents, Tribes, and other Alaska Native entities, to reduce the potential effects on federally qualified subsistence users on Alaska NWR lands. This rule does not change Federal subsistence regulations. This rule does not restrict federally qualified subsistence users who are hunting in accordance with Federal subsistence regulations. ANILCA section 304(a) requires that "Each refuge shall be administered by the Secretary . . . in accordance with the laws governing the administration of units of the NWR System and this Act." Further, section 815 of ANILCA is explicit that nothing in Title VIII, the subsistence title, modifies or repeals the provisions of the Administration Act. This rule is consistent with the Administration Act, the Improvement Act, and the purposes for which the NWRs were created or expanded as stated in ANILCA sections 302 and 303.

FWS agrees that consultation with all constituent communities is extremely important and in particular continues to strive for increased cooperation and dialogue with rural Alaskans. We held nine public meetings in urban and rural communities, attended RAC and BOG meetings throughout the State, and contacted Alaska Native Tribes for government-to-government consultation and ANCSA corporations for consultations. We met and communicated with the Tribes and ANCSA corporations that requested formal consultation. Details on the outreach that was conducted with Tribes, the State, and the public are detailed in this rule and the finding of no significant impact (FONSI). FWS remains available to discuss the application of the rule with Tribes and ANCSA corporations at their request.

(7) *Comment:* Commenters expressed discontent with the BOG management of wildlife on Alaska NWRs. Commenters stated that the public (nationwide) owns the lands within NWRs, and therefore the State should not have sole responsibility for managing these lands and their associated wildlife populations. They also had concerns that the BOG favored management of wildlife for the interests of hunters and trappers and ignored nonconsumptive user groups.

*FWS Response:* FWS is authorized by ANILCA, the Administration Act, and the Improvement Act to manage wildlife

and their habitats within Alaska NWRs. As directed by the Improvement Act, six wildlife-dependent recreational uses are the priority general public uses of the Refuge System. These uses are defined in the Improvement Act to consist of consumptive uses (hunting and fishing) and nonconsumptive uses (wildlife observation, wildlife photography, environmental education, and environmental interpretation).

(8) *Comment:* Commenters stated FWS does not have the authority to take the proposed action and indicated FWS should resolve issues by working with the State. Commenters were concerned the proposal would affect game on State lands. Commenters stated FWS was preempting the intent of Congress for the State's integral role in fish and wildlife management. Commentators assert that the Improvement Act, 16 U.S.C. 668dd(m), reserves to the States management authority over wildlife on refuge lands.

*FWS Response:* First, nothing in this rule applies to wildlife when located on other than Refuge-administered lands. At 16 U.S.C. 668dd(l), the Improvement Act states: "Nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of fish and resident wildlife on lands or waters that are not within the System."

Second, FWS is committed to continuing to work with the State and prefers for the State to manage wildlife populations on refuge lands when consistent with NWR mandates, policies, and laws. However, as explained in more detail above, FWS is required under Federal law to make decisions regarding management of wildlife on refuges to ensure consistency with the purposes for which Congress established those refuges. While State law is the backdrop for fish and wildlife management, pursuant to the Property Clause, Congress enacted certain statutes, including those referenced in the Department's Wildlife Policy statement found at 43 CFR part 24, which obligate FWS to manage Federal refuge lands consistent with their authorized purposes. Cooperation with the States is required in certain respects, but specific laws have provided the Secretary the ultimate authority to make decisions that are required and/or allowed by Federal law. Congress in enacting the Administration Act and the Improvement Act provided FWS with the authority to manage fish and wildlife and their habitats on Federal lands including those within the boundaries of Alaska NWRs. ANILCA section 304(a) directs that "Each refuge shall be administered by the Secretary . . . in accordance with

the laws governing the administration of units of the NWR System and this Act."

In addition to the authorities discussed above, the Improvement Act (Act) clarifies Federal and State authorities in (16 U.S.C. 668dd(k)): "Notwithstanding any other provision of this Act, the Secretary may temporarily suspend, allow, or initiate any activity in a refuge in the System if the Secretary determines it is necessary to protect the health and safety of the public or any fish or wildlife populations."

With respect to the role of the States, one commenter asserted that the Improvement Act actually affords States the authority, to the exclusion of FWS, to make management decisions for fish and wildlife on Federal refuges. At 16 U.S.C. 668dd(m), the Improvement Act states: "Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans." This section establishes a preference for State management and reliance on State regulations where "practicable," but by its very terms contemplates that FWS must make independent determinations to ensure "practicability," which includes compatibility with refuge purposes. The section affirms the responsibility of the State to enforce its fish and wildlife laws and the role of the State in management of fish and wildlife even on Federal refuges, but does not suggest that State authority is exclusive. Furthermore, the reading suggested by the commenter would have the effect of nullifying the many other provisions of the Improvement Act and other laws that impose upon FWS the responsibility to make decisions regarding management of Federal refuges.

Furthermore, this final rule is consistent with the provisions regarding taking of fish and wildlife that are stated in section 1314 of ANILCA. Subsection (a) provides that except for Federal subsistence, nothing in ANILCA "is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands"; subsection (b) states that except as specifically provided in ANILCA, "nothing in this Act is intended to enlarge or diminish the responsibility

and authority of the Secretary over the management of the public lands.”

Prior to initiating this rulemaking process, FWS met with State officials on multiple occasions over the past 10 years to discuss and attempt to resolve the issues that are finally addressed in this rule. Additional meetings with the State occurred during the development of the rule and after we published the proposed rule, but we have been unable to come to common ground. Thus we are proceeding with this rulemaking process in order to ensure that wildlife management on Alaskan NWRs remains consistent with the Service's legal mandates and authorities.

#### *Compliance With Mandates, Laws, and Policies*

(9) *Comment:* Commenters stated the rulemaking violated the intent of the Improvement Act and ANILCA. They also asserted FWS elevated inappropriately through regulations one of the 14 non-hierarchical “broad responsibilities” identified in the Improvement Act: “to ensure that the biological integrity, diversity, and environmental health of the system are maintained for the benefit of present and future generations of Americans.”

*FWS Response:* This rule codifies regulations that will help FWS meet the mandates of the Improvement Act and that are fully consistent with ANILCA—sections 302, 303, Title VIII, and section 1314, in particular. Under ANILCA, each refuge in Alaska has a list of purposes for which it was established, including to “conserve fish and wildlife populations and habitats in their natural diversity” followed by a list of representative species particular to each refuge. The Improvement Act specifically states that in administering the NWR System, the Secretary is authorized to issue regulations to carry out that Act (see 16 U.S.C. 668dd(b)(5)). This rule will specifically help NWRs to comply with the following parts of the Improvement Act: (1) Provide for the conservation of fish, wildlife, and plants, and their habitats within the NWR System (see 16 U.S.C. 668dd(a)(4)(A)); and (2) ensure that the BIDEH of the NWR System is maintained for the benefit of present and future generations of Americans (see 16 U.S.C. 668dd(a)(4)(B)). As identified in the preamble of this rule, FWS management to fulfill management for biological diversity is essentially the same as management for natural diversity as defined in this rulemaking. This rule directly supports the mission of the NWR System as identified in Improvement Act and also supports the 14 directives listed in the Improvement

Act, including specifically the directive that states the Secretary shall in administering the system ensure that the BIDEH of the NWR System is maintained for the benefit of present and future generations of Americans (see 16 U.S.C. 668dd(a)(4)(B)). This rule does not elevate or prioritize the importance of this directive over the other directives, but does specifically identify its importance and relevance to the justification for actions specified in the rule.

By law (Improvement Act), regulations (43 CFR part 24), and policy (the Service Manual at 605 FW 1 and 605 FW 2), FWS must, to the extent practicable, ensure that NWR regulations permitting hunting and fishing are consistent with State laws, regulations, and management plans. In recognition of the above, non-conflicting State general hunting and trapping regulations are usually adopted on NWRs. Hunting and trapping, however, remain subject to legal mandates, regulations, and management policies pertinent to the administration and management of NWRs.

(10) *Comment:* Commenters pointed out that uses allowed on NWRs must be compatible with NWR purposes as per the Improvement Act and also noted that the Improvement Act gives equal priority for priority public uses.

*FWS Response:* The Service agrees with this comment. Under the Improvement Act, FWS is required to manage NWRs for natural diversity and BIDEH across ecosystems. The Improvement Act also established and reinforced the compatibility standard as the legal backbone for NWRs, defining a “compatible” use as one that does not “materially interfere with or detract from the fulfillment of the National Wildlife Refuge System or the purposes of the national wildlife refuge” (603 FW 2.6B.). While Alaskan NWRs have historically recognized sport hunting and fishing as priority public uses, the Improvement Act gave equal priority to wildlife viewing, photography, and environmental education and interpretation as priority public uses. The Improvement Act identifies hunting as a permissible use of NWRs, but consumptive recreational uses are not given any higher priority than nonconsumptive uses (such as wildlife watching, hiking, camping, photography, etc.), and protection of wildlife and other natural resources found within NWRs continue to be accorded the highest of priorities (see 16 U.S.C. 668dd). Moreover, the Improvement Act retains and re-emphasizes the Administration Act's compatibility requirements and imposes

other standards that require more, not less, biological and ecological evidence to support decisions to open or close NWRs to activities.

(11) *Comment:* Commenters were concerned that the proposed regulations would be applied to all NWRs nationwide in the future.

*FWS Response:* In 1981, the Service added a new part 36 to its regulations in title 50 of the CFR to specifically address the requirements of ANILCA. The general National Wildlife Refuge System regulations continue to apply to Alaska refuges, “except as supplemented or modified by these [part 36] regulations or amended by ANILCA.” In general, FWS defers to the respective States for management of wildlife on NWRs across the United States. However, it is common for NWRs outside of Alaska to promulgate refuge specific hunting and fishing regulations to ensure refuge management complies with NWR System laws and policies. Public participation and closure procedures for NWRs in the lower 48 States are found at 50 CFR 25.21 and 50 CFR 25.31. The regulations at 50 CFR part 36 are specific to Alaska, and NWRs in other States are subject to their own rulemaking procedures.

#### *Biological Integrity, Diversity, and Environmental Health*

(12) *Comment:* Concern was expressed that our definition of “natural diversity” precludes FWS' ability to use predator control as a tool.

*FWS Response:* “Natural diversity” is defined in this rule as the existence of all fish, wildlife, and plant populations within a particular wildlife refuge system unit in the natural mix and in a healthy condition for the long-term benefit of current and future generations. Managing for natural diversity includes avoiding emphasis of management activities favoring some species to the detriment of others and assuring that habitat diversity is maintained through natural means, avoiding artificial developments and habitat manipulation programs whenever possible. In the preamble of this rule, we described statements by Chairman Udall and Senator Stevens, who were floor managers involved in enactment of ANILCA, to provide background on how congressional leaders involved in drafting ANILCA interpreted the words “natural diversity” and the term's context relative to future management of NWRs in Alaska. This legislative history provides important context to this rule. This rule does not preclude predator control as a management tool, but instead provides that FWS will only use

predator control on NWRs in Alaska when it is determined necessary to meet refuge purposes, is consistent with Federal laws and policy, and is based on sound science in response to a conservation concern. FWS continues to recognize predator control as an important and valid management tool when appropriate to meet NWR purposes or the NWR System's mission. As explained above, natural diversity is discussed and defined in this rule because it is a statutory purpose of every refuge unit in Alaska, but the term is not defined in ANILCA. The inclusion of a discussion and definition of natural diversity in this rule is to clarify how we interpret this term. The discussions cited from the legislative history on the meaning of natural diversity are an important element considered in our interpretation. Managing to maintain the natural diversity of fish and wildlife and their habitats includes avoiding emphasis of management activities favoring some species to the detriment of others; assuring that habitat diversity is maintained through natural means, avoiding artificial developments and habitat manipulation programs whenever possible.

*(13) Comment:* The definition of "natural diversity" used in the proposed rule was not vetted with the State and Tribes prior to publication of the proposed rule.

*FWS Response:* The Service did consult with Tribal governments, Native Corporations, and the State before issuing a proposed rule. The Service also engaged in further discussions/consultations after the proposed rule was issued. In the preamble of this rule, we reference ANILCA's legislative history to provide background on how congressional leadership interpreted the term "natural diversity" and its context relative to future management of NWRs. This background information provides important context for this rule and how we developed the definition of "natural diversity" in this rule.

The context for FWS' interpretation of "natural diversity" was included in information shared with the State and the Tribes as early as 2014. Reference to legislative history information that provided specific context for developing FWS' definition of "natural diversity" was provided repeatedly to the State and Tribes during the drafting of the rule starting in 2014. Upon repeated requests from the State and Tribes throughout the 2014–2015 rule development, FWS developed the definition of "natural diversity" set forth in this rule. We included this definition in the draft of the proposed rule that we shared with the State and

Tribes (November 2015) prior to publishing the proposed rule in January 2016. In addition, there was a 90-day comment period to provide a revised or alternate definition. One commenter referenced an alternate definition (see Comment (24), below) that was evaluated and determined inappropriate for this rule. In response to comments, we added additional ANILCA legislation history language from Senator Ted Stevens to the preamble of this rule to provide a broader context for evaluating the interpretation of natural diversity.

*(14) Comment:* Commenters were concerned the proposal provided FWS Refuge Managers too much latitude for interpreting and making decisions about future management for BIDEH.

*FWS Response:* The actions Refuge Managers are authorized to take in this rule, and the criteria to be applied when doing so, are consistent with Federal law and are comparable to the actions the managers have long been authorized to take in administering refuges. Refuge Managers are subject matter experts regarding management of refuge units. Refuge Managers are selected to manage operations of a NWR because of their expertise. Refuge Managers receive assistance from their local refuge staff, as well as regional refuge staff as needed or required to make appropriate management decisions. Refuge Managers also seek out scientific information and traditional ecological knowledge from appropriate experts including State biologists and tribal entities. Refuge Managers' decisions are based on a variety of sources, including, but not limited to, laws, regulations, policies, legislative history, and planning documents for which the public has had the opportunity to provide input such as comprehensive conservation plans and step-down management plans. The use of the BIDEH policy guidance by Refuge Managers is incorporated into a diversity of short- and long-term decision-making situations. A few of the examples where BIDEH policy guidance is utilized by a Refuge Manager include development of comprehensive conservation plans, inventory and monitoring plans, and compatibility determinations. A Refuge Manager's decisions to conduct or recommend management actions relative to BIDEH policy are, as appropriate, further evaluated by the respective regional refuge supervisors and refuge chiefs.

*(15) Comment:* Commenters stated the use of the BIDEH policy is so broad and unspecific that it also allows FWS to justify nearly any action it desires, as

long as it is in "the professional judgment" of FWS employees.

*FWS Response:* Section 4(a)(4)(B) of the Improvement Act states that "In administering the System, the Secretary shall . . . ensure that the biological integrity, diversity, and environmental health [BIDEH] of the System are maintained for the benefit of present and future generations of Americans. . ." (16 U.S.C. 668dd(a)(4)(B)). The FWS BIDEH policy (601 FW 3) provides guidance for implementation of this aspect of the Improvement Act. The integration of BIDEH policy language in the preamble of this rule and at 50 CFR 36.1 provides clarification of how the rule supports FWS policy mandates and subsequently NWR purposes and the NWR System mission. Refuge Managers will use sound professional judgment when implementing the BIDEH policy primarily during the comprehensive conservation planning process to assess the complex evaluations that are required by the BIDEH policy. Sound professional judgment incorporates field experience, knowledge of refuge resources, the refuge's role within an ecosystem, applicable laws, and best available science including consultation with others both inside and outside FWS. The use of a Refuge Manager's "professional judgment" is just one component of decision making and is constrained by the requirement to meet NWR System purposes, mandates, and laws. The BIDEH policy is one of several directives for Refuge Managers to follow while achieving NWR purposes and the NWR System mission. Decisions by Refuge Managers will require professional judgment that can integrate into the decision-making process, a collective understanding and knowledge of the best available science and applicable laws. The BIDEH policy is comprehensive and provides for the consideration and protection of the broad spectrum of fish, wildlife, and habitat resources found on NWRs and associated ecosystems. However, the BIDEH policy also provides Refuge Managers with an effective and purposeful evaluation process to analyze their refuges and recommend the best management direction to prevent further degradation of environmental conditions. Where appropriate, the BIDEH policy, in concert with NWR purposes and NWR System mission, allows a Refuge Manager to pursue the restoration of lost or severely degraded resources.

*(16) Comment:* Some commenters indicated FWS should not be conducting a formal rulemaking process that encompasses the entire region.

Commenters suggested FWS should instead follow section 3.9(g) of the BIDEH policy that identifies that compatibility reviews and comprehensive conservation plans are the required approach to address NWR specific issues.

*FWS Response:* FWS adheres to the guidance provided in section 3.9(g) of the BIDEH policy that states, "Through the Comprehensive Conservation Plan (CCP) process, interim management planning, or compatibility review, determine the appropriate management direction to maintain and, where appropriate, restore BIDEH, while achieving NWR purposes." FWS, in evaluating the purpose and need for this rule, determined that it is not a refuge-specific rule and should be applied to all Alaska NWRs. This rule was developed because FWS wanted to establish consistent definitions and guidance for all Alaska NWRs to abide by when evaluating predator control requests on an NWR. It specifically clarifies how our existing mandates for the conservation of natural and biological diversity, biological integrity, and environmental health on NWRs in Alaska relate to predator control (50 CFR 36.32). This rule is fundamental to ensure that Alaska NWRs consistently evaluate predator control requests using standardized criteria and to ensure the public understands the legal authorities associated with predator management decisions.

*(17) Comment:* Commenters were concerned with FWS definitions for BIDEH and the legality of codifying these terms. They further stated that BIDEH terms require clearer definitions than what we proposed.

*FWS Response:* We do not include definitions of "biological diversity," "biological integrity," "environmental health," and "historic conditions" in the Regulation Promulgation section of this final rule; these definitions remain in our BIDEH policy (601 FW 3). The NWR System Improvement Act states that, in administering the NWR System, the Secretary shall "ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans" (16 U.S.C. 668dd(a)(4)(B)). Refuge Managers are required to comply with the Improvement Act including maintaining BIDEH on NWRs in Alaska. Adequate guidance for Refuge Managers currently exists in policy, including clear definitions of BIDEH. As explained above, the concepts of BIDEH and natural diversity are essentially the same.

*(18) Comment:* Commenters supported the FWS BIDEH policy because it is consistent with legal requirements for management of NWRs. They stated concerns with State IM program indicating the State did not manage for BIDEH and is not receptive to the nonconsumptive user concerns.

*FWS Response:* We note these comments.

*(19) Comment:* Commenters suggest FWS should periodically determine population and genetic status of predator species to establish baseline information to address future criticisms of the use of the BIDEH policy to justify management.

*FWS Response:* FWS agrees that the collection of population and genetic data for predators is important for informing future management decisions. We recognize the importance of collecting both types of data when funding and resources are available, and of considering the available data to guide our management decisions. We will also seek to continue to partner with the State, other agencies, and appropriate organizations and persons to gather the data that will best inform our current and future management decisions.

*(20) Comment:* The proposed regulations add a new paragraph (a) to section 36.1, and there was concern the new paragraph fails to accurately and fully reflect Alaska NWR purposes.

*FWS Response:* The new paragraph at 50 CFR 36.1 clarifies how NWRs in Alaska meet the primary conservation mandates of ANILCA and the Improvement Act. As identified in the preamble section of the rule, the Service finds that the requirements in ANILCA for maintaining the natural diversity of wildlife and their habitats is essentially the same as the BIDEH mandate in the Improvement Act. The added paragraph includes reference to NWR purposes provided in ANILCA (conserving natural diversity) and managing NWRs in accordance with NWR laws, mandates, and policies (Improvement Act, BIDEH policy, etc.). The language does not, nor is intended to, diminish or minimize ANILCA, the Improvement Act, or other purposes for any of the NWRs in Alaska.

*(21) Comment:* One commenter referenced "Executive Order 13443" and interpreted that it prioritizes hunting opportunities above all other wildlife-dependent uses and directs FWS to actively "foster" healthy and productive wildlife populations. The commenter indicated FWS does not have the legal option to ignore such a mandate that so clearly expresses its intent.

*FWS Response:* The purpose of Executive Order 13443, "Facilitation of Hunting Heritage and Wildlife Conservation," is to "direct Federal agencies that have programs and activities that have a measurable effect on public land management, outdoor recreation, and wildlife management, including the Department of the Interior and the Department of Agriculture, to facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat . . . consistent with agency missions." There is no directive in that Executive Order (E.O.) for Federal agencies to prioritize hunting over all other uses. Section 2(e) of the E.O. directs Federal agencies to "Establish short and long term goals, in cooperation with State and tribal governments, and consistent with agency missions, to foster healthy and productive populations of game species and appropriate opportunities for the public to hunt those species." FWS manages Alaska NWR lands in compliance with this directive. Alaska NWRs will continue to facilitate hunting opportunities on NWRs in compliance with NWR purposes, the Improvement Act, and the Refuge Recreation Act (16 U.S.C. 460k *et seq.*), in addition to E.O. 13443.

*(22) Comment:* Concern was expressed that the proposal seeks to limit management tools and preclude manipulation of habitat and/or wildlife populations for the purpose of benefitting hunters, including subsistence users. The commenter quoted from the Senator Stevens Senate Congressional Record of December 1, 1980, S15131, p. 157.

*FWS Response:* FWS is required to conduct all NWR activities in a manner that complies with law and policy, and we are not attempting to preclude actions that could benefit hunters or subsistence users. To the contrary, FWS has an extensive and lengthy history of management actions for wildlife species that also benefit a variety of user groups including hunters; however, these actions have complied with governing law and policy. This rule responds to the State's IM statute and corresponding recent liberalized methods and means for the take of predators designed for "the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game (AS sec. 16.05.255(k)(5))." This is not consistent with statutory mandates for NWRs under the Improvement Act or ANILCA purposes for NWRs in Alaska. There is additional language from the Congressional Record associated with ANILCA that adds context to how

NWRs should be managed relative to the term “natural diversity” (statements of U.S. Representative Udall and U.S. Senator Stevens, as noted above). The BIDEH policy also does not preclude the manipulation of habitat or populations. Guidance in the BIDEH policy (601 FW 3.7E.) specifically states, “Management, ranging from preservation to active manipulation of habitats and populations, is necessary to maintain biological integrity, diversity, and environmental health [BIDEH]. We favor management that restores or mimics natural ecosystem processes or functions to achieve refuge purpose(s). Some refuges may differ from the frequency and timing of natural processes in order to meet refuge purpose(s) or address [BIDEH] at larger landscape scales.” This approach benefits a variety of user groups including hunters and subsistence users. This rule does not change existing Federal subsistence regulations (36 CFR part 242 and 50 CFR part 100) or restrict subsistence uses under Federal subsistence regulations.

*(23) Comment:* Commentators expressed concern that FWS values BIDEH more than the human environment.

*FWS Response:* The mission of the NWR System is to administer a national network of lands and waters for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. The NWR System exists because people value wildlife. Congress, through its actions, has made the decision to conserve these resources within the NWR System. The Improvement Act makes clear that one of our priority responsibilities is to maintain the natural diversity, ecological processes, and ecological functions of NWRs as expressed by the BIDEH policy. Taking care of these priorities helps us ensure these natural resources will be available for future generations to enjoy, thereby maintaining or improving these areas for people as well. Refuge Managers work to balance the diverse demands of the public with the requirement to meet NWR purposes and the NWR System mission, utilizing the best available science to make decisions.

*(24) Comment:* One commenter offered a different definition of natural diversity (FWS policy at 701 FW 1) and suggested we consider it as an alternate definition for the rule.

*FWS Response:* After considering the public comments, we are defining “natural diversity” in this final rule as

proposed, with the exception that we have removed the phrase “and taking into consideration the fact that humans are dependent on wildlife refuge subsistence resources” from the definition. As explained above, in promulgating this definition, we have carefully considered the legislative history of ANILCA, other ANILCA background documentation, and FWS laws, mandates, and policies. The context for the development of the definition of “natural diversity” is appropriate because it derives from ANILCA legislation and speaks to the intent of that legislation, which is specific to Alaska. Managing to meet the definition of “natural diversity” in this rule is essentially the same as management to achieve the definitions of biological integrity and diversity provided in BIDEH policy, as noted above.

*(25) Comment:* One commenter provided written quotations from refuge CCPs that identified language that acknowledged our ability to conduct or permit predator control on NWRs and therefore suggested we should not pursue this rulemaking process.

*FWS Response:* The information about predator control and predator management that was cited from refuge CCPs supports the provisions of this rule. The excerpts from the CCPs indicate that, when appropriate, FWS does conduct predator control on NWRs and that we can allow for the harvest of predators on NWRs, as long as these actions are in compliance with applicable legal and policy mandates. In evaluating the purpose and need for this rule, FWS determined that it is not a refuge-specific rule and should be applied regionally to all Alaska NWRs. This rule was developed to establish consistent definitions and guidance for all Alaska NWRs to follow when evaluating predator control requests and to ensure the public understands the associated legal authorities.

*(26) Comment:* Concern was expressed that the environmental assessment (EA) and BIDEH policy does not take into consideration fish.

*FWS Response:* While this rule was developed to address specific predator control proposals for terrestrial species, including specific methods and means for the harvest of bears, wolves, and coyotes, the requirements of natural diversity and the BIDEH policy apply to other species, including fish. Refuge Managers evaluate refuge conditions and future refuge management relative to the BIDEH policy and consider all resources associated with an NWR, including fish. The BIDEH policy is an additional directive for managers to

follow while achieving NWR purpose(s) and the NWR System mission. It provides for the consideration and protection of the broad spectrum of fish, wildlife, habitat, and vegetation resources found on NWRs and associated ecosystems.

#### *Economic Impacts*

*(27) Comment:* Commenters expressed concern that depleted predator populations may reduce ecotourism opportunities, like wildlife watching and photography, in the future. Others were concerned the proposal may negatively impact hunting tourism.

*FWS Response:* Maintaining healthy and sustainable ecosystems on NWRs contributes to the wildlife-based tourism business in Alaska. Although this rule may result in slight changes in refuge visitor experiences, we do not expect this rule to significantly impact visitors engaged in either hunting or nonconsumptive uses like wildlife viewing. In fact, the rule supports the long-term sustainability of both consumptive and nonconsumptive uses on NWRs. FWS recognizes that wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation), when determined to be compatible with NWR purposes, are legitimate and appropriate public uses of the NWR System as mandated by the Improvement Act. As a result of this rule, there may be slight effects to recreational big game hunting on refuges by eliminating a hunter’s ability to use a few specific methods and means of take. However, until recent years, many of these methods and means were prohibited Statewide. Due to the historical ban on these methods and means of take of predators, it is estimated that these hunting methods (take of brown bears over bait, take of brown bears using traps or snares, take of wolves and coyotes during the denning season, and same-day airborne take of bears) represent a very small fraction of all big game hunting on NWRs. As a result, opportunities for big game hunting on NWRs will likely change minimally. From 2009 to 2013, big game hunting on NWRs in Alaska averaged about 40,000 days annually and represented 2 percent of wildlife-related recreation on NWRs. Big game hunting on NWRs in Alaska represented only 4 percent of all Statewide big game hunting days (1.2 million days) for the State (U.S. Department of the Interior, U.S. Fish and Wildlife Service, Division of Federal Aid, 2011 National Survey of Fishing, Hunting, and Wildlife Associated Recreation; and U.S. Department of the Interior, U.S. Fish

and Wildlife Service, National Wildlife Refuge System, Refuge Annual Performance Plan 2009–2013. Washington, DC, unpublished). With this final rule and prohibition of certain effective methods and means of take of predators, there may be a small direct positive effect to wildlife watching activities for nonconsumptive users. This rule will not affect the majority of State general hunting regulations or other allowable public uses on NWRs in Alaska. A more naturally functioning ecosystem will better facilitate a diversity of public uses.

#### Moose

(28) *Comment:* Commenters expressed concerns about a shortage of moose for subsistence hunters near the Kenai NWR that is likely due to lack of predator management. Other commenters were concerned that moose near Kenai, Alaska, are negatively impacted by trapping lines, disease, habitat loss, and trophy hunting.

*FWS Response:* Moose populations on the Kenai Peninsula have numbered 5,000 to 6,000 since the mid-1980s and are likely to increase in the near term due to recent and expected wildfires. In the longer term, the effects of a warming climate that include the potential introduction of lethal diseases (e.g., Chronic Wasting Disease) and winter ticks, thermal stress in the spring, and a changing fire regime may negatively impact Kenai moose. In addition, moose-vehicle collisions on the Kenai Peninsula have averaged 244 per year (or about 30 percent of moose killed by humans every year), translating to over 7,100 moose killed by vehicles since 1980. Small numbers of moose may also be killed or maimed by traps, snares, and dogs. Bears and wolves do prey on calves and infirm moose, but their effect on moose population demographics is generally compensatory and not additive unless moose populations are extremely low (U.S. Fish and Wildlife Service. 2015. Draft Environmental Assessment: Non-subsistence Take of Wildlife: Proposed Regulatory Updates to Methods and Means for Predator Harvest on NWRs in Alaska). Overall moose populations within Alaska appear to be healthy and expanding into western portions of the State. Depending on where you are located in Alaska, some populations of moose are at low densities but are stable populations. These populations may be limited in many ways beyond simply predators. In many places, the food availability may actually be the more limiting factor.

#### Bears

(29) *Comment:* Comments were received pertaining to allowable bait for bears, as the proposed rule specifically stated FWS was seeking comment on the type of bait that should be allowed for the baiting of black bears. One commenter wrote that the use of carcass remains was “unethical.” Three commenters suggested using “natural” baits that bears would normally eat (e.g., fish and game remains).

*FWS Response:* We received few comments regarding the type of bait that should be allowed for baiting bears. As a result of public comments, we have decided to continue to adopt State regulations on allowable baits for black bear hunting. Currently, State regulations, which are adopted on NWRs, require the bait used at bear baiting stations to be biodegradable.

(30) *Comment:* Commenters opposed same-day aerial shooting of wildlife on NWRs because it benefits trophy hunters, is not in keeping with Refuge tenets, and is not in keeping with the spirit of fair chase.

*FWS Response:* The allowance for same-day airborne hunting of wolves and bears by the public reverses a long-standing prohibition in the State. It has only recently been allowed by the State in areas where the overall State goal is to reduce predator populations. Same-day airborne take of wildlife is already prohibited on all Alaska NWRs for many species. This rule will add bears to the list of species that cannot be taken by hunters the same day they were airborne. Same-day airborne take of black and brown bears would likely increase harvest pressure and reduce bear populations because it allows the hunter the ability to observe bears from the air, land, and harvest the animal that same day, which provides a large advantage over a person on the ground dealing with limited visibility. Same-day airborne take of black and brown bears is prohibited in this rule because it is a particularly effective means of harvesting predators with the potential to significantly impact predator populations and subsequently impact important ecological process like the predator-prey relationship.

(31) *Comment:* Certain commenters proposed that the practice of killing bears and cubs in their winter dens should be prohibited, but others expressed support for the harvest method to continue for local residents for cultural reasons only.

*FWS Response:* In Alaska, State-regulated hunting of sows and cubs has mostly been limited to predator control areas, where the intention is to

significantly reduce bear population numbers. There is an allowance under State general hunting regulations for the take of black bears, including sows with cubs and cubs, by resident hunters from a den site from October 15 through April 30 (year-round in Unit 25D, which is within Yukon Flats NWR) for customary and traditional use in interior Alaska. These State regulations open this season to any Alaska resident. These State regulations specify the game management units and seasons during which this method of harvest can occur. This rule prohibits taking black or brown bear cubs or sows with cubs (exception allowed in accordance with State law and regulations for resident hunters to take black bear cubs or sows with cubs under customary and traditional use activities at a den site October 15–April 30 in specific Game Management Units (GMUs)). Allowing cubs, and sows with cubs, to be harvested under general hunting regulations year-round or outside of customary and traditional uses would likely have the consequence of reducing the overall bear population. This would be a high-intensity impact, as the ecological function of a top predator would be reduced and the effects would be considered long term due to life strategies of these species.

(32) *Comment:* Some commenters were concerned that bait attracts both intended and unintended wildlife species, and the concentrations of wildlife caused by baiting may spread disease. Commentators stated that bear baiting is a serious human safety issue, as bears become habituated and potentially dangerous encounters between bears and humans increase.

*FWS Response:* We prohibit harvesting brown bears over bait due to the potential to reduce their population by significantly increased harvest rates. Based on basic biological differences in productivity and survival, the recovery time for brown bear populations is much longer than for black bears. At this time, available data do not yet indicate that baiting at current hunter participation levels has resulted in the overharvest of black bears. Brown bears can be attracted to black bear baiting stations in areas where their ranges overlap, and this is an area of concern that FWS will continue to monitor. There is a potential for baited bears to become human-habituated and food-conditioned. While there have been few studies that linked baiting for brown bears to increases in bear attacks on humans, there are studies documenting an increase in negative bear-human encounters when bears become food-conditioned and tolerant of humans.

Previous information on food conditioning and human habituation provides evidence that indirect problems associated with these methods are likely to occur at some level. There is also potential for higher instances of defense of life and property mortalities associated with food- and human-conditioned bears. Brown bear populations in proximity to villages, towns, and cities are often subject to higher rates of mortality from humans related to defense of life and property (U.S. Fish and Wildlife Service. 2015. Draft Environmental Assessment: Non-subsistence Take of Wildlife: Proposed Regulatory Updates to Methods and Means for Predator Harvest on NWRs in Alaska). This source of mortality must be factored into the management of overall human-caused mortality when regulating bear hunting for long-term health and survival of the population. The spread of disease related to bear baiting has not been documented as a problem at this time. Public safety of visitors to NWRs in Alaska is a high priority for FWS. There are inherent risks to visiting remote locations in Alaska, and the provisions of this final rule do not change that. This rule will however, enhance maintenance of more intact ecosystems, and healthier and more resilient populations of animals for both consumptive and nonconsumptive users.

(33) *Comment:* Commenters expressed concerns regarding the practice of trapping bears and believed it is not humane and not selective relative to bear type, sex, or age.

*FWS Response:* This rule prohibits the use of traps to harvest bears on NWRs in Alaska. Trapping of bears is a nonselective harvest method that will result in the harvest of cubs or sows with cubs. Harvest of these classes of bears is generally only employed when the goal is to reduce the overall population.

(34) *Comment:* Concerns were expressed regarding the cultural and biological significance in taking brown bears over bait. Commenters suggested that data have not been collected that indicate that brown bears are harvested on NWRs using bait, and there are no data that indicate brown bear baiting is a particularly effective method of take in certain areas in Alaska.

*FWS Response:* For federally qualified subsistence users, where the baiting of brown bears is customary and traditional, proposals should be submitted to the Federal Subsistence Board (FSB). For example, the FSB recently allowed the harvest of brown bears over bait in game management units 11, 12, and 25D, an area which

includes Tetlin NWR, most of Yukon Flats NWR, and a portion of Arctic NWR. In terms of biological significance, baiting for brown bears has been shown to be a highly effective tool for reducing brown bear populations in some areas. Because of the documented importance of apex predators for maintaining long-term fitness and resilience in their prey populations, and because such predators are part of NWRs' natural diversity, this rule prohibits baiting of brown bears for general sport hunting on all NWRs in Alaska. Even though bear baiting may not be practiced on all refuges, and the effects of bear baiting for population reduction will vary from region to region and from habitat to habitat in Alaska, FWS is legally tasked with maintaining natural diversity and healthy ecosystems. It is not prudent to wait until the practice spreads to new areas or impacts previously unaffected brown bear populations before taking action. Thus, we are proactively precluding the loss of diversity and degradation of ecosystem functions by prohibiting this practice on NWRs Statewide, both where it may have occurred already and where it could be initiated in the future.

(35) *Comment:* A commenter stated the BOG's management is not scientifically driven and could result in widespread reductions of Alaska's grizzly<sup>1</sup> bear populations. The commenter cited that hunter kill rates on wolves, grizzly bears, and other carnivores has a multiplier effect on total mortality over time that exceeds natural mortality rates and is due to loss of mature reproductive individuals and disruptions of social structures.

*FWS Response:* FWS proposed regulatory changes specifically to address methods and means employed to reduce predator populations on NWRs in Alaska. Many of these methods this rule prohibits involve the harvest of adult female animals and/or females with dependent young. We concur with the commenter that such approaches have impacts on predator populations beyond just the animals harvested. Predator reduction methods allowed by the State are permitted where the goal is to reduce predator numbers. The elimination or reduction of ungulate predators and predatory forces on wild ungulate populations may seem like the best way to produce more ungulates, but these ecological systems rely on predation and apex

predators to maintain long-term fitness and resilience of ungulate populations. It is these ecological processes that must be maintained to provide healthy ungulate populations on NWRs in Alaska for future generations of both consumptive and nonconsumptive users.

(36) *Comment:* Commenter stated it was inappropriate for FWS to extrapolate the overharvest of brown bears on Kenai NWR, which resulted from State regulations, to a potential scenario of overharvest of brown bears to the rest of the State.

*FWS Response:* Under its general or sport hunting regulations, the State had a long-standing prohibition on the harvest of brown bears over bait. This was only recently changed in the 2012–2013 regulatory year, when one of the stated goals of the 20E intensive management area, located adjacent to Tetlin NWR, was to significantly reduce brown bear populations to enhance moose populations. That was the reason offered by the State in allowing the harvest of brown bears over bait. While every designed program results in varying amounts of take, the use of bait for brown bears has been and continues to be employed to reduce brown bear population levels. FWS also considered the cumulative impacts from all the various methods and means that have been changed by the State for the purpose of reducing predators. While the level of effectiveness of each method may vary in a given unit or circumstance, the impact of these cumulative changes have had and will have the collective effect of reducing predator populations for the stated goals of increasing ungulate populations for human consumption. Although current human-use patterns that potentially negatively impact brown bear populations on the Kenai may differ relative to the rest of the State today, human-use and access patterns are neither static nor perfectly predictable. In addition, historically remote areas are becoming increasingly accessible. As a result, FWS finds it necessary to adopt these regulatory changes across all NWRs in Alaska. FWS is mandated to preserve the natural diversity of the wildlife and their habitats. Ungulate populations benefit from having apex predators as one of the natural forces driving their populations and maintaining their fitness and resilience. These benefits are lost when predator populations are sharply reduced and maintained at low levels for long periods of time. For these reasons, FWS finds it is necessary to adopt the regulatory changes set forth in this rule for nonsubsistence hunting on NWRs in

<sup>1</sup> According to MacDonald and Cook (2009), brown and grizzly bear are one in the same: *Ursus arctos*. For the purposes of this final rule, brown bear includes grizzly bear but will only be referred to as brown bear.

Alaska. Protection of the ecological processes will provide healthier ungulate populations for all users, both consumptive and nonconsumptive.

(37) *Comment:* A commenter identified a discrepancy between baiting regulations at 50 CFR 32.2 and at 50 CFR 36.32.

*FWS Response:* We correct that error in this rule.

#### *Wolves and Coyotes*

(38) *Comment:* Multiple commenters expressed that wolf and coyote season closures should extend through November. Commenters were concerned with the practice currently allowed by the State that allows taking animals while in the denning season. Concerns were expressed about the value of pelts taken in summer.

*FWS Response:* This rule prohibits the take of wolves and coyotes from May 1 through August 9 for nonsubsistence users. These dates reflect the former longstanding State harvest seasons that provided reasonable harvest opportunities while still maintaining natural diversity with viable and healthy wolf and coyote populations. For the reasons stated herein, this rule maintains this traditional and historically effective management standard that had been used by both State and Federal managers rather than adopting recent State general hunting regulations that lengthened the hunting seasons on both species. FWS understands that some individuals may have uses for wolf pelts that are harvested outside the normal trapping season. This rule, however, protects wolves and coyotes during the denning season when they and their young are vulnerable but allows the opportunity for harvest during the winter months. Should wolf or coyote population levels become a concern with respect to natural diversity in the future, FWS will work with the State and/or the FSB, as applicable, to consider appropriate actions at that time.

(39) *Comment:* Commenters expressed concerns that predator control measures can eliminate wolf packs and negatively impact wolf pack dynamics, and that hunting can increase levels of cortisol and reproductive hormones that may negate the intent of predator control as intended. Other commenters were concerned about the survival of orphaned pups, and the maintenance of healthy wolf and coyote populations as a whole.

*FWS Response:* This rule expressly prohibits certain particularly effective harvest methods and means on Alaska NWRs and clarifies when predator control can be authorized. Predator

control will not be implemented on a NWR unless it is based on sound science in response to a conservation concern. The rule is intended to reasonably limit, but not eliminate, public hunting opportunities of both wolves and coyotes. The rule shortens hunting seasons for these species to minimize negative impacts to these populations that can occur if species are harvested while raising their pups.

(40) *Comment:* A commenter opposes restrictions on taking coyotes since they are in conflict with regulations established in other States.

*FWS Response:* This rule is consistent with the former longstanding State harvest seasons that balance both coyote harvest and coyote conservation. NWRs in other States have a diverse array of coyote hunting seasons ranging from no coyote hunting to seasons lasting several months. Alaska NWRs regulations are developed to meet Alaska NWRs purposes consistent with both ANILCA and the Improvement Act, and these regulations only apply to Alaska NWRs.

(41) *Comment:* Commenters request reasonable daily bag limits on wolves.

*FWS Response:* With this rule, FWS intends to address “particularly effective” methods of harvest, and does not specifically address daily bag limits for the affected species. Although certain bag limits may have potential to result in a conservation concern in a given area or for a certain species, this rule does not address them. In general, bag limits are more appropriately addressed through the State’s regulatory processes and the FSB program in conjunction with harvest information and population data. Should the issue surrounding excessive bag limits become a concern in the future with respect to maintaining natural diversity, FWS will work with the State and the FSB as appropriate.

#### *Sport/General Hunting and State Subsistence Hunting*

(42) *Comment:* Commenters expressed concern the rule would negatively affect subsistence hunting, and if wildlife populations fluctuate to low levels, subsistence users will be required to purchase more food.

*FWS Response:* ANILCA provides a priority to rural Alaskans for the nonwasteful taking of fish and wildlife for subsistence uses on Federal public lands in Alaska, including on NWRs. Under ANILCA, all NWRs in Alaska are also mandated to provide the opportunity for continued subsistence use by local rural residents, as long as this use is not in conflict with the conservation of fish and wildlife populations and habitats in their natural

diversity or with fulfilling the international treaty obligations of the United States. Additionally, Title VIII of ANILCA, section 802, states that “consistent with sound management principles, and the conservation of healthy populations of fish and wildlife . . . the purpose of this title is to provide the opportunity for rural residents engaged in a subsistence way of life to do so.” FWS recognizes the importance of the fish, wildlife, and other natural resources in the lives and cultures of Alaska Native peoples and in the lives of all Alaskans, and in accordance with section 804 of ANILCA, we continue to recognize subsistence uses of fish and wildlife and other renewable resources as the priority consumptive use on Alaska NWRs. This rule does not change existing Federal subsistence regulations (36 CFR part 242 and 50 CFR part 100) or restrict the taking of fish or wildlife for subsistence uses under Federal subsistence regulations. FWS is committed to allowing subsistence harvest across a broad taxonomic spectrum of species, specifically so that as some populations decline others remain stable or increase and thus remain readily available for harvest by those who rely on them.

(43) *Comment:* Commenters expressed concern the rule would negatively affect hunters, as prohibited predator control methods for taking game are important culturally and biologically to hunters.

*FWS Response:* FWS recognizes that some hunters will be impacted by this rule; however, because this rule maintains methods and means for take of predators that were formerly prohibited by the State, the rule will impact only a small fraction of all big game hunting opportunities on NWRs. This rule restricts certain methods and means of harvest on NWR lands under the State general hunting regulations; it does not prohibit the harvest of predators. In addition, this rule does not affect the current State harvest regulations that are applicable to hunting on non-Federal lands. The Federal subsistence regulations on NWR lands remain unchanged. The Federal subsistence regulations reflect the flexibility that federally qualified subsistence users’ desire in seasons and harvest limits.

(44) *Comment:* Commenters expressed concern about the inappropriate techniques (such as baiting bears, trapping bears, and same-day airborne take of wildlife) used for sport hunting and negative impacts to individual animals and populations.

*FWS Response:* The specific methods and means for the general or sport

harvesting of predators that are prohibited in this rule conflict with FWS mandates to conserve fish and wildlife populations and habitats in their natural diversity and to maintain BIDEH on NWRs in Alaska. One aspect of the rule is to prohibit certain methods and means for taking predators under State general hunting regulations on NWR lands. While many commenters identified these methods as “unethical” or “inhumane,” this rulemaking specifically addresses prohibiting those methods and means that have the potential to greatly increase predator harvests and to disrupt natural diversity and the interactions of wildlife.

(45) *Comment:* Commenters expressed concerns that it is equally important for Alaska residents to be able to hunt on all lands in Alaska. There were also concerns the rule is more about eliminating hunting on refuge lands than predator control management.

*FWS Response:* This rule does not eliminate subsistence or nonsubsistence hunting on NWR lands for any species. The intent of the rule is to prohibit a small number of specific, highly effective methods and means of predator harvest on NWR lands that have been allowed under the State’s general hunting regulations. The Background section, above, discusses the laws and policies that relate to subsistence and nonsubsistence hunting on NWR lands, including the preference/priority for subsistence uses that applies to all Federal lands in Alaska, including NWRs. The Background discussion also states that hunting is recognized as one of several priority uses of the NWR System (605 FW 2), and that taking of fish and wildlife through public recreational activities is authorized on NWRs in Alaska “as long as such activities are conducted in a manner compatible with the purposes for which the areas were established” (50 CFR 36.31(a)).

(46) *Comment:* One commenter indicated that the proposed rule will be unenforceable due to lack of resources.

*FWS Response:* The methods and means of harvest prohibited by this rule will be enforced by the Service in a similar fashion to other applicable State and Federal harvest regulations. The Service will continue to prioritize its resources to provide for effective enforcement, recognizing that enforcement issues will likely be the greatest near refuge boundaries or in areas with checkerboard land ownerships.

(47) *Comment:* Commenters expressed concern about the use of drones.

*FWS Response:* The Alaska State hunting regulations were modified in

2014 to prohibit the use of any device that has been airborne, controlled remotely, and used to spot or locate game with the use of a camera or video device (5 AAC 92.080(7)). 50 CFR 36.32(a) continues to adopt non-conflicting State and Federal laws pertaining to the taking of fish and wildlife. This Alaska law regarding drones is an example of such an adopted regulatory provision, and such use of a drone is also a violation of this rule.

#### *Intensive Management (IM) Programs*

(48) *Comment:* Commenters expressed concern that State IM practices on lands near or adjoining NWRs in Alaska will negatively impact the predator and/or prey populations on NWR lands.

*FWS Response:* It is possible that IM practices on neighboring lands may have impacts to resources on NWR lands. Each Federal and State agency involved with managing land in Alaska has a different management mandate, and there will be instances where animals that cross boundaries are exposed to different management regimes. This challenge for managers is not new. It is the longstanding practice of FWS that our refuge regulations apply on to the lands and waters that FWS administers.

Fortunately, Alaska NWRs are generally large enough to maintain natural and biological diversity and integrity, despite these challenges. Despite differences in their respective management mandates, Federal and State wildlife managers throughout Alaska strive for as much interagency consistency as possible when developing and implementing wildlife management actions. Such consistency is in the best interests of both our constituents and the wildlife resources they value.

(49) *Comment:* Commenters stated that enabling legislation for Alaska NWRs does not include directives to conduct IM practices on NWRs. Some commenters believe IM practices are costly and not based on sound science.

*FWS Response:* IM is a State, not Federal, mandate. The rule will help the agencies and the public better understand differences between the State mandate and Federal laws and policies.

(50) *Comment:* Some commenters stated that the proposal is politically driven or intended to impede State efforts to manage wildlife on Alaska lands.

*FWS Response:* The sole purpose of this rule is to ensure that FWS carries out its statutorily mandated responsibilities for Alaska NWRs. The

rule establishes definitions and administrative processes that fulfill these responsibilities. This effort is not politically driven, but it is an administrative process to clarify and define the legally mandated management responsibilities of Alaska NWRs, particularly when they are not consistent with those of the State. The regulations clarify FWS’ mandate under ANILCA “to conserve fish and wildlife populations, and habitats in their natural diversity,” the first-listed management purpose for each Alaska NWR. This effort to clarify and define the natural diversity mandate is intended to provide a better understanding of when predator control is allowed by FWS on Alaska NWRs. Harvest techniques come in many forms, such as lengthening seasons, increasing bag limits, government-funded control, and allowing more effective means of pursuit. These techniques are, however, subject to NWR System laws, regulations, and policies. It is for this reason that we are making the regulatory changes set forth in this rule.

#### *Predator and Prey Species Management*

(51) *Comment:* Commenters expressed support for the proposal and stated the State’s current predator management practices do not recognize the importance of apex predators, and many disagreed with BOG predator control measures.

*FWS Response:* We note this comment.

(52) *Comment:* Commenters expressed the need to include a prohibition against using Pittman-Robertson funds for predator control.

*FWS Response:* Addressing the use of Pittman-Robertson (Wildlife Restoration or WR) grant funds is outside the scope of this rulemaking. Regulations for the use of Federal assistance, including WR funds, are uniform and national in scope (see 2 CFR part 200 and 50 CFR part 80). Eligibility of WR funds specific to predator control is not currently addressed in our regulations, but rather in FWS policy (521 FW 1).

(53) *Comment:* Commenters stated opinions that predator control is effective for providing continued (ungulate) populations for subsistence and nonsubsistence users.

*FWS Response:* FWS recognizes predator control as a management tool and, as stated above, authorizes the technique when appropriate and consistent with Federal laws and policies.

(54) *Comment:* Commenters were concerned the rule will negatively

impact hunting and other activities on Alaska's NWRs.

*FWS Response:* As stated above, the methods and means restrictions do not apply to the take of fish and wildlife under the Federal subsistence regulations. Because this rule follows practices historically used by State wildlife regulators until only recently, there will be minimal incremental impacts to nonsubsistence general hunting through the implementation of the restrictions on certain methods and means of take. The definition of "predator control" at 50 CFR 36.2 and the process of allowing predator control on NWRs in Alaska are designed to clearly articulate to Refuge Managers and the public under what circumstances and conditions FWS will consider predator control programs. Not conducting active predator control programs allows predator-prey populations to fluctuate naturally in response to factors that drive these dynamics, including habitat conditions. As a result, healthier populations of both predators and prey will exist but will fluctuate and, at times, may either increase or decrease game hunting opportunities. Predator control programs may temporarily increase prey populations, but can have undesirable impacts such as habitat damage, disease, or declines in herd fitness that also negatively affect opportunities for hunting. This rule complies with ANILCA's legislated purpose that the NWRs were established and shall be managed to conserve fish and wildlife populations and habitats in their natural diversity.

*(55) Comment:* Some commenters stated restrictions on predator management would impact FWS' ability to maintain healthy predator-prey populations.

*FWS Response:* The large landscapes within the NWR units in Alaska are still largely intact and fully capable of supporting healthy predator-prey populations without the need for human management actions such as predator control programs. The relationships between predators, prey, and habitat is complicated, subject to large population or habitat condition swings that can be triggered by other factors, including weather, fire, disease, and other wildlife species. When considering predator-prey population dynamics, FWS must also carefully consider human impacts that can affect these relationships, including impacts from hunting (*i.e.*, bag limits and seasons); disturbance, particularly during critical periods such as calving or wintering; potential for introduction of disease; human-caused habitat impacts such as fire or climate

change; barriers to movement; and other factors. Successful management of these factors and preserving the natural ecosystem functions of landscapes will enable us to continue to maintain healthy, dynamic prey-predator populations.

*(56) Comment:* Several commenters are concerned that the term "predator control" is vague and could be taken out of context or banned from use.

*FWS Response:* We have added clarifying language to the preamble of this rule to help readers better understand predator control and its context. The rule defines predator control as "the intention to reduce the population of predators for the benefit of prey species." For clarity, this includes predator reduction practices, such as, but not limited to, those undertaken by government officials or authorized agents, aerial shooting, or same-day airborne take of predators. Other less intrusive predator reduction techniques, such as, but not limited to, live trapping and transfer, and authorization of particularly effective public harvest methods and means, are also included. FWS recognizes predator control as a management tool and uses the technique, when appropriate and consistent with Federal laws and policies governing Alaska NWRs. This rule clarifies, for the public and agencies, how FWS complies with its ANILCA mandate to conserve fish and wildlife populations and habitats in their natural diversity, the first-listed management purpose for Alaska NWRs. This clarification of the ANILCA natural diversity mandate is intended to provide a better understanding of when predator control techniques are allowed on Alaska NWRs.

*(57) Comment:* Commenters would like more flexibility in working with resource managers in order to decide if and when predator control is necessary.

*FWS Response:* Any predator control program proposed for NWRs in Alaska must be consistent with Federal laws and policies. A purpose of this rule is to implement a consistent approach for determining when predator control will be conducted and to clarify how Alaska NWRs' natural diversity mandate is linked to predator control management on NWRs. Refuge Managers will continue to discuss refuge management issues with tribal leaders, the State, and other interested parties.

*(58) Comment:* Commenters expressed that keeping healthy populations of prey species could best be accomplished by maintaining healthy populations of apex predator species.

*FWS Response:* The Service agrees with this comment.

*(59) Comment:* Commenters expressed concerns that ungulates are more negatively affected by other factors than by predators.

*FWS Response:* There are many factors other than predators that affect ungulate populations. Natural phenomena, such as weather and fires, can have significant effects on habitat and wildlife. FWS must also carefully consider human impacts that can affect ungulate populations, including impacts from hunting (*i.e.*, bag limits, methods and seasons); disturbance, particularly during critical periods such as calving or wintering; potential for introduction of disease; human-caused habitat impacts such as fire or introduction of weed species; barriers to movement; and other factors.

*(60) Comment:* Commenters drew parallels to the wilderness characteristics at stake on Alaska's NWRs compared to what occurred at Yellowstone and other National Parks with the loss of wolves (and subsequent reintroduction), bears, and other predators.

*FWS Response:* The long-term absence (70 years) of wolves in Yellowstone National Park and their subsequent reintroduction is a classic science-based example of the influence of apex predators in sustaining naturally diverse and healthy ecosystems ([http://www.cof.orst.edu/leopold/papers/RippleBeschtaYellowstone\\_BioConserv.pdf](http://www.cof.orst.edu/leopold/papers/RippleBeschtaYellowstone_BioConserv.pdf)). The studies following wolf reintroductions completed in 1995–1996 indicate substantial vegetation, bio-diversity, and hydrologic responses related to reintroducing wolves and their subsequent influence on prey species like elk. Elk density and behavioral changes (primarily foraging) resulting from wolf reintroductions have had cascading positive impacts throughout the Yellowstone ecosystem. ANILCA and the Improvement Act mandate FWS to manage NWRs using a natural diversity approach that maintains healthy ecosystems and where natural biotic and abiotic processes and systems continue to flourish. Maintaining a diverse and healthy population of predators is essential to meeting these mandates, and this rule supports FWS' ability to achieve these mandates while also providing for subsistence and other uses as applicable.

#### *Comment Period*

*(61) Comment:* Commenters expressed concerns that the public comment period was too short to allow for a review of the proposed rule and environmental assessment.

*FWS Response:* Under the Administrative Procedure Act (see 5 U.S.C. 553), a general notice of proposed rulemaking shall be published in the **Federal Register**, and after that publication, the agency must ordinarily provide the public a reasonable opportunity to submit written data, views, or arguments on the proposed rulemaking for consideration by the agency. Executive Order 12866 establishes 60 days as the standard for a proposed rule's comment period (see section 6(a)(1) of Executive Order 12866).

We published our proposed rule on January 8, 2016 (81 FR 887). The comment period for our proposed rule, as extended (see 81 FR 9799; February 26, 2016), lasted 90 days, ending April 7, 2016. In accordance with the E-Government Act of 2002 (Pub. L. 107-347), FWS provided for submission of comments by electronic means, as well as by hard copy or in person or at public meetings, and made available online the comments and other materials included in the rulemaking docket. We received over 3,600 comments, including substantial comments from the State, BOG, Alaska Native Tribes, ANCSA corporations, RACs, Association of Fish and Wildlife Agencies (AFWA), and numerous other Alaskan constituents, organizations, and businesses. Electronic sites to notify the public about the 30-day extension of the original 60-day comment period (81 FR 9799; February 26, 2016) for the proposed rule were updated immediately on the Alaska NWR System Web site (February 25, 2016) and the Federal eRulemaking Portal (<http://www.regulations.gov>) (February 26, 2016). Both Web sites remained fully functional for the entire comment period. Within the Alaska NWR system Web site, the extended comment period date was highlighted in red text to attract and alert a reviewer to the new comment period deadline. FWS posted phone and email contact information on all social media, electronic Web site, and printed outreach materials to ensure that anyone needing assistance to acquire documents or comment on the proposed rule and EA could contact an FWS representative for assistance. The extensive outreach history conducted prior to and after publication of the proposed rule is well documented in both this rule and the FONSI. FWS is confident, given our comprehensive outreach history and the proposed rule's 90-day comment period, that all interested constituents had a reasonable opportunity to understand and comment on the proposed rule and EA.

(62) *Comment:* One commenter was concerned there may be last minute language changes or additions to the rule that will not be part of the public commenting process.

*FWS Response:* The intent of the formal comment period is to obtain feedback and suggested changes on the proposed rule. The notice-and-comment process enables anyone to submit a comment on any part of the proposed rule. At the end of the process, the agency must base its reasoning and conclusions on the rulemaking record, consisting of the comments, scientific data, expert opinions, and facts accumulated during the pre-rule and proposed rule stages. In the case of this rule, FWS has not relied on significant new data or arguments received after the comment period, and we have determined that any modifications to the proposed rule are a logical outgrowth of the information made available to us during the rulemaking period.

#### *Regulations for Closures and Public Participation Procedures*

(63) *Comment:* Commenters expressed agreement with FWS for adding the Internet as a method of notifying affected people and organizations about hearings pertaining to closures or restrictions.

*FWS Response:* We note this comment.

(64) *Comment:* Some commenters stated that Internet-based means of soliciting comments might invite people who will never visit Alaska to sway FWS' decision.

*FWS Response:* The mission of the NWR System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. Therefore, when we propose a change to our NWR regulations, we accept all timely comments regardless of their source. Everyone has a right to offer comments on regulations affecting the public lands. FWS is committed to using a wide variety of notification and comment methods to ensure everyone with a vested interest in a given proposal has the opportunity to comment. Utilization of Internet-based communications is in furtherance of, and fully consistent with, the directives of Congress in the E-Government Act of 2002 (see our response to Comment (61)). The eRulemaking Program is a widely utilized method of communication for a wide variety of interested members of the public

covering a broad geographic area, including many (not all) parts of Alaska. The public comment process is not like a ballot initiative or an up-or-down vote in a legislature; agencies cannot simply base a final rule on the number of comments in support or against a particular proposal. At the end of the comment process, the agency must base its decision on the record before it which consists of the comments, scientific and other data, expert opinions, laws, policies and facts accumulated during the rulemaking process. A broader range of views and opinions about any agency proposal is critical to FWS in ensuring that the best resource decisions are made for the continuing benefit of the American people. FWS is committed to utilizing a broad range of communication methods to ensure all interested individuals have an opportunity to participate in the process.

(65) *Comment:* Commenters expressed concern about FWS using the Internet as a method to notify the public because Internet access is limited in rural Alaska. Commenters expressed concerns that the rule removes traditional methods of notification like radio and newspapers.

*FWS Response:* The rule does not reduce the methods used to conduct public outreach but rather expands the methods that should be used to communicate information to a broadly dispersed and diverse public that includes Alaska and the rest of the United States. FWS is very sensitive to the fact that electronic communication of information may not be appropriate or reliable in rural areas of Alaska, and therefore FWS will continue to use traditional means of communication such as newspapers, postal mail, radio announcements, flyers, and so forth, in addition to providing information via electronic methods like Web sites, list serves, and email. This rule updates our regulations to take advantage of our current options for communication by adding the use of the Internet, broadcast media, or other available methods, in addition to continuing to use the more traditional methods of newspapers, signs, and radio.

(66) *Comment:* Several commenters indicated that public meetings and hearings are appreciated, but the rule is inconsistent regarding whether or not they are required, in particular as it relates to closures.

*FWS Response:* We revised applicable paragraphs in the "Public participation and closure procedures" section of this rule (50 CFR 36.42 in the Regulation Promulgation section, below) to address

this comment and to clarify when meetings and hearings are required.

(67) *Comment:* Multiple commenters expressed concern about the closure procedures in the proposed rule. Concerns included increasing the emergency closure period from 30 days to 60 days, which may encompass most or all of an entire hunting season for some species; and fear that temporary closures may extend for years, thus restricting access for subsistence use. Others stated that the proposal for temporary closures eliminates the need for permanent closures.

*FWS Response:* FWS recognizes that emergency closures may be implemented at any time and may extend up to 60 days, thereby potentially impacting all user groups, including hunters. If an emergency closure is implemented, it is the intent of FWS to resolve the emergency as quickly as possible to reduce impacts to all NWR user groups. Invoking an emergency closure is a serious action that FWS understands may have important consequences and hence will be invoked only when absolutely necessary. FWS clarified language in this rule to indicate that an emergency closure will not exceed 60 days. Closures requiring longer than 60 days will require FWS to comply with temporary or permanent nonemergency closure procedures that require consultation with the State, affected Tribes, and Native Corporations as well as the opportunity for public comment and a public hearing in the vicinity of the area(s) affected. Based on public comments, the time for temporary closures or restrictions related to the taking of fish and wildlife will extend only for as long as necessary to achieve the purpose of the closure or restriction, and may not exceed 12 months. Another temporary closure or restriction may be allowed only after public comment, hearing, and consultation with State, Native Corporations, and Tribes as indicated in 50 CFR 36.42(d)(2). Permanent closures or restrictions related to the taking of fish and wildlife have no time limit associated with the closure period. This is distinctly different from temporary closures, which are implemented with the intent of extending only as long as necessary to achieve a desired purpose for the closure or restriction.

(68) *Comment:* Some commenters are concerned FWS plans to remove the requirement for FWS to hold a hearing on the emergency closure procedure.

*FWS Response:* This rule does not change hearing procedures for emergency closures. Emergency closures or restrictions relating to the taking of

fish and wildlife will be accompanied by notice pursuant to 50 CFR 36.42(f) with a subsequent hearing.

(69) *Comment:* Multiple commenters expressed concern about the authority given to the Refuge Manager to initiate closures without input from the public. Commenters suggested that there is consultation with other entities before closures occur.

*FWS Response:* Only certain emergency closures can be implemented by a Refuge Manager without receiving formal input from the public, State, Tribes, and Native Corporations. For any closure extending beyond 60 days, the manager is required to consult with the State, Tribes, and Native Corporations and provide the opportunity for public comment. To date, there has been a very low level of emergency closures executed on NWRs in Alaska.

#### *Public Process and Involvement*

(70) *Comment:* One commenter was concerned that if FWS received many comments from special interest groups, those comments from “outsiders” might outnumber those received from persons directly affected, such as tribal members.

*FWS Response:* The mission of the NWR System is to “administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.” Therefore, all Americans have vested interest in the management of NWRs, regardless of where they live. The notice-and-comment process enables anyone to submit a comment on any part of the proposed rule. This process is not like a ballot initiative or an up-or-down vote in a legislature. An agency is not allowed to base its final rule on the number of comments in support of the rule over those in opposition to it. The agency also does not weigh comments based on where the commenter resides. At the end of the process, the agency must base its reasoning and conclusions on the rulemaking record, consisting of the substantive comments, scientific data, expert opinions, and facts accumulated during the pre-rule and proposed rule stages.

(71) *Comment:* One commenter was concerned that permanent closures for the take of fish and wildlife would not require a public hearing.

*FWS Response:* Permanent closures or restrictions related to the taking of fish and wildlife will be effective only after allowing for the opportunity for public

comment and a public hearing in the vicinity of the area(s) affected and publication in the **Federal Register**. These closures also require consultation with the State and affected Tribes and Native Corporations.

(72) *Comment:* Commenters expressed discontent with certain “public process” experiences, saying they do not believe Alaska residents and other American citizen concerns are being heard.

*FWS Response:* As a result of public comments during scoping for the proposed rule and EA, and from comments we received during the 90-day public comment period on the proposed rule, FWS made several changes to this rule (see table above titled, Summary of primary differences between our proposed rule and this final rule). These changes are documented in this final rule and the FONSI along with FWS’ response to comments. FWS strived to gather input on the proposed rule using a broad array of outreach efforts that included public hearings, open houses, meetings, and communicating the availability of the rule via radio, television, newspapers, Web sites, listservs, emails, posters, flyers, and phone calls. When distributing paper or electronic information, FWS ensured that there was always a phone contact included so that a person could call someone to receive materials or get assistance on how to comment. As a result of this process, we gathered over 3,600 comments, of which 409 were substantive.

(73) *Comment:* Commenter stated that conserving and enhancing resources for the benefit of the people requires collaborating with the State and enhancing public involvement in decision making.

*FWS Response:* FWS agrees, and throughout this regulatory process FWS engaged the public, agencies, and nongovernmental organizations in conversations. Public involvement is fundamental to our mission and required by law. Public lands are held in trust for the American people, and they have the right to provide input on how these lands will be managed. Successful management of NWR resources is achieved by working with our conservation partners, like the Alaska Department of Fish and Game (ADFG). FWS prefers to defer to the State on regulations of hunting and trapping on NWRs in Alaska, unless, when doing so, FWS would not be in compliance with Federal laws and FWS policy.

### Public Uses

(74) *Comment:* Multiple commenters expressed concern about real or perceived decreased opportunities for wildlife viewing and photography as a result of the State's predator control regulations and IM actions. Commenters were concerned that hunters had higher priority than other public uses and wanted NWRs to have a natural variety of wildlife species.

*FWS Response:* FWS is mandated by the Improvement Act to permit for a diversity of wildlife-dependent recreational opportunities that includes both consumptive and nonconsumptive opportunities. This rule facilitates our ability to manage NWRs for natural diversity and BIDEH, which in turn will facilitate providing a diversity of recreational opportunities from wildlife observation and photography of predators to harvest of predators.

(75) *Comment:* Commenters expressed concerns that only predators would exist in the future for the public to view due to an unbalanced ecosystem that has resulted from removal of predator control practices.

*FWS Response:* Maintaining healthy predator-prey relationships is an important part of managing Alaska NWRs. Predators cannot survive without prey. Indeed, predator and prey populations in Alaska co-existed and fluctuated naturally for millennia without intensive predator management.

### Scientific Methods

(76) *Comment:* Commenters expressed concern about the science used to support the proposed rule and were specifically concerned with FWS' use of the terms "potential" and "intent" relative to proposed management practices and outcomes.

*FWS Response:* The terms "intent" or "potential" are used in this rule and the EA to express our interpretation or understanding of information. The use of these terms is appropriate in that we do not necessarily always have specific studies or references for specific Alaska populations or NWRs, but rather we make decisions based on the best available science. In the ideal scenario, we have the data and analysis completed for a specific situation and location that can be directly applied to a decision-making process. Sometimes, however, we are charged with making decisions based on the best scientific information available as well as the professional judgment of our biologists and managers. The justifications for actions identified in this final rule are soundly supported by the best available science and do incorporate analyses of

Alaska-specific data where available. FWS' evaluation of the best available science data, along with the professional judgment of our biologists and managers, indicate a strong potential and/or intent that the specific methods and means of take prohibited by this rule will have significant negative impacts to specific populations and the overall conservation of NWR natural ecological processes. It is not the intent of, nor is it appropriate for, FWS to simply wait and document negative impacts of threats that can be avoided. Rather, the prudent conservation approach is to be proactive in our management by curtailing and protecting NWRs from threats that we infer, based on best available science, will have negative consequences (precautionary principal). Throughout the rulemaking process, FWS worked to collect and apply the best available scientific information to evaluate and develop the regulatory changes set forth in this rule. There are substantial references cited in the EA that document our current knowledge of the importance of predator-prey relationships relative to sustaining healthy ecosystems and that clearly outline the justification and rationale for the methods and means prohibitions identified in this rule. This rule is not based on achieving or maintaining any particular wildlife population levels, and therefore did not require comprehensive data documenting those levels. Rather, the rule reflects FWS' responsibility to manage NWRs for natural processes, including predator-prey relationships, and responds to practices that are intended to alter those relationships.

(77) *Comment:* Commenters expressed support for the proposed rule and agreed with the science and philosophy used by FWS to support regulatory changes and how wildlife is managed on NWRs. Commenters questioned the science behind the purpose and need for the State's current predator management practices, expressing that the State does not recognize the scientific importance of maintaining healthy populations of top predators and does not evaluate other important factors influencing ungulate populations like habitat.

*FWS Response:* We note this comment.

### General or Other Comments

(78) *Comment:* Commenter expressed concerns over the layout and organization of the proposed rule document and offered suggestions for improvements.

*FWS Response:* Editorial suggestions from commenters for the rule focused

on the layout of the table that summarized the changes proposed to the existing procedures for public participation and closures at 50 CFR 36.42. The suggested edits were evaluated and incorporated as appropriate to clarify rule changes.

(79) *Comment:* Commenters expressed strong support for the changes proposed by FWS. Many commenters stated they believe the proposed rule does not violate ANILCA and other laws and regulations, will allow for continued subsistence use, and will help secure the BIDEH of the NWR System for the continued benefit of present and future generations.

*FWS Response:* We note this comment.

(80) *Comment:* Commenters requested that FWS delete 50 CFR 36.12(d)(3) from the regulations or provide an exception for Unit 23 Selawik NWR. A commenter proposed modifying language to read, "except for in Unit 23, Selawik NWR, a snowmachine may be used to position a caribou, wolf, or wolverine for harvest provided that the animals are not shot from a moving snowmachine machine." Commenters indicated that such use of machines is necessary to pursue and harvest wildlife, especially predators.

*FWS Response:* This comment cannot be addressed as part of this final rule because it is outside the scope of this rulemaking. We did not include any proposed changes to 50 CFR 36.12 in the proposed rule, and the public was not given notice or a chance to comment on the change. To amend this section of the regulations would require a separate rulemaking.

(81) *Comment:* Commenters expressed a concern that managing for natural diversity is different in NWRs compared to National Parks.

*FWS Response:* Alaska NWRs have different management mandates from National Parks and Monuments, as specified by ANILCA and other laws. NWRs are managed differently than National Parks as illustrated in the Senate Congressional Record that states that habitat manipulation and predator control and other management techniques frequently employed on NWR lands are inappropriate within National Parks and NPS Monuments (ANILCA, Senate Record, Dec. 1980). Alaska NWRs may use habitat manipulation, predator control, or other management techniques, as appropriate, when there is a conservation concern and a sound biological justification for the action.

## Required Determinations

### *Plain Language Mandate*

This rule, as well as the proposed rule, contains revisions to regulations in order to comply with longstanding Presidential directions to use plain language in regulations. Such revisions do not modify the substance of the previous regulations. These types of changes include using “you” to refer to the reader and “we” to refer to the NWR System, using the word “allow” instead of “permit” when we do not require the use of a permit for an activity, and using active voice (*i.e.*, “We restrict entry into the refuge” vs. “Entry into the refuge is restricted”).

### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small

entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would have a significant economic impact on a substantial number of small entities.

As described above and in the January 8, 2016, proposed rule (81 FR 887), the changes in this rule will amend regulations for NWRs in Alaska. This rule primarily: (1) Codifies how our existing mandates relate to predator control in Alaska (50 CFR 36.1); (2) prohibits several particularly effective methods and means for take of predators (50 CFR 36.32); and (3) updates our public participation and closure procedures (50 CFR 36.42). Predator control is prohibited on NWRs in Alaska unless it is determined necessary to meet refuge purposes, is consistent with Federal laws and policy, and is based on sound science in response to a conservation concern. Demands for more wildlife to harvest cannot be the sole or primary basis for predator control. This rule does not change Federal subsistence regulations (36 CFR part 242 and 50 CFR part 100) or restrict taking of fish or wildlife for subsistence uses under Federal subsistence regulations. Codifying how our existing mandates relate to predator control in Alaska (50 CFR 36.1) will not result in a significant change of refuge use because these practices were historically prohibited by the State, and thus enforced as a matter of the adoption of non-conflicting provisions of State law. The rule ensures that these prohibitions continue. Codifying previously and currently prohibited sport hunting and trapping practices will not have a significant impact because the few changes that have occurred have been relatively recent, and this rule constitutes a reinstatement of the prior status quo. State general hunting and trapping regulations currently apply to NWRs in Alaska. Therefore, the prohibition of particular methods and means for the take of predators under State regulations on NWRs in Alaska that may affect visitor use on those NWRs include the take of brown bears over bait, take of wolves and coyotes

during the denning season, and same-day airborne take of bears. The take of black bear sows with cubs is only allowed under State regulations in specific game management units for customary and traditional use; therefore, it is not currently nor in the past has it been legal for the general public to participate in this activity outside of that framework. As a result, big game hunting may decrease if a hunter’s preferred hunting method is prohibited on a NWR and they choose not to hunt elsewhere where such methods are not prohibited. Conversely, wildlife watching activities may well increase if there are increased opportunities to view wildlife, including bears, wolves, and coyotes. From 2009 to 2013, big game hunting on NWRs in Alaska averaged about 40,000 days annually and represented 2 percent of wildlife-related recreation on NWRs. For Statewide hunting, big game hunting on NWRs in Alaska represented only 4 percent of all big game hunting days (1.2 million days). Due to the past ban on these prohibited methods and means for take of predators, we estimate that these hunting methods (take of brown bears over bait, take of wolves and coyotes during the denning season, and same-day airborne take of bears) represent a small fraction of all big game hunting on NWRs. As a result, big game hunting on NWRs is expected to change minimally. This change in opportunity will most likely be offset by other sites (located outside of NWRs) gaining participants. Therefore, there may be a substitute site for these hunting methods, and participation rates will not necessarily change.

Hunters’ spending contributes income to the regional economy and benefits local businesses. Due to the unavailability of site-specific expenditure data, we use the Alaska estimate from the 2011 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average trip-related expenditures for big game hunting (\$139 per day) yields approximately \$5.9 million annually in big game hunting-related expenditures on NWRs in Alaska. Since only a small fraction of big game hunters are likely to choose not to hunt on NWRs because of this rule, the impact will be minimal. The net loss to the local communities should be no more than \$5.9 million annually, and most likely considerably less because few hunters use the prohibited methods and those hunters that do will likely choose a substitute site.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, etc.) may be impacted from some decreased refuge visitation. A large percentage of these retail trade establishments in local communities around NWRs qualify as small businesses. We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule will have a significant economic effect on a substantial number of small entities in Alaska.

With the small change in overall spending anticipated from this rule, it is unlikely that a substantial number of small entities will have more than a small impact from the spending change near the affected NWRs. Therefore, we certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- a. Will not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.
- c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act*

As this rule applies to uses on federally owned and managed NWRs, it will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*Takings (E.O. 12630)*

This rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630. This rule affects only the public use and management of Federal lands managed by FWS in Alaska. A takings implication assessment is not required.

*Federalism (E.O. 13132)*

As discussed in the *Regulatory Planning and Review* and *Unfunded Mandates Reform Act* sections, above, this rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement under E.O. 13132. The rule's effect is limited to Federal NWR lands managed by FWS in Alaska, and the rule will not have a substantial direct effect on State and local governments in Alaska. In preparing this rule, we worked with State governments. A federalism summary impact statement is not required.

*Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- b. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*Consultation With Indian Tribes (E.O. 13175 and Department Policy) and Alaska Native Claims Settlement Act Native Corporations*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951 (May 4, 1994)), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments; 65 FR 67249 (November 9, 2000)), and the Department of the Interior Manual, 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis, and we did seek the Tribes' input in evaluating the proposed rule. In addition, we evaluated the proposed rule in accordance with 512 DM 4 under Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act (ANCSA) Corporations, August 10, 2012.

Prior to the development of the proposed rule, we sought feedback from interested parties, including Tribal governments, ANCSA corporations, the State of Alaska, and the Federal Subsistence RACs. We contacted 146 Tribal governments, 12 regional and 106 village ANCSA corporations, and 13 Native nonprofits, all within proximity to NWRs in Alaska. In response to what we heard, we significantly narrowed the

scope and complexity of what we proposed (*e.g.*, reducing the number of proposed prohibited methods and means of take from 16 to 5; not opening collection of natural resources (berries, mushrooms, downed timber); and shortening the temporary closure from a maximum of 5 years to maximum of 3 years and providing additional clarification, where possible).

We sent out an initial invitation consultation to Tribal governments, ANCSA corporations, and Native nonprofit organizations in Alaska, and the Alaska Federation of Natives, on September 24, 2014. We then sent a follow-up letter to the same contacts in the first week of February 2015, and another in mid-May 2015. In December 2015, several weeks prior to publication of the proposed rule and EA, we sent out a fourth letter notifying the Tribal governments and ANCSA corporations of the impending publication and scheduled hearings, and we provided an overview of the proposed rule, as well as another invitation to consult with us on the proposed rule. In early March 2016, we sent letters and/or emails to all Tribal governments, ANCSA corporations, and Native nonprofit organizations to notify them that we extended the comment period on the proposed rule for another 30 days, ending April 7, 2016.

FWS conducted three Statewide Tribal consultation teleconferences that included opportunity to dialogue with the Regional Director and the Chief of NWRs for Alaska. These teleconferences were held in November 2014 and February 2015. We also reached out to Tribal governments, ANCSA corporations, and Native nonprofit organizations through phone calls, emails, and meetings to notify them of our availability for consultation and to encourage comment on the proposed rule. Specific consultations requested during the comment period occurred with the following: Allakaket Council and Alatna Council on March 1, 2016; Doyon Corporation on March 7, 2016; Gwichyaa Zhee Tribal Council on February 24, 2016; Kaktovik Tribal Council on February 16, 2016; Native Village of Venetie Tribal Council and the Venetie Village Council on February 25, 2016; Nulato Tribe on February 3, 2016; and Togiak Tribal Council on April 1, 2016.

We provided information on the proposed rule at conferences and meetings including the Alaska Federation of Natives (October 2014 and 2015), Bureau of Indian Affairs Service Providers Conference (December 2014 and 2015), and the Federal Subsistence RACs meetings (September–October

2014, February–March 2015, October–November 2015, and March 2016).

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We evaluated this rule under the criteria in E.O. 13175 and under the Department's tribal consultation and ANCSA corporation policies and determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian Tribes. While FWS has determined the rule will have no substantial direct effect on federally recognized Indian Tribes or ANCSA corporation lands, water areas, or resources, FWS has consulted with Alaska Native Tribes and ANCSA corporations on the proposed rule as indicated above.

#### *Paperwork Reduction Act of 1995 (PRA)*

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the PRA (44 U.S.C. 3501 *et seq.*). The application (FWS Form 3–1383–G) for the special use permit mentioned in this rule is already approved by OMB under OMB control number 1018–0102, which expires on June 30, 2017. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### *National Environmental Policy Act*

FWS has analyzed this rule in accordance with the criteria of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the Department of the Interior's manual at 516 DM. An environmental assessment (EA) entitled “Non-Subsistence Take of Wildlife: Proposed Regulatory Updates to Methods and Means for Predator Harvest on National Wildlife Refuges in Alaska Draft Environmental Assessment, December 23, 2015” was prepared to determine whether this rule will have a significant impact on the quality of the human environment. The draft EA was adopted without changes. This rule does not constitute a major Federal action significantly affecting the quality of the human environment, and an environmental impact statement is not required because we reached a finding of no significant impact (FONSI). The EA and FONSI are available online at <http://www.regulations.gov> under Docket No. FWS–R7–NWRS–2014–0005.

#### *Energy Supply, Distribution, or Use (E.O. 13211)*

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking actions that significantly affect energy supply, distribution, or use. This rule is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

#### **Authors**

The primary authors of this rule are Heather Abbey Tonneson, Stephanie Brady, and Carol Damberg of the U.S. Fish and Wildlife Service, Alaska Regional Office, with considerable review and input from other Service Alaska refuge and Office of Subsistence Management managerial and biological staff.

#### **List of Subjects**

##### *50 CFR Part 32*

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

##### *50 CFR Part 36*

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

#### **Regulation Promulgation**

For the reasons set forth in the preamble, the Service amends title 50, chapter I, subchapter C, of the Code of Federal Regulations as follows:

### **PART 32—HUNTING AND FISHING**

- 1. The authority citation for part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

#### **§ 32.2 [Amended]**

- 2. Amend § 32.2(h) by removing the words, “(Baiting is authorized in accordance with State regulations on national wildlife refuges in Alaska)” and adding in their place the words, “(Black bear baiting and use of bait to trap furbearers are authorized in accordance with State regulations on national wildlife refuges in Alaska.)”.

### **PART 36—ALASKA NATIONAL WILDLIFE REFUGES**

- 3. The authority citation for part 36 continues to read as follows:

**Authority:** 16 U.S.C. 460(k) *et seq.*, 668dd–668ee, 3101 *et seq.*

### **Subpart A—Introduction and General Provisions**

- 4. Amend § 36.1 by:
  - a. Redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively; and
  - b. Adding a new paragraph (a) to read as follows:

#### **§ 36.1 How do the regulations in this part apply to me and what do they cover?**

(a) National Wildlife Refuges in Alaska are maintained to conserve species and habitats in their natural diversity and to ensure biological integrity, diversity, and environmental health of these refuges are maintained for the continuing benefit of present and future generations.

\* \* \* \* \*

- 5. Amend § 36.2 by adding, in alphabetical order, definitions for “Bait”, “Big game”, “Cub bear”, “Furbearer”, “Natural diversity”, “Predator control”, “Sport hunting”, and “Trapping” to read as follows:

#### **§ 36.2 What do these terms mean?**

\* \* \* \* \*

*Bait* means any material excluding a scent lure that is placed to attract an animal by its sense of smell or taste; however, those parts of legally taken animals that are not required to be salvaged and which are left at the kill site are not considered bait.

*Big game* means black bear, brown bear, bison, caribou, Sitka black-tailed deer, elk, mountain goat, moose, muskox, Dall sheep, wolf, and wolverine.

*Cub bear* means a brown (grizzly) bear in its first or second year of life, or a black bear (including the cinnamon and blue phases) in its first year of life.

\* \* \* \* \*

*Furbearer* means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, least weasel, short-tailed weasel, muskrat, river (land) otter, flying squirrel, ground squirrel, red squirrel, Alaskan marmot, hoary marmot, woodchuck, wolf, or wolverine.

*Natural diversity* means the existence of all fish, wildlife, and plant populations within a particular wildlife refuge system unit in the natural mix and in a healthy condition for the long-term benefit of current and future generations. Managing for natural diversity includes avoiding emphasis of management activities favoring some species to the detriment of others and assuring that habitat diversity is maintained through natural means, avoiding artificial developments and

habitat manipulation programs whenever possible.

\* \* \* \* \*

*Predator control* is the intention to reduce the population of predators for the benefit of prey species.

\* \* \* \* \*

*Sport hunting* means the taking of or attempting to take wildlife under State hunting or trapping regulations. In Alaska, this is commonly referred to as general hunting and trapping and includes State subsistence hunts and general permits open to both Alaska residents and nonresidents.

\* \* \* \* \*

*Trapping* means taking furbearers under a trapping license.

**Subpart B—Subsistence Uses**

**§ 36.11 [Amended]**

- 6. Amend § 36.11 by removing paragraph (d) and by redesignating paragraph (e) as paragraph (d).
- 7. Revise § 36.13 to read as follows:

**§ 36.13 Subsistence fishing.**

Fish may be taken by federally qualified subsistence users, as defined at 50 CFR 100.5, for subsistence uses on Alaska National Wildlife Refuges where subsistence uses are allowed in compliance with this subpart and 50 CFR part 100.

- 8. Revise § 36.14 to read as follows:

**§ 36.14 Subsistence hunting and trapping.**

Federally qualified subsistence users, as defined at 50 CFR 100.5, may hunt and trap wildlife for subsistence uses on Alaska National Wildlife Refuges where subsistence uses are allowed in compliance with this subpart and 50 CFR part 100.

**Subpart D—Non-Subsistence Uses**

- 9. Revise the heading of subpart D to read as set forth above.
- 10. Revise § 36.32 to read as follows:

**§ 36.32 Taking of fish and wildlife.**

(a) The taking of fish and wildlife for sport hunting and trapping and for sport fishing is authorized in accordance with applicable State and Federal law, and such laws are hereby adopted and made a part of these regulations, except as set forth in this section and provided however, that the Refuge Manager, pursuant to § 36.42, may designate areas where, and establish periods when, no taking of a particular population of fish or wildlife will be allowed.

(b) Predator control is prohibited on National Wildlife Refuges in Alaska, unless it is determined necessary to meet refuge purposes, is consistent with Federal laws and policy, and is based on sound science in response to a conservation concern. Demands for more wildlife for human harvest cannot be the sole or primary basis for predator control. A Refuge Manager will authorize predator control activities on a National Wildlife Refuge in Alaska only if:

(1) Alternatives to predator control have been evaluated as a practical means of achieving management objectives;

(2) Proposed actions have been evaluated in compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);

(3) A formal refuge compatibility determination has been completed, as required by law; and

(4) The potential effects of predator control on subsistence uses and needs have been evaluated through an ANILCA section 810 analysis.

(c) The exercise of valid commercial fishing rights or privileges obtained pursuant to existing law, including any use of refuge areas for campsites, cabins, motorized vehicles, and aircraft landing directly incident to the exercise of such rights or privileges, is authorized; *Provided, however,* that the Refuge Manager may restrict or prohibit the

exercise of these rights or privileges or uses of federally owned lands directly incident to such exercise if the Refuge Manager determines, after conducting a public hearing in the affected locality, that they are inconsistent with the purposes of the refuge and that they constitute a significant expansion of commercial fishing activities within such refuge beyond the level of such activities in 1979.

(d) The following provisions apply to any person while engaged in the taking of fish and wildlife within an Alaska National Wildlife Refuge:

(1) *Trapping and sport hunting.* (i) Each person must secure and possess all required State licenses and must comply with the applicable provisions of State law unless further restricted by Federal law.

(ii) Each person must comply with the applicable provisions of Federal law.

(iii) In addition to the requirements of paragraphs (a) and (c) of this section, each person must continue to secure a trapping permit from the appropriate Refuge Manager prior to trapping on the Kenai, Izembek, and Kodiak Refuges and the Aleutian Islands Unit of the Alaska Maritime Refuge.

(iv) It is 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, wolf, or wolverine until after 3 a.m. on the day following the day in which the flying occurred, except that a trapper may use a firearm or any other weapon to dispatch a legally caught wolf or wolverine in a trap or snare on the same day in which the flying occurred. This prohibition does not apply to flights on regularly scheduled commercial airlines between regularly maintained public airports.

(v) The following methods and means for take of wildlife are prohibited:

Prohibited acts	Exceptions
(A) Using snares, nets, or traps to take any species of bear .....	None.
(B) Using bait .....	(1) Bait may be used to trap furbearers. (2) Bait may be used to hunt black bears.
(C) Taking wolves and coyotes from May 1 through August 9 ...	None.
(D) Taking bear cubs or sows with cubs .....	In accordance with Alaska State law and regulation, resident hunters may take black bear cubs or sows with cubs under customary and traditional use activities at a den site October 15–April 30 in game management units 19A, 19D, 21B, 21C, 21D, 24, and 25D.

(2) *Sport and commercial fishing.* (i) Each person must secure and possess all required State licenses and must comply with the applicable provisions of State law unless further restricted by Federal law.

(ii) Each person must comply with the applicable provisions of Federal law.

(e) Persons transporting fish or wildlife through Alaska National Wildlife Refuges must carry an Alaska State hunting or fishing license, or in

cases where a person is transporting game for another person, they are required to carry an Alaska State “Transfer of Possession Form” on their person and make these available when

requested by law enforcement personnel.

(f) Nothing in this section applies to or restricts the taking or transporting of fish and wildlife by federally qualified subsistence users under Federal subsistence regulations.

(g) Animal control programs will only be conducted in accordance with a special use permit issued by the Refuge Manager.

■ 11. Amend § 36.42 by revising paragraphs (a), (c), (d), (e), (f), (g), and (h) to read as follows:

**§ 36.42 Public participation and closure procedures.**

(a) *Applicability and authority.* The Refuge Manager may close an area or restrict an activity in an Alaska National Wildlife Refuge on an emergency, temporary, or permanent basis in accordance with this section.

(b) \* \* \*

(c) *Emergency closures or restrictions.* (1) Emergency closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation will be made after notice pursuant to paragraph (f) of this section and hearing;

(2) Emergency closures or restrictions relating to the taking of fish and wildlife will be accompanied by notice pursuant to paragraph (f) of this section with a subsequent hearing;

(3) Other emergency closures or restrictions will become effective upon notice as prescribed in paragraph (f) of this section; and

(4) No emergency closure or restriction will exceed 60 days. Closures or restrictions requiring longer than 60 days will follow nonemergency closure procedures (*i.e.*, temporary or permanent; see paragraphs (d) and (e), respectively, of this section).

(d) *Temporary closures or restrictions.*

(1) Temporary closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation will be effective only after notice pursuant to paragraph (f) of this section and hearing in the vicinity of the area(s) affected by such closures or restriction, and other locations as appropriate.

(2) Temporary closures or restrictions related to the taking of fish and wildlife will be effective only after notice pursuant to paragraph (f) of this section and after allowing for the opportunity for public comment and a public hearing in the vicinity of the area(s) affected, and other locations as appropriate. Temporary closures or restrictions related to the taking of fish and wildlife also require consultation with the State and affected Tribes and Native Corporations.

(3) Other temporary closures will be effective upon notice as set forth at paragraph (f) of this section.

(4) Temporary closures or restrictions will extend only for as long as necessary to achieve the purpose of the closure or restriction, and may not exceed 12 months; *Provided, however*, a new temporary closure or restriction may be adopted thereafter by following the applicable procedures set forth at paragraph (d)(1), (d)(2), or (d)(3) of this section.

(e) *Permanent closures or restrictions.* Permanent closures or restrictions related to the use of aircraft, snowmachines, motorboats, or nonmotorized surface transportation, or taking of fish and wildlife, will be effective only after notice pursuant to paragraph (f) of this section, and shall be published by rulemaking in the **Federal Register** with a minimum public comment period of 60 days and

shall not be effective until after a public hearing(s) is held in the affected vicinity and other locations as appropriate. Permanent closures or restrictions related to the taking of fish and wildlife require consultation with the State and affected Tribes and Native Corporations.

(f) *Notice.* Emergency, temporary, or permanent closures or restrictions will be published on the U.S. Fish and Wildlife Service's Web site at [http://www.fws.gov/alaska/nwr/ak\\_sp\\_hunt\\_regs.htm](http://www.fws.gov/alaska/nwr/ak_sp_hunt_regs.htm). Additional means of notice reasonably likely to inform residents in the affected vicinity will also be provided where available, such as:

(1) Publication in a newspaper of general circulation in the State and in local newspapers;

(2) Use of electronic media, such as the Internet and email lists;

(3) Broadcast media (radio, television, etc.); or

(4) Posting of signs in the local vicinity or at the Refuge Manager's office.

(g) *Openings.* In determining whether to open an area to public use or activity otherwise prohibited, the Refuge Manager will provide notice in the **Federal Register** and will, upon request, hold a public meeting in the affected vicinity and other locations, as appropriate, prior to making a final determination.

(h) Except as otherwise specifically allowed under the provisions of this part, entry into closed areas or failure to abide by restrictions established under this section is prohibited.

Dated: July 22, 2016.

**Michael J. Bean,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

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