

Congress of the United States

Washington, DC 20515

February 28, 2023

The Honorable Deb Haaland
Secretary, U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Secretary Haaland:

We write to urge you to withdraw the National Park Service's (NPS) proposed rule, "Alaska; Hunting and Trapping in National Preserves," as published in the Federal Register on January 9, 2023. This rule, which was proposed without consultation with the State of Alaska, recalls a similar 2015 NPS rule prohibiting select hunting practices and management techniques on national preserves. We find it unacceptable that the proposed rule would reverse a 2020 NPS Rule that better aligned the agency's regulations with Alaska state laws for hunting and trapping in national preserves in Alaska.

We object to the proposed rule because (1) it was written without consultation with the State of Alaska or affected stakeholders, (2) it would effectively reimpose a 2015 Rule that prohibited harvest methods allowed under Alaska state law without any supporting scientific data, (3) it disregards the importance of traditional hunting practices of Alaska Natives residing in non-rural areas, and (4) it ignores recent congressional actions to overturn a substantively similar rule barring specific hunting techniques promulgated by the U.S. Fish and Wildlife Service (USFWS).

Hunting, fishing, and trapping are methods of harvesting wildlife by the public and are specifically authorized activities under ANILCA in Alaska national preserves. Section 1313 of ANILCA establishes the extent to which NPS has authority to restrict the take of fish and wildlife, and explicitly does not provide NPS with authority to regulate the "methods or means" for harvesting wildlife, as those practices are governed by the State. Even if one assumes that NPS holds the authority to regulate the "methods or means" for harvesting wildlife, which it does not, Section 1313 calls for the promulgation of regulations to be put into effect "only **after** consulting with the appropriate State agency having responsibility over hunting, fishing, and trapping activities" (emphasis added). As Commissioner Doug Vincent-Lang's letter to Director Sams on January 11, 2023, attests, such consultation did not occur.

Further, in a meeting between Delegation and NPS staff on January 20, 2023, NPS staff agreed that the bear baiting rule was not predicated on data indicating a clear threat to public safety, nor that the practice was widespread enough to implicate the promulgation of a rule banning bear baiting across all of Alaska's national preserves. The evidence underlying the rule was purely anecdotal, relying upon the testimony of in-state NPS officials and the practice mainly carried out

in the Wrangell-St. Elias National Preserve. Neither of these reasons are solid grounds upon which to promulgate the bear baiting ban now proposed by NPS.

Additionally, NPS fails to consider the impacts its bear baiting rule will have on Athabascan non-federal subsistence users. Bear baiting is a traditional hunting practice for many Athabascan hunters, a great number of whom now reside in non-rural areas. Because of this, they are not considered federally-qualified subsistence users and would be subsequently barred from practicing their traditional hunting practice under this proposed rule. Regardless of the explicit carve-out separating federal subsistence from this proposed rule, the restriction still would negatively harm Athabascan hunters whose right to practice their traditional hunting technique should be respected regardless of where they reside.

Congress' intent on this issue is unambiguous, and this was clearly demonstrated in its response to a 2015 rule. In 2015, NPS promulgated a rule that effectively banned State-authorized hunting practices that it had identified as "predator control." Soon after, in 2016, the U.S. Fish and Wildlife Service (USFWS) promulgated its own "Statewide Refuge Rule," which was nearly identical to NPS's 2015 Rule in prohibiting specific hunting practices allowed by State law. Congress responded by enacting a disapproval resolution under the Congressional Review Act to nullify the Statewide Refuge Rule. (P.L. 115-50, 131 Stat. 86 (2017)). Therefore, today's "methods and means" of hunting on Refuges in Alaska are governed by state law. Given that NPS's 2023 Proposed Rule is substantively identical to the 2015 Rule, and Congress has rejected the alleged "legal mandate" that underlies its reimposition, NPS is obligated to abandon this effort and comply with ANILCA's clear terms.

The U.S. Supreme Court has also unanimously affirmed Alaska's right to manage its fish and wildlife. In the unanimous opinion, *Sturgeon v. Frost*, Chief Justice Roberts wrote that, ANILCA "repeatedly recognizes that Alaska is different"¹—from its unrivaled scenic and geological values, to the unique situation of its rural residents dependent on subsistence uses, to the need for development and use of Arctic resources with appropriate recognition and consideration given to the unique nature of the Arctic environment. NPS cannot supersede the law – only Congress can do that – and it would be well-advised to re-examine the *Sturgeon v. Frost* ruling before attempting to finalize the 2023 Proposed Rule.

¹ *Sturgeon v. Frost*, 139 S. Ct. 1066, 1078, 203 L. Ed. 2d 453 (2019).

NPS holds only the legal and statutory authority granted by Congress. Any attempt to move forward with the 2023 Proposed Rule would disregard congressional intent; confuse hunters, trappers, and anglers about the rules in national preserves; and significantly reduce the State's lawful ability to manage healthy, effective, sustainable wildlife populations for all Alaskans, especially subsistence users.

Sincerely,



Lisa Murkowski
United States Senator



Dan Sullivan
United States Senator



Mary Sattler Peltola
Representative for All Alaska