

U. S. Department of the Interior
Fish and Wildlife Service
Region 7, Alaska

FINDING OF NO SIGNIFICANT IMPACT

Non-Subsistence Take of Wildlife:
Regulatory Updates to Methods and Means for
Predator Harvest on National Wildlife Refuges in Alaska

July 2016

The U.S. Fish and Wildlife Service (FWS) prepared an environmental assessment (EA) to evaluate the effects of proposed regulations for the non-subsistence take of wildlife on National Wildlife Refuges (NWRs) in Alaska. The purpose of this action is to limit the impacts associated with State of Alaska (State) Board of Game (BOG) general harvest regulations that are inconsistent with federal laws and policies intended to protect the resources on NWRs in Alaska. This action, promulgation of a final rule, is intended to provide long-term resource protection and certainty to the public regarding hunting and trapping on NWRs in Alaska.

The final rule responds to recent changes to State wildlife harvest regulations that allow liberalized methods of hunting and trapping wildlife and extended seasons to increase opportunities to harvest predator species. Specifically, the rule prohibits the following activities on Alaska NWRs that are currently allowed under State law:

- *take of 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 to April 30 in specific Game Management Units GMUs);*
- *take of brown bears over bait;*
- *take of bears using traps or snares;*
- *take of wolves and coyotes from May 1 to August 9; and*
- *same-day airborne take of bears*

The Alaska National Interest Lands Conservation Act (ANILCA) was established in 1980. Title III of ANILCA lists the following purposes for all NWRs in Alaska:

- *(i) to conserve fish and wildlife populations and habitats in their natural diversity;*
- *(ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats;*

- (iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii), the opportunity for continued subsistence uses by local residents [except Kenai NWR]; and
- (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in paragraph (i), water quality and necessary water quantity within the refuge.

ANILCA provides a priority to rural Alaskans for the non-wasteful taking of fish and wildlife for subsistence uses on Federal public lands in Alaska, including NWRs. The 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 we continue to recognize subsistence uses of fish and wildlife and other renewable resources as the priority consumptive use on NWRs in Alaska. The final rule would not change existing or future Federal subsistence regulations (36 CFR 242 and 50 CFR 100) or restrict taking of fish or wildlife for subsistence uses under Federal subsistence regulations.

The final regulations respond to recent changes to State wildlife harvest regulations that allow liberalized methods of hunting and trapping wildlife and extended seasons to increase harvest of predator species. The State framework for managing wildlife in Alaska is based on sustained yield, which is defined in State statute to mean “*the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game... (AS § 16.05.255 (k) (5)).*” Some recent State regulations implementing the sustained yield statute have the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes in order to increase harvest of ungulates by humans. These State regulations are not consistent with the statutory mandates for the NWRs found in ANILCA and the National Wildlife Refuge System Improvement Act (Improvement Act) of 1997.

The FWS evaluated an action and the no-action alternatives for the proposed action to amend regulations regarding the take of predators on NWRs in Alaska for non-subsistence hunting or trapping purposes in the EA. The EA considered potential environmental impacts on wildlife (terrestrial mammals and habitats); federally authorized subsistence uses including hunting and trapping; public use; and wilderness. The EA was prepared in accordance with the National Environmental Policy Act of 1969 (NEPA) and regulations of the Council on Environmental Quality (CEQ) (40 CFR 1508.9).

The FWS selected Alternative B, *Promulgate Regulations to Prohibit Several Particularly Efficient Methods and Means for Take of Predators on NWRs in Alaska*, which is described in the decision on page 9 of this document. To implement this action, the FWS will publish the final regulations in the Federal Register to make changes to 50 CFR Part 36 – Alaska NWRs.

The FWS received 3,662 comments overall on both the proposed rule and EA during a 90-day public comment period from January 8 to April 7, 2016. Comments were received via online commenting through the regulations.gov website, and by letters, emails, and comments submitted at meetings or delivered to the Alaska Regional Office. The comment period was extended for an additional 30 days beyond the original 60-day comment period to accommodate requests for additional time to submit comments.

Alternatives Considered

Two alternatives were evaluated in the EA.

No Action (Alternative 1)

Under the No Action Alternative (Alternative 1), the FWS would take no additional action to prohibit certain methods and means for the take of predators on NWRs in Alaska. All State hunting and trapping regulations that are not currently restricted under existing Federal regulations would apply on NWRs in Alaska. All but one (bear snaring) of the proposed prohibited methods and means for the harvest of predators are currently allowed under State regulations on NWRs in Alaska. Bear snaring is legal in two GMUs designated for Intensive Management (IM) that do not include refuges, but bear snaring could be approved by the BOG in additional GMUs in the future, which could make this practice legal on refuges unless further restricted or prohibited by Federal law or regulation. Alaska NWR lands remain under federal jurisdiction and the FWS would continue to work cooperatively with the State under tenets of 43 CFR Part 24 – *DOI Fish & Wildlife Policy: State-Federal Relationships* and Master Memorandum of Understanding (MMOU) (DOI 1983; Re-Commitment to the MMOU 2006) towards achieving wildlife management and population objectives. The FWS recognizes the State has obligations to manage wildlife in Alaska according to the directives in the State constitution. The FWS similarly must ensure that activities on NWRs are consistent with federal laws and FWS policy and has final authority for managing plants, fish and wildlife on NWRs in Alaska. The FWS prefers to defer to the State on regulation of hunting and trapping on NWRs in Alaska, unless, by doing so, the FWS would be out of compliance with federal laws and FWS policy.

Methods and means for take of predators that are currently allowed on NWRs in Alaska under State general hunting and trapping regulations include, but are not limited to, the following examples:

- *taking of black bear cubs or sows with cubs (limited to an allowance for resident hunters to take black bear cubs or sows with cubs under customary and traditional use activities at a den site October 15 to April 30 in specific game management units (GMUs) and year round in GMU 25D);*

- *taking brown bears over bait;*
- *taking wolves or coyotes during the denning season; and*
- *same-day airborne take of bears*

Under Alternative 1, the above methods and means, in addition to any other methods and means for take of predator's legalized in future State regulations which are not further restricted by Federal law or regulations, would be allowed on NWRs in Alaska.

Promulgate Regulations to Prohibit Several Particularly Efficient Methods and Means for Take of Predators on NWRs in Alaska – Proposed Action Alternative (Alternative 2)

Under Alternative 2, the FWS would publish a final rule, prohibiting the use of several particularly efficient methods and means for take of predators on Alaska NWRs, including:

- *taking black or brown bear cubs or sows with cubs (exception allowed in accordance with State 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 to April 30 in GMUs 19A, 21B, 21C, 21D, 24, and 25D);*
- *taking brown bears over bait;*
- *taking bears using traps or snares;*
- *taking wolves and coyotes from May 1 to 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 NWRs regulations and this would not change.*

Alaska NWR lands and waters would remain under federal jurisdiction and the FWS would continue to work cooperatively with the State under tenets of 43 CFR Part 24 – *DOI Fish & Wildlife Policy: State-Federal Relationships* and MMOU (DOI 1983; Re-Commitment to the MMOU 2006) towards achieving wildlife management and population objectives. The FWS recognizes the State has obligations to manage wildlife in Alaska according to the directives in the State constitution. The FWS similarly must ensure that activities on NWRs are consistent with federal laws and FWS policy and has final authority for managing plants, fish and wildlife on NWRs in Alaska. The FWS prefers to defer to the State on regulation of hunting and trapping on NWRs in Alaska, unless, by doing so, the FWS would be out of compliance with federal laws and FWS policy.

Consultation and Public Outreach Summary

Consultation with Federally-Recognized Tribes and Native Corporations

In compliance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, Federal agencies are required to consult with federally-recognized tribal governments during the NEPA process for certain actions including the development of regulations. Under Public Law 108-199, the Executive Order also applies to Corporations established under Alaska Native Claims Settlement Act (ANCSA). Within the DOI and FWS, the Executive Order is implemented by the DOI policies on Consultation with Indian Tribes (December 2011) and Consultation with ANCSA Corporations (August 2012).

We contacted 146 Tribal governments, 12 regional and 106 village ANCSA Corporations and 13 Native non-profits, all within proximity to NWRs in Alaska. During scoping for the draft EA, we sought feedback from interested parties, including Tribal governments, ANCSA Corporations, the State of Alaska and the Federal Subsistence Regional Advisory Councils (RACs). In response to that feedback, we have significantly narrowed the scope and complexity of what we are proposing (e.g. reduced number of proposed prohibited methods and means from 16 to 5 for example) and have tried to provide additional clarification, where possible.

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

The FWS conducted three statewide Tribal consultation teleconferences that provided opportunities to dialogue with the Regional Director and the Chief of Refuges for Alaska. These teleconferences were held in November 2014 and February 2015. We also reached out to Tribal governments, ANCSA Corporations, and Native non-profit 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, 3/1/2016; Doyon Corporation, 3/7/2016; Gwichyaa Zhee Tribal Council, 2/24/2016; Kaktovik Tribal Council, 2/16/2016; Native Village of Venetie Tribal Council and the Venetie Village Council, 2/25/2016; Nulato Tribe, 2/3/2016 and Togiak Tribal Council, 4/1/2016.

Other Outreach and Scoping

FWS met with the Alaska Department of Fish and Game (ADFG) and Department of Natural Resources (DNR) leadership and staff to specifically discuss the proposed rule on five occasions, including December 23, 2014, February 6, 2015, December 4, 2015, December 29, 2015, and May 3, 2016. The FWS provided ADFG and DNR with an early notification and review of the draft proposed rule and draft EA (November 2015). The FWS Alaska Regional Director and Alaska Chief of Refuges also had conversations with State leadership that included discussions regarding the proposed rule. The FWS briefed the BOG on the proposed rule at their March 13, 2015 public meeting and March 18, 2016 meeting. We gave an update at the Association of Fish and Wildlife Agencies (AFWA) meeting (September 2015), as well as sending AFWA an early notification and review of the proposed rule and draft EA (November 2015). The FWS Director, Dan Ashe, updated AFWA again in March 2016.

We met with and discussed the proposed rule with the Citizens Advisory Commission on Federal Areas (January 2015, 2016, and May 2016) and Alaska Professional Hunters Association (March and August 2015), as well as other interested groups. 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), Western Arctic Caribou Herd Meeting (December 2014), and the RACs meetings (September – October 2014, February – March 2015, October – November 2015, and March 2016). Refuge staff updated the ADFG Advisory Committees on the proposed rule at their regularly scheduled meetings during 2014, 2015, 2016. Since fall, 2014, we also met with the Alaska Congressional Delegation on several occasions to discuss the proposed rule most recently in February 2016.

We received multiple requests from several entities, including the Alaska Congressional Delegation and the Governor of Alaska, to extend the comment period on the proposed rule and draft EA. In order to provide all interested parties an additional opportunity to review and comment on our proposed rule, we extended the comment period for an additional 30 days (90 days in total), until April 7, 2016.

Public Engagement & General Summary of Outreach Efforts:

Nine formal public hearings and open houses were conducted to inform, engage, and encourage public comment (Table 1). Hearings and open houses were conducted between January 26 and March 3, 2016 in Anchorage, Bethel, Soldotna, Fairbanks, Tok, Kotzebue, Dillingham, Kodiak, and Galena. All formal hearings allowed constituents an option to call into hearings and testify.

A comprehensive outreach strategy was implemented to notify all constituents, especially the Tribes, on how to obtain information and comment on the proposed rule. Outreach efforts included the use of: newspapers (local, regional), newsletters, letters, radio announcements, phone calls, attending local meetings (e.g., city council), email, email list serve, internet websites, social media (Facebook, etc.), and posting local flyers/posters. The FWS included phone and email contact information on all social media, electronic website, and printed outreach material to ensure that anyone needing assistance to acquire documents or comment on the proposed rule and draft EA could contact a FWS representative for assistance via phone, email, or mail. The proposed rule document and draft EA could be obtained electronically from the Alaska NWR System website and the regulations.gov website. Paper copies were available via mail upon request. Comments on the proposed rule were collected via the regulations.gov website, formal hearings, email, or postal mail.

Electronic sites to notify the public about the extension of the comment period for the proposed rule were updated immediately on the Alaska NWR System website (February 25) and the regulations.gov website (February 26). Both websites remained fully functional for the entire comment period. On the Alaska NWR system website, the extended comment period date was highlighted in red text to attract and alert a reviewer to the new comment period deadline. Outreach was conducted throughout the state via the above-mentioned methods to inform the public and Tribes about the extended comment period.

Table 1. Location, dates, and times of formal public hearings and open houses for the proposed rule and draft EA.

Date	City	Time of Open House	Time of Public Hearing	Location
January 26, 2016	Kotzebue, Alaska	1:00 p.m. to 2:00 p.m.	2:30 p.m. to 4:30 p.m.	Selawik NWR Conference Room
February 8, 2016	Bethel, Alaska	4:00 p.m. to 5:00 p.m.	5:30 p.m. to 7:30 p.m.	Yukon Delta NWR Conference Room
February 10, 2016	Fairbanks, Alaska	5:00 p.m. to 6:00 p.m.	6:30 p.m. to 8:30 p.m.	Morris Thompson Cultural and Visitors Center
February 11, 2016	Tok, Alaska	5:00 p.m. to 6:00 p.m.	6:30 p.m. to 8:30 p.m.	Tok School, 249 Jon Summar Road
February 16, 2016	Soldotna, Alaska	4:00 p.m. to 5:00 p.m.	5:30 p.m. to 7:30 p.m.	Kenai NWR Visitor Center
February 18, 2016	Anchorage, Alaska	4:00 p.m. to 5:00 p.m.	5:30 p.m. to 7:30 p.m.	Gordon Watson Conference Room, U.S. Fish and Wildlife RO, 1011 E. Tudor Rd., Anchorage, AK 99503
March 1, 2016	Dillingham, Alaska	4:00 p.m. to 5:00 p.m.	5:30 p.m. to 7:30 p.m.	Dillingham City Council Chambers, 141 Main Street, Dillingham, AK 99576
March 2, 2016	Kodiak, Alaska	4:00 p.m. to 5:00 p.m.	5:30 p.m. to 7:30 p.m.	Kodiak NWR Visitor Center
March 3, 2016	Galena, Alaska	1:00 p.m. to 2:00 p.m.	2:30 p.m. to 6:30 p.m.	Larson Charlie Community Hall

COMMENTS

We had a total of 3,662 comment letters on the proposed rule and EA. Of the 3,662 comment letters, 2,195 support the rule and 74 oppose the rule. These commenters specified in their comment letters that they supported or opposed the rule. The 90-day comment period for the proposed rule and EA ended April 7, 2016.

Comments on the proposed rule and the EA were received from the State, Tribal Councils, RACs, Association of Fish and Wildlife Agencies, Wilderness Watch, The Humane Society, National Parks and Conservation Association; various guide businesses, and several individuals.

Substantive comments that required FWS responses are attached to the Finding of No Significant Impact (FONSI) as Appendix A. Changes to the EA are contained in the Errata as Appendix B. The public comments were considered in formulating the decision made in this FONSI.

DECISION

The decision is to select Alternative B. When implemented with regulations, the decision will prohibit activities or management actions for specific liberalized predator harvest methods (as described in the final rule). The decision will prohibit, among other activities, the following methods of harvest that are currently allowed under State law:

- *taking black or brown bear cubs or sows with cubs (exception allowed in accordance with State 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 to April 30 in game management units 19A, 21B, 21C, 21D, 24, and 25D);*
- *taking brown bears over bait;*
- *taking bears using traps or snares;*
- *taking wolves and coyotes from May 1 to 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 and this would not change.*

Predator control will be prohibited 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.

A Refuge Manager can authorize predator control activities on a NWR 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 and found to be 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.

The FWS will inform the public about prohibited hunting and trapping activities specific to NWRs in Alaska.

RATIONALE for the DECISION

The selected alternative and publication of the final rule ensures that the non-subsistence take of wildlife on NWRs in Alaska is consistent with our legal mandates and policies for administration of those NWRs.

The FWS has various mandates it must adhere to in managing NWRs in Alaska. There are three statutes in particular that provide direction and authority for managing refuges in Alaska: The ANILCA (16 U.S.C. 3111–3126); the Improvement Act 16 U.S.C. 668dd–668ee, which amended the National Wildlife Refuge System Administration Act; and the Wilderness Act (16 U.S.C. 1131 – 1136).

Some State hunting regulations authorize wildlife harvest practices that are not consistent with ANILCA, the Improvement Act, and/or the Wilderness Act. These include liberalized predator harvest methods and seasons. For example, Section 4(a) (4) (B) of the Improvement Act states that “In administering the System, the Secretary shall...ensure that the biological integrity, biological 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)).

In recent years, concurrent with its adoption and implementation of Intensive Management (IM) plans for predator control areas, the BOG has also adopted measures under its general hunting and trapping regulations that have the potential to greatly increase the effectiveness of predator harvest and disrupt natural processes and wildlife interactions. Some of these measures have also been adopted under Federal subsistence regulations, which only apply to Federally-qualified subsistence users. Examples of these recently adopted measures, which apply beyond areas officially designated for IM, including many NWRs in Alaska, include:

- *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*

These practices are not consistent with FWS mandates under ANILCA, the Improvement Act, or the Wilderness Act for non-subsistence hunting and trapping on NWRs.

This decision provides for promulgation of a FWS final rule for Alaska to protect NWR resources and to be consistent with FWS statutory mandates and policies.

Extensive public involvement during this process (as documented in this FONSI and associated Appendix A and the final rule) showed that a majority of the commenters supported the proposed action. However, several parties objected to the limitations on methods and seasons to harvest predators because they wanted increased opportunity to harvest predators and ultimately access to more ungulates as a food resource.

Some subsistence resource advisory groups stated that they hunt predators in NWRs under State rules and were concerned their opportunities would be diminished. The final promulgation of regulations to implement this action will not alter federal subsistence regulations on NWRs for federally-qualified subsistence hunters and trappers.

SIGNIFICANCE CRITERIA

The FWS considered all of the factors in 40 CFR Part 1508.7 in reaching this FONSI.

FINDINGS

The levels of adverse impacts to NWR resources anticipated from the selected alternative will not result in an impairment of Alaska FWS area resources that fulfill specific purposes identified in the establishing legislation or that are important to the natural or cultural integrity of the FWS areas affected by this decision.

The selected alternative complies with the Endangered Species Act, the National Historic Preservation Act, and Executive Orders 11988 Floodplain Management and 11990 Protection of Wetlands. In regard to Section 810(a) of ANILCA, subsistence uses would not be significantly restricted by the action.

The FWS has determined that the selected alternative does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, in accordance with the NEPA and regulations of the CEQ (40 CFR 1508.9), an Environmental Impact Statement (EIS)

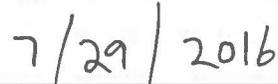
is not required and will not be prepared for this action.

CONCLUSIONS

Based on review and evaluation of the information contained in the EA, I have determined that there will be no significant individual or cumulative impacts to the human environment, within the meaning of Section 102(2)(c) of NEPA and 40 CFR 1508.27, and that the proposed action described in the EA is not a major Federal action. Accordingly, the FWS is not required to prepare an EIS.



Chief of Refuges, Alaska Region



Date



U.S. Fish & Wildlife Service



FINDING OF NO SIGNIFICANT IMPACT

Appendix A Responses to Substantive Public Comments For the Environmental Assessment Non-subsistence Take of Wildlife: Regulatory Updates to Methods and Means for Predator Harvest on National Wildlife Refuges in Alaska

1. Comment:

The FWS failed to provide a proper and detailed analysis of the proposed action and the FWS should not be able to reach a FONSI. The FWS has failed to show that any of the adverse impacts in the EA have been assessed for their intensity beyond such vague consideration as minimal, small or few.

FWS Response:

The purpose of the proposed rule is to prohibit selected means of take and to clarify the use of predator control on NWR lands in Alaska in order to achieve the statutory Refuge purposes ...*in their natural diversity*, and FWS mission tenet of *biological integrity, diversity, and environmental health* (BIDEH). Sufficient information is provided in the EA based on scientific peer-reviewed literature, knowledgeable subject-matter experts, best available subject information, and best professional training and judgment to warrant a sound decision. The evaluation was conducted to a level sufficient to demonstrate there would be no significant impacts. The FWS believes given the low level of intensity of impacts, additional analysis is not warranted because it would not change the conclusion. The EA informs agency decision making and discloses potential environmental effects to the public and decision maker.

2. Comment:

NEPA requires Federal agencies to identify and disclose to the public the potential environmental impacts of the proposed actions and reasonable alternatives to those actions. The proposed change should have required the FWS to complete an EIS rather than an EA.

The EA does not evaluate the reasonably foreseeable effects of all aspects of the proposed rule because some aspects were categorically excluded: “*The Department of the Interior (DOI) Categorical Exclusion 43 CFR 46.210 (i) (Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature) applies to some of the proposed rule.*”

The FWS did not quantify or characterize how the actions and impacts were stated in Alternative 1 and Alternative 2 in the draft EA.

FWS Response:

The FWS has analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) and 516 DM. We prepared an environmental assessment (EA) to determine whether this rule will have a significant impact on the quality of the human environment. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Federal agencies are provided a wide latitude of interpretation regarding implementation of categorical exclusions, EAs, or EISs under 40 CFR 1508.18, which may further be defined by *significantly*, relative to effects to the human environment (40 CFR 1508.27). One of the categories listed as a major federal action under 40 CFR 1508.18 (b) (1) is, "*Adoption of official, such as rules, regulations, and interpretations under the Administrative Procedure Act; treaties and international conventions or agreements; and formal documents establishing policies...*" As stated in this FONSI, the selected action will not have a significant effect in context or intensity on the human environment (40 CFR 1508.27).

Courts have consistently specified that disagreement must be with respect to the character of the effects on the quality of the human environment in order to be considered "controversial" within the meaning of NEPA, rather than the unpopularity of a proposal. To the effect case law has determined, "Mere opposition to federal project does not make a project controversial so as to require environmental impact statement" (Como-Falcon Coalition, Inc. v US Dept. of Labor, 609 F.2d 342 (8th Cir 1978), cert. denied, 446 US 936).

The FWS prepared the EA in compliance with the DOI Categorical Exclusion 43 CFR 46.210 (i) (Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature) and the FWS subsequently determined that the EA only analyzes the potential effects of the portion of the proposed rule that covers prohibition of several particularly efficient methods and means for take of predators. The remaining issues that were addressed in the proposed rule and subsequent final rule are administrative in nature and are therefore, categorically excluded from further NEPA analysis.

3. Comment:

The changes proposed by the FWS threaten management of the refuge system outside of Alaska and the management authorities of other states. The proposed rule is Alaska-specific is both misleading and inappropriate, and that only limited aspects of the proposed rule were evaluated in the EA.

FWS Response:

The proposed rule and subsequent EA only apply to refuges in Alaska. The regulations are Alaska specific as indicated in 50 CFR 36. We sufficiently analyzed the appropriate sections of the proposed rule in the EA. If equivalent proposed rule stipulations were considered for refuges outside of Alaska, where there are no statutory requirements for subsistence lifestyles, NEPA compliance would have to be reinitiated addressing actual and potential issues applicable to those refuges and conducting new public scoping. This was not anticipated nor foreseeable under the present EA relative to Alaska only, therefore; not included as a consequence of the proposed Federal action.

4. Comment:

The process for soliciting stakeholder input to ensure adequate and thorough consideration of the potential impacts and consequences, particularly to Alaskans and resident wildlife was a concern.

The FWS appears to be simply going through a required public comment process without intent to seriously address and mitigate public concerns.

Conserving and enhancing resources for the benefit of the people requires collaborating with the State and enhancing public involvement in decision making.

FWS Response:

The FWS did a considerable amount of outreach on both the proposed rule and environmental assessment to solicit stakeholder input (see outreach section of the FONSI). We met with the State of Alaska, attended and presented at numerous RAC meetings over the course of the last two years, we contacted all tribal governments within and around refuges throughout the process, including conducting government to government consultation with several tribes. We attended and presented to the Bureau of Indian Affairs Provider conference, we met with the Association of Federation of Natives, we held nine public hearings and the comment period was open for 90 days. Throughout this public process, we have considered every substantive comment discussed or submitted by the public.

We conducted a thorough and adequate consideration of all potential impacts and we considered how the proposed rule may impact both Alaska residents but also the larger American public. The mission of the FWS is to “*Work with others to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people.*” The mission of the National Wildlife Refuge 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.” Therefore, not only do we need to be mindful of our obligations to Alaska residents but also to the American people as a whole.

As a result of the public process and public comment the final rule was modified to address several public concerns as identified in the final rule.

5. Comment:

The trophic cascades analysis in the EA is not supported by mitigating factors referenced by Terborgh and Estes.

FWS Response:

The FWS contends that Terborgh and Estes 2010 is an appropriate citation for evaluating potential impacts of recent State regulatory changes liberalizing non-subsistence hunting and trapping regulations for wolves, bears and coyotes on wildlife populations and ecological function on NWRs in Alaska. While we concur that these regulatory changes, when considered independently and over the short-term, are unlikely to trigger full scale trophic cascade effects through significant reductions or loss of apex predator populations, we disagree that such impacts are not possible cumulatively over time, and particularly when they are considered in the context of the State's overall intensive management program. Moreover, the State's scientific assessments associated with predator reduction programs focusing on habitat condition (primarily woody browse utilization) and body condition of ungulates examine a very limited facet of possible trophic interactions and effects. Lastly, harvest levels and human use patterns are not predictable, and current impacts of recent State regulatory changes on use and harvest may not be indicative of future trends.

6. Comment:

The practices sanctioned by the BOG through its IM policy used to kill bears, wolves and coyotes on the NWRs and hunting pressures on bear, wolves and other carnivores far exceed what would occur in nature.

FWS Response:

The purpose of the proposed rule is to prohibit selected means of take and to clarify the use of predator control on NWR lands in Alaska in order to achieve the statutory Refuge purposes ...*in their natural diversity*, and FWS mission tenet of *biological integrity, diversity, and environmental health* (BIDEH). Greatly depressing large predators populations adjacent to

NWRs could exacerbate other factors such as prey species exceeding habitat carrying capacity, increased epizootic events; and or trophic cascades (in a food web, the cascading effect that a change in the size of one population in the web has on the populations below it) that may impact FWS ability to meet Refuge-specific mandates.

7. Comment:

The FWS did not consider the health and sustainability of natural resources, culture, traditions, economy, livelihood and community and the proposed rule will fundamentally change the manner in which fish and wildlife resources are managed and conserved. There is also concern that the following impacts are not addressed: Prohibition on all activities that fall under the term “predator control,” resulting in less stable wildlife populations and reduced opportunities for wildlife users, including for subsistence; and prohibition on taking fish and wildlife for subsistence use under State regulation.

FWS Response:

As with all Federal agencies, under NEPA the FWS is required to ... *encourage productive and enjoyable harmony between [humans] and [their] environment, to promote efforts which prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of [humans]; to enrich the understanding of the ecological systems and natural resources of the ecological systems and natural resources important to the Nation; ...* (NEPA Section 2). Additionally and concurrently, the FWS must address requirements of ANILCA ... *in their natural diversity ...* and the Improvement Act ... *biological integrity, diversity, and environmental health ...*, among other pertinent statutory stipulations on lands it administers. NEPA integrates all these statutory considerations into a single process while facilitating *public involvement in decisions which affect the quality of the human environment* (40 CFR 1500.2 (c)). In this regard, the FWS does not, nor legally may it, favor one statute over another, nor any individual statutory tenet or phraseology over another. It is required to address all statutes equally under its purview.

To this end, the FWS considered an appropriate course of action, among several, for long-term conservation of fish, wildlife and their habitats on NWR lands in Alaska and determined that selected liberalized means of take and intensive predator control actions were contrary to relevant statutory mandates. The FWS considered not only the natural resources but subsistence lifestyles as stipulated under ANILCA. The FWS took precautions to protect existing subsistence opportunities and ensure these for future generations. This agency decision may not be popular nor satisfy all interests, rather it is made in consideration of the majority of substantive public comments and consistent with meeting FWS statutory mandates.

8. Comment:

The EA definition of a “particularly effective” method or mean of harvest implies that no preemption of state law would be required. Also, there is no definition or guidance on what constitutes a “particularly effective” method or mean of harvest.

FWS Response:

The FWS BIDEH policy applies to all refuges in the National Wildlife Refuge System. The EA adequately addresses and the proposed rule specifically defines, efficient means of take, where the subject animal has a higher than average probability of lethal capture, hence “particularly effective” methods. The FWS proposed these specific regulatory changes to adhere to our purposes as detailed by ANILCA and BIDEH. Specifically, the FWS does not believe the intentional reduction in predator populations for the purpose of increasing ungulate populations for non-subsistence harvest complies with Alaska NWRs mandates. To that end the FWS selected the recently approved methods and means that are aimed at this goal. The FWS recognize that humans are part of the landscape in many of these areas and support sustainable hunting of predators and ungulates by both subsistence and non-subsistence hunters.

The FWS mandates that healthy ecosystems and natural ecosystem processes like the predator-prey relationship is vital in maintain healthy and resilient ungulate populations for future generations of both consumptive and non-consumptive users.

9. Comment:

The EA did not address fire suppression in regards to habitat diversity and overall management of wildlife. In addition, the FWS sometimes practices habitat management and will manipulate habitat to the benefit a single species or small group of species which is not supported in the EA.

FWS Response:

FWS policies and laws do not prohibit manipulating habitats. However, on Alaska NWRs, large-scale manipulation of habitats historically has not been necessary to meet Refuge purposes. Consistent with FWS mandates to conserve fish, wildlife and habitats in their natural diversity, natural disturbance agents such as fire are the primary drivers of habitat change and wildlife populations often fluctuate in response to these changes. As such, fire management on Alaska refuges emphasizes maintaining the role of fire as a natural ecological process. Suppression of wildland fires is, however, sometimes necessary to protect values at risk, including communities and/or infrastructure. Fire is not addressed in the EA as it is not relevant to the rule.

10. Comment:

The FWS values biological integrity, diversity, and environmental health more than environmental justice and the human environment. The BIDEH policy is being applied only in Alaska and not in similar circumstances in the lower 48 states. A concern was expressed over the ability to manage fish and wildlife, including the ability to monitor and implement closures when needed to protect fish and wildlife resources.

FWS Response:

The mission of the National Wildlife Refuge 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 NWRs exist because people value wildlife and have made the decision to conserve refuge resources (fish, wildlife, plants, insects, etc.) on NWRs. The FWS's focus on the conservation of BIDEH within refuges directly takes into account the human environment and public values. Understanding the human dimensions and values surrounding NWRs is critical to our success and management of refuges and their diverse resources. The Improvement Act makes clear that one of our priority responsibilities is to maintain the natural diversity, ecological processes and ecological functions of refuges. Managers work to balance the diverse demands of the public with the requirement to meet refuge purposes and the System mission, utilizing the best available science to make these decisions. Success in maintaining or restoring BIDEH will produce more resilient landscapes and wildlife and fish populations for the public to enjoy and utilize. The FWS BIDEH policy applies to all refuges in the national wildlife refuge system. See the final rule that addresses closure procedures on refuges and how they may be used to manage and protect fish and wildlife.

11. Comment:

The comments from constituents from outside of Alaska, for example comments from special interest groups, might outnumber those received from persons directly affected, such as tribal members.

FWS Response:

The mission of the National Wildlife Refuge 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. Therefore, National Wildlife Refuges are for the benefit of all Americans.

In addition, 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 permitted 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 they originate from. 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.

12. Comment:

The comment period was only 60 days and did not give the public opportunity to provide comments on the draft EA. Some commenters were concerned the Internet was the only method used to convey information about the comment period.

FWS Response:

Under the Administrative Procedure Act provisions of 5 U.S.C. 553, an agency must provide the public the opportunity to submit written comments for consideration by the agency. As required by Public Law No. 107-347, the FWS provided for submission of comments by electronic means and made available online the comments and other materials included in the rulemaking docket under 5 U.S.C. 553 (c). Executive Order 12866 established 60 days as the standard for the comment period. The FWS extended the comment period for the draft proposed rule from 60 to 90 days in March 2016 and the final comment period ended April 7, 2016. We received over 3,600 comments, including substantial comments from the State, BOG, Tribal Governments, Corporations, the RACs, Association of Fish and Wildlife Agencies, and numerous other Alaskan constituents, organizations, and businesses. Electronic sites to notify the public about the extension of the comment period for the proposed rule were updated immediately on the Alaska NWR System website (February 25) and the Regulations.gov website (February 26). Both websites remained fully functional for the entire comment period. Within the Alaska NWR system website the extended comment period date was highlighted in red text to attract and alert a reviewer to the new comment period deadline. The FWS posted phone and email contact information on all social media, electronic website, and printed outreach material to ensure that anyone needing assistance to acquire documents or comment on proposed rule and EA could contact a FWS representative for assistance. See the Consultation and Public Outreach Summary in the FONSI that documents the extensive outreach history conducted prior and post publication of the rule. We are confident, given our comprehensive outreach history and 90 day comment period, that all interested constituents had been informed and had adequate opportunity to understand and comment on the draft proposed rule and EA.

13. Comment:

Management of resources rests with the State unless specifically delegated by Congress and that the proposed rule and draft EA ignores the intent of the ANILCA. The FWS is seeking to preempt State law regarding the active management of fish, wildlife and habitats.

FWS Response:

The State and the FWS have differing agency missions, goals and objectives and authorities are derived through State or Federal statutes, respectively. The subject EA does not detract from these agency directives or authorities. Rather, the goal of the rule and FWS is to maintain its purview and management authority on NWR lands in Alaska, and within the statutory contexts of ANILCA NWR purposes and FWS mission.

14. Comment:

A study showed “Habituated food conditioned bears did not go on to become nuisances, did not jeopardize public safety, and did not behave in accordance with the stereotypes assigned to them” negating the FWS rationale for prohibition.

FWS Response:

The potential threat by human-and food-conditioned bears has been well documented and examples of this literature were cited in the EA for this proposed regulatory change. In the example cited by the commenter, an area plagued with nuisance human and food conditioned black bears was provided an unlimited supply of beef fat at an alternate feeding area. The food conditioned black bears simply fed elsewhere and were successfully diverted from the residential neighborhoods. Most eventually died as a result of human harvest at adjacent black bear baiting stations. This study simply showed that human-and food-conditioned bears that were entering residential areas could be fed elsewhere and did not return to the neighborhood garbage cans because they were satisfied by being fed elsewhere. This study neither demonstrates nor supports the inference that artificially-fed black and brown bears on NWRs in Alaska would pose no threat to humans. Therefore, this study does not change the FWS’s position that human-and food-conditioned bears can pose an increased threat to human safety.

15. Comment:

The FWS needed to consider the cultural and biological significance in taking bears over bait. There was no data has indicated that bears are being taken over bait currently on some NWRs.

Further, there is no data that indicates that this is a particularly effective method in certain areas in Alaska.

FWS Response:

For areas where the baiting of brown bears has been a customary and traditional practice, proposals could be submitted to the Federal Subsistence Board (FSB) to recognize the practice for rural residents with a customary and traditional use determination to harvest brown bears. For example, the FSB recently allowed the harvest of brown bears over bait in game management units 11, 12, and 25D, which includes Tetlin NWR, most of Yukon Flats NWR, and a portion 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 refuges' natural diversity, the FWS is proposing these regulatory changes on all NWRs in Alaska. Even though bear baiting may not be practiced on all refuges, and even though the effectiveness of bear baiting for population reduction probably varies from region to region and habitat to habitat in Alaska, FWS is legally tasked with *maintaining* natural diversity and healthy ecosystems. It would not be prudent to wait until the practice spreads to new areas or impacts previously unaffected brown bear population before taking action. Thus, FWS is acting proactively to preclude the loss of diversity and degradation of ecosystem functions by prohibiting this practice on refuges statewide-both where it may have occurred already and where it could be initiated in the future.

16. Comment:

The EA states that allowing the use of bait for the harvest of brown bears will potentially increase harvest to the point where it may be high, but to an unknown level, and must be prohibited because of these potential negative effects. The State's available data does not support this assertion and the EA does not provide any alternative data to support this claim. For example, in GMU 20E, in the eastern interior of Alaska just to the north of Tetlin NWR, use of bait stations for the harvest of brown bears was authorized from 2004 to spring 2009. The EA used the harvest of brown bears over bait in GMU 7 of the Kenai Peninsula as an example of harvests that may reach unsustainable levels under state hunting authorizations. This is not an appropriate example for comparison purposes.

FWS Response:

Under general or non-subsistence hunting regulations, the State of Alaska had a long-standing prohibition on the harvest of brown bears over bait. This was only recently changed in the 2012

to 2013 regulatory year. One of the goals of the 20E intensive management area was to significantly reduce brown bear populations to boost moose populations.

While every designed program results in varying amounts of success, the use of bait for brown bears has been and continues to be employed when the goal is to reduce brown bear population levels. Although current human use patterns and the potential to negatively impact brown bear populations on the Kenai may differ relative to the rest of the state today, human use and access patterns are not static or predictable. In addition, ever more remote areas are becoming increasingly accessible. As a result, the FWS finds it necessary to propose these regulatory changes across all refuges in Alaska.

The FWS is mandated to preserve the ecological processes that exist on NWR in Alaska. Ungulate populations benefit from having apex predators as a natural part of the forces driving their populations and maintaining population 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 the FWS finds it necessary to propose these regulatory changes for non-subsistence hunting on NWRs in Alaska. Protection of the ecological processes will provide healthier ungulate populations for all users, both consumptive and non-consumptive.

While selective harvest is often touted as a reason to allow baiting, the data does not support that this selectivity is employed during general hunting. In the examples cited in Unit 7 and 15, the proportion of adult males in the harvest of brown bears over bait was 47.5% (19 of 40) in 2014. In 2015, the harvest rate of adult male brown bears taken over bait was 50% (8 of 16) with the remaining half of the harvest being adult sows or sub-adult bears of either sex. To date, the State has eliminated the prohibition on harvesting brown bears over bait in 15 game management units or sub-units (7,11,12,13,14B,15,16,20A,20B,20C,20E,21D,24C,24D,25D). Of those units, 73% (11 of 15) are accessible from the state highway system. Again, this method is only utilized when the overall goal is to increase harvest and reduce brown bear populations. If baiting of brown bears was a preferred method to avoid harvest of sows and cubs, it would have been utilized in all areas of the state including Kodiak (GMU 8) and the Alaska Peninsula (GMU 9).

17. Comment:

The preamble of the proposed rule states that bait may be used to trap furbearers, but that this is contradicted by the proposed changes which would prohibit it. If the FWS intended to allow it and, as the EA indicates, only meant to prohibit the harvest of brown bears over bait, the proposed regulations do not reflect that.

FWS Response:

This comment is addressed in the final rule.

18. Comment:

The proposed natural diversity definition will scrap current hunting regulations targeting adult male ungulates which would impact subsistence users.

The EA repeatedly refers to the application of the proposed rule to fish and wildlife, especially in reference to the interpretation of the term “natural diversity.”

The FWS does not analyze any of the effects of these concepts to the management and use of fish, either on or off the NWR system, for subsistence, recreation, or in the context of commercial fisheries.

FWS Response:

These regulations are prohibiting a small number of methods and means for harvesting predators on Alaska NWRs. The regulations are to clarify, for the public and agencies, the ANILCA mandate “to conserve fish and wildlife populations, and habitats in their natural diversity”, the first management purpose for Alaska NWRs. The effort to further clarify the natural diversity mandate was also intended to provide a better understanding of when predator control techniques are allowed on Alaska NWRs. Although the natural diversity mandate does apply to fish populations and their habitats, the focus of these proposed regulations is not on management of fish populations. The FWS is defining natural diversity in regulation in the final rule. However, we are not defining “biological diversity,” “biological integrity,” “environmental health,” nor “historic conditions. See the response to comments in the final rule for further explanation. The FWS did not address fisheries or fishing in the proposed rule or the EA.

19. Comment:

The FWS Comprehensive Conservation Plans (CCPs) contain language that acknowledges the ability to conduct or permit predator control on refuges. Therefore, the FWS should not pursue this rule making process.

FWS Response:

The information about predator control and predator management that was cited from refuge CCP’s support what is drafted in the proposed rule. The excerpts from the CCPs indicate that when appropriate, the FWS can do predator control on refuges and that we can allow for the

harvest of predators on refuges, as long as these actions are in compliance with refuge policy and mandates, such as our BIDEH policy and ANILCA.

20. Comment:

The proposed rule may limit opportunities for users to harvest within and outside NWR lands in Alaska, affecting their rights to hunt and their ability to survive. Concern was expressed that inadequate analysis was done on the impacts on what will occur for hunting after implementation.

Concern was expressed that some Alaskans hunting for subsistence purposes would be classified as non-subsistence hunters which might prevent hunters from engaging in traditional family customs which are protected by ANILCA.

FWS Response:

The proposed rule does not preclude the harvest of any species of wildlife on NWR lands; rather, it prohibits a small number of methods and means for predator harvest under the State's general hunting regulations. Further, the proposed rule does not change State regulations on private and state lands outside of Refuges, including other Federal public lands (e.g. Bureau of Land Management, U.S. Forest Service).

The FWS continues to recognize the uses of fish, wildlife, and other renewable resources as the priority consumptive use on refuges in Alaska. The Federal Subsistence Board promulgates regulations in 36 CFR 242 and 50 CFR 100 to provide for a priority for federally qualified subsistence users on federal public lands, and this proposed rule does not affect those federal regulations.

21. Comment:

Opposition was stated for the adoption of the methods and means of take being proposed and indicated that subsistence hunting is not expected to have long-term impacts on overall populations of species.

FWS Response:

The FWS BIDEH policy applies to all refuges in the National Wildlife Refuge System. The FWS proposed these specific regulatory changes to adhere to our purposes as detailed by ANILCA and BIDEH. Specifically, the FWS does not believe the intentional reduction in predator populations for the purpose of increasing ungulate populations for non-subsistence harvest is allowable on NWRs in Alaska.

The FSB implements, to the extent necessary, Title VIII of ANILCA and administers the subsistence taking and uses of fish and wildlife on public lands. Section 804 of ANILCA (16 USC 3113) requires that the subsistence uses of fish and wildlife is managed to protect the continued viability of those populations.

22. Comment:

The proposed rule will have impacts to subsistence hunting and non-subsistence hunting.

FWS Response:

The FWS is proposing to restrict a few specific methods and means of predator harvest under State general hunting regulations on NWR lands. The rule does not preclude non-Federally qualified users from harvesting the affected species; rather, it restricts specific methods and means of harvest on NWR lands.

23. Comment:

General support of proposed changes to the State hunting regulations was provided, however, a concern was expressed for a need for flexibility for management options in special circumstances.

FWS Response:

The final rule would not impact management options, including predator control efforts, for Alaska NWRs. The rule would specifically prohibit a small number of methods of means of harvesting predators under the State's general hunting regulations. Alaska NWRs could still implement predator control efforts if deemed necessary to meet specific refuge purposes, Federal laws, or policy; is consistent with mandates to manage for natural and biological diversity, biological integrity, and environmental health; and is based on sound science in response to a conservation concern. In addition, any predator control efforts would need to go through a formal NEPA process prior to implementation.

24. Comment:

Research indicates that wolves who are hunted, experience elevated stress hormones, as well as a disruption in their social structures, indicating that hunting can decrease pack size, resulting in altered predation patterns, increased time spent defending kill sites from scavengers and may lead to increased conflict with humans and livestock.

FWS Response:

This FWS rule expressly prohibits predator control on NWR lands in Alaska unless it is determined to meet refuge objectives and comply with our mandates. Additionally, predator control will not be implemented without sound biological justification in the response to a biological concern. This rule is intended to reasonably limit, but not eliminate, public hunting opportunities of both wolves and coyotes. Human caused mortality has proven to be acceptable at current levels (prior to liberal season implementation) including those secondary effects to family groups or reproductive physiological responses.

25. Comment:

It was noted that the terms “particularly effective” authorization dates and language regarding coyote taking is confusing.

FWS Response:

The FWS proposed using the dates of August 9 rather than August 10 simply to remain consistent with the previously long standing regulations for coyote hunting season duration and timing. These previously longstanding regulations resulted in an acceptable balance between coyote harvest opportunity and conservation. A more liberal season (a season open beyond the proposed dates) would undoubtedly be more effective at increasing take of coyotes (thereby it could impact abundance), but with limited existing information on harvest and overall coyote abundance, it is unclear whether a population change would be expected.

26. Comment:

The proposed changes are likely not in keeping with what was intended in ANILCA.

FWS Response:

The FWS is fully committed to managing Alaska NWRs for the purposes expressed in ANILCA Sections 101 and 102.

- *“to preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska that contain nationally significant natural, scenic...and wildlife values.”*
- *“to provide for the maintenance of sound populations of, and habitat for, wildlife species of inestimable values ...including those species dependent on vast relatively undeveloped areas.”*
- *“to preserve in their natural state extensive unaltered arctic tundra, boreal forest and coastal rainforest ecosystems.”*

27. Comment:

The BOGs management is not scientifically driven and could result in widespread reductions of Alaska grizzly bear¹ populations. Hunter kill rates on wolves, grizzly bears and other carnivores have a multiplier effect on the ultimate increase in total mortality over what would occur in nature due to breeder loss and pack disruption.

FWS Response:

FWS also has concerns about brown bear populations, particularly those resulting from the liberalizations to the State's predator harvest regulations. Therefore, FWS proposed these regulatory changes specifically to address methods and means employed to reduce predator populations on NWRs in Alaska.

28. Comment:

The draft EA focuses on the State's IM instead of the State's overall management program.

FWS Response:

Regulations proposed through the BOG and FSB are subject to NWRs laws, regulations and policies when implemented on Alaska NWRs. The FWS has determined that both the intent and specific elements of the State's IM program conflict with the laws, regulations and policies governing the management of Alaska NWRs. Similarly, recent liberalization of the State's predator harvest regulations are inconsistent with those same federal mandates. As a result, this proposed rule and subsequent EA, focuses on prohibiting on refuges those specific methods and means which could have population-level impacts on predator populations, impacts which would compromise the biological integrity, diversity, and environmental health of our Alaskan refuges.

29. Comment:

The FWS had a lack of (complete) data on species and predator-prey relations to support the conclusions in the EA and the FWS did not review nor use sound science and data. Concern was also expressed about terms in the EA that are not clearly defined (e.g. natural, substantial human changes, historic) that would give a manager too much flexibility in directing refuge management.

FWS Response:

¹According to MacDonald and Cook (2009), brown and grizzly bear are one in the same – *Ursus arctos*. For the purposes of the Final Rule and FONSI, brown bear included grizzly bear but will only be referred to as brown bear.

Complete and comprehensive wildlife data on important topics (e.g., species biology, ecology, and behavior; relationships within and among those species – predator-prey, competitive, etc.; and, species assemblages relationships with their habitats) are almost *never* available, even in the areas and on the species where the most extensive and ground-breaking research has been conducted. The scientific process typically involves drawing inferences from research conducted both locally and elsewhere, and applying those findings in new situations or new areas. Thus, the significant body of scientific literature about the impacts of predator control on predator populations and the frequently deleterious results of such control on both the prey populations and their habitats provide much of the basis for FWS decision-making for Alaska NWRs. Law, regulation, and policy, combined with the rich tradition of wildlife management compel the FWS to consider a larger suite of factors in their decision-making than maintaining ungulate populations at artificially high levels and viewing predators as the primary causal factor in major population declines or fluctuations. Northern latitude (i.e., Arctic and subarctic) fish, wildlife, and their habitats are under increasing stress related to climate change, which is likely to continue for the foreseeable future. The FWS action to limit selected means of predator harvest seeks to maintain natural diversity and ecosystem health – predators and prey, for human use and enjoyment now and for future generations.

The rule is based on the FWS’s legal and policy framework, which among other things require refuges to be managed “to ensure that... biological integrity, biological diversity, and environmental health are maintained (National Wildlife Refuge System Administration Act) (BIDEH Policy) and “to conserve fish and wildlife populations and habitats in their natural diversity (ANILCA Sections 302, 1-9 and 303, 1-7). 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 the FWS responsibility to manage national wildlife refuges for natural processes, including predator-prey relationships, and responds to practices that are intended to alter those relationships.

Throughout the rule-making process, the FWS worked to collect and apply the best available scientific information to evaluate and develop the proposed regulatory changes. 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 prohibiting the methods and means identified in the rule. The FWS is committed to using sound science in its decision-making and to provide the public with information of the highest quality possible (305 DM 3 Integrity of Scientific and Scholarly Activities Policy). Although some commenters identified the need for additional supporting data to prohibit specific methods and means, they offered no additional scientific data to support claims that specific methods and means or IM of predators did not alter natural diversity and the functioning of natural systems. The scientific information referenced in the EA is derived from a

breadth of research conducted both within and beyond Alaska. These studies identify important issues regarding predator control, document the potential impacts of intensive predator management and describe the effectiveness of the specific methods and means prohibited by the rule.

The actions Refuge Managers are authorized to take in the Rule are consistent with federal law and are comparable to the actions managers have long been authorized to take in similar circumstances. The Rule recognizes that Refuge Managers are the subject matter experts regarding management of the refuge unit. A Refuge Manager is hired into their leadership position to manage daily and long term operations of a refuge because of their expertise. They 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 consult with tribal governments to obtain traditional ecological knowledge as well as State biologists. These decisions are based on a variety of guidance including, but not limited to, laws, policy, refuge purposes/establishment guidance, and a variety of planning documents that receive public input including comprehensive conservation plans and other management step-down plans. The use of the BIDEH policy guidance by 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 manager include development of comprehensive conservation plans, inventory and monitoring plans, and compatibility determinations. A Refuge Manager's decisions to conduct or recommend management action relative to BIDEH policy, are evaluated, as appropriate, by regional refuge supervisors and the regional chief of refuges.

30. Comment:

The FWS definition of predator control should not include methods and means which directly affect rural resident lifestyle.

FWS Response:

The definition of predator control in the rule is “the intention to reduce the population of predators for the benefit of prey species.” The definition does not include any reference to methods and means.

31. Comment:

The FWS does not explain how these authorizations (particularly effective methods) were selected for preemption out of all the state authorizations related to predator harvest. Even knowing the Service included these allowances on finding them “*particularly effective*,” there is

no way for the State to know when considering a harvest opportunity, or the public to know when requesting an authorization, if it might qualify for preemption on Alaska refuges.

FWS Response:

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. Regulations or activities on refuges in Alaska that allow for unsustainable (i.e. particularly effective) methods and means for the take of wildlife that could lead to overharvest or the disruption of natural or biological diversity, biological integrity, or 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 several applicable agency policies (601 FW 3, 610 FW 2, and 605 FW 2). Additionally, regulations or practices that allow for hunting or trapping of wildlife when the harvested animals will not be utilized conflict with USFWS policy on administration of recreational hunting programs on refuges (605 FW 2). Such allowances violate a requirement under policy 605 FW 2 to manage refuge hunting programs in a manner that promotes respect for the resource and are inconsistent with the guiding principles of refuge hunting programs set forth in policy, including the promotion of visitor understanding and appreciation for America's natural resources. The five methods and means prohibited in the rule were found inconsistent with the above laws and policies. The particularly effective methods prohibited in this rule were also historically prohibited by the State until recently, when State predator management actions were intensified, with the intent to reduce predator populations to levels inconsistent with FWS mandates and laws noted above.

32. Comment:

The proposed regulation establishes both a closure criteria and regulatory mandate for the management of Alaska NWRs, but there is no reference to other purposes outlined in the Improvement Act that applies to the entire NWR system.

FWS Response:

The final rule only applies to NWRs in Alaska. See the final rule for further discussion on closure criteria.

FINDING OF NO SIGNIFICANT IMPACT

Appendix B

Errata

For the Environmental Assessment on
Non-subsistence Take of Wildlife:
Regulatory Updates to Methods and Means for
Predator Harvest on National Wildlife Refuges in Alaska

Through the process of public comment and administrative review, the resulting changes have been refined and apply to the EA.

Change 1:

Replace throughout the EA the term “efficient” with the term “effective”.

Change 2:

How predator control is applied on NWRs in Alaska is as follows:

“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”.

Change 3:

The definition of natural diversity has changed from the glossary of the EA. The definition is as follows:

“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.”

