

Final Rule Amending Regulations for National Wildlife Refuges in Alaska

Questions and Answers

What is a final rule?

To make a change in regulations, U.S. Fish and Wildlife Service (Service) must first propose what the agency would like to do through a proposed rulemaking process. During the established public comment period, the Service gathers comments on the proposed rule both in writing and through public hearings.

The Service proposed to amend regulations for national wildlife refuges in Alaska that govern predator control and public participation and closure procedures. The proposed rule identifying changes to regulations was published in the *Federal Register* on January 8, 2016, opening a 90-day public comment period. Nine formal public hearings and open houses were conducted to inform, engage and encourage public comment between January 26 and March 3, 2016, in Anchorage, Bethel, Soldotna, Fairbanks, Tok, Kotzebue, Dillingham, Kodiak and Galena. The rule was modified in response to written public comments and testimony provided at the hearings.

The Service is now publishing a final rule in the *Federal Register* that includes these modifications. The amended regulations will become effective 30 days following the publication date of the final rule. In compliance with the National Environmental Policy Act (NEPA), the Service wrote an Environmental Assessment to analyze the effects of the proposed rule. The Service has published a Finding of No Significant Impact with the final rule.

What changes were made to the proposed rule that has now been made final?

In general, the substantive changes made between the proposed rule and the final rule are summarized below.

Proposed rule (81 CFR 887)	Final rule
50 CFR 36.2: What do These Terms Mean? (Definitions)	
Proposed 13 new definitions to be added to regulations.	The Service removed definitions for biological diversity, biological integrity, environmental health, historic conditions and Regional Director.
50 CFR 36.32(b) Taking of Fish & Wildlife	
Proposed a description of the circumstances under which predator control could be authorized and a required process for considering authorization of predator control on a refuge.	Adopted with modification to simplify and clarify the description of the circumstances under which predator control could be authorized.
50 CFR 36.32(1)(iv) Taking of Fish & Wildlife: Trapping & Sport Hunting	
Proposed prohibiting same-day airborne take of	Adopted as proposed

any bear species	
50 CFR 36.32(1)(v) Talking of Fish & Wildlife: Trapping & Sport Hunting	
Proposed prohibiting five methods and means of harvest of predators	Adopted as proposed
50 CFR 36.42(b) Public Participation and Closure Procedures: Criteria	
Proposed to include in the list of criteria for closures: conservation of natural diversity, biological integrity, biological diversity, and environmental health	These criteria were not adopted. Closure criteria remain identical to what they were prior to the rule.
50 CFR 36.42(c)(4): Emergency closures or restrictions – time frame	
Proposed to increase the maximum duration of emergency closures or restrictions from 30 to 60 days and require extensions beyond 60 days to be subject to non-emergency closure procedures.	Adopted as proposed
50 CFR 36.42(d): Temporary closures or restrictions	
Proposed to increase the maximum duration of temporary closures or restrictions related to the taking of fish and wildlife from 12 months to three years and require consultation with the state and 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.	Maintained a maximum duration of 12 months for temporary closures and restrictions. Adopted the requirement for consultation with the state and affected Tribes and Native Corporations and the opportunity for public comment and a public hearing in the vicinity of the area(s) affected.
50 CFR 36.42(e): Permanent closures or restrictions	
Proposed a requirement for consultation with the state and 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.	Adopted as proposed
50 CFR 36.42(f): Notice	
Proposed to add the use of internet, broadcast media, or other available methods, in addition to the more traditional methods of newspapers, signs and radio	Adopted as proposed

Why has the Service published this rule?

The Service has published the rule to ensure the taking of fish and wildlife on national wildlife refuges in Alaska is managed consistent with federal laws, regulations and Service policies. The state of Alaska regulates sport/general hunting and trapping on lands in Alaska, including national

wildlife refuges. The state manages wildlife on the sustained yield principle, 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” (Alaska Statute 16.05.255(k)(5)). Since 1994, Alaska state law has prioritized human consumptive use of ungulates, and the state has increased harvest limits, lengthened seasons, and liberalized the methods for the taking of predators under sport/general hunting and trapping regulations. Some of the recent regulatory changes have reversed long-standing prohibitions and restrictions on certain methods and means of take.

The Service is required by law to manage refuges “to ensure that . . . biological integrity, biological diversity, and environmental health are maintained” (National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997). Under the Alaska National Interest Lands Conservation Act (ANILCA), the first purpose for all refuges in Alaska is to “conserve fish and wildlife populations and habitats in their natural diversity.” ANILCA further states that the primary purpose of the act is “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, historic, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife values...”

In managing for natural diversity, the Service conserves and protects 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. The Service assures that habitat diversity is maintained through natural means on refuges in Alaska, avoiding artificial developments and habitat manipulation programs whenever possible.

The Service considers hunting to be one of many priority uses of the refuge system (when and where compatible with refuge purposes) that is a healthy, traditional outdoor pastime, deeply rooted in the American heritage. The Service fully recognizes and considers that rural residents utilize and are often dependent on refuge resources for subsistence purposes and manages for this use consistent with the conservation of species and habitats in their natural diversity.

The final rule will limit the impacts associated with State Board of Game (BOG) general harvest regulations that are inconsistent with federal laws and policies, clarify when the Service allows the use of predator control on refuges, and provide long-term resource protection and certainty to the public regarding hunting and trapping on refuges in Alaska.

The final regulatory changes are aimed at ensuring natural ecological processes and functions are maintained, and wildlife populations and habitats are conserved and managed to function in their natural diversity on Alaska refuges.

How does the final rule change existing regulations?

The final rule makes the following substantive changes to existing refuge regulations:

Natural Diversity Definition:

- 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:

- Predator control is not allowed on refuges in Alaska unless it is determined to be 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 on refuges in Alaska.
- 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.
- Predator control is defined in regulation “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. This clarification text was added to the preamble of the rule but is not in regulation.

Methods and Means of Take of Wildlife:

- Prohibits the following particularly effective methods and means for non-subsistence take of predators on refuges in Alaska due to the potential impacts to predator populations and the environment that are inconsistent with the Service’s mandates to conserve the natural and biological diversity, biological integrity and environmental health on refuges in Alaska:
 - Take of 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 regulations*).
 - Take of brown bears over bait.
 - Take of bears using traps or snares.
 - Take of wolves or coyotes from May 1 – August 9.
 - Take of bears from an aircraft or on the same day as air travel has occurred. (*Same day airborne take of wolves or wolverines is already prohibited under current refuge regulations.*)

Federal Management of Hunting and Fishing:

- Regulations were updated 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.

Black Bear Baiting:

- 50 CFR 32.2(h) was amended to state that black bear baiting is authorized in accordance with state regulations on refuges in Alaska. This change ensures consistency in the regulations relative to the amendments to 50 CFR 36, as presented in this rule.

Public Closure and Participation Procedures:

- The Service updated 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 current 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, not to 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 during 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, the Service may want to use. The changes to the notification procedures are not intended to limit public involvement or reduce public notice; rather, the Service intends to engage in ways more likely to encourage public involvement. The Service recognizes that in-person public meetings will continue to be the most effective way to engage Alaskans, and intend to continue that practice. The Service also recognizes that many individuals in rural Alaska do not have access to high-speed Internet, and for that reason, the agency 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.

Will the regulatory changes apply to subsistence hunting and trapping on National Wildlife Refuges?

The final rule does not change federal subsistence regulations (36 CFR 242 and 50 CFR 100) or restrict taking of fish or wildlife under federal subsistence regulations. The Service recognizes there may be some impacts to local communities that result from these changes. The agency has worked to address concerns that were raised during tribal consultations, early public scoping in rural

communities, and during the public comment period and is open to discussing others that arise in the future.

The Service recognizes the importance of fish and wildlife and other natural resources in the lives of all Alaskans and in the lives and cultures of Alaska Native peoples. The agency takes its responsibility seriously to provide the opportunity for continued subsistence use by rural Alaskans on refuges under ANILCA.

What authority does the Service have to establish hunting and trapping regulations? Isn't it the state's job to manage wildlife in Alaska?

The Service recognizes the state has obligations to manage wildlife in Alaska according to the directives in the state constitution. The Service similarly must ensure that activities on refuges are consistent with federal laws and Service policy and has final authority for managing plants, fish and wildlife on refuges in Alaska. The Service prefers to defer to the state on regulation of hunting and trapping on refuges in Alaska, unless by doing so, the Service would be out of compliance with federal laws and Service policy.