



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

## Citizens' Advisory Commission on Federal Areas

101 Airport Road  
Palmer, AK 99645  
Phone: 907.269.3645  
[dnr.cacfa@alaska.gov](mailto:dnr.cacfa@alaska.gov)

April 12, 2016

Dr. Herbert Frost, Regional Director  
National Park Service, Alaska Region  
240 West 5th Avenue  
Anchorage, AK 99501

Re: RIN 1024-AE28, Proposed Rule for Subsistence Collections in Alaska

Director Frost:

The Citizens' Advisory Commission on Federal Areas (CACFA; Commission) has reviewed the proposed rule on the collection of natural resources for subsistence uses, the collection or possession of live wildlife, the type of bait that can be used by federally qualified subsistence users to harvest bears and revised definitions related to subsistence harvest on lands managed by the National Park Service (Service) in Alaska.

The purpose and content of the proposed regulations indicate a fundamental misunderstanding of how the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) operates with respect to national parks and preserves in Alaska. From a foundational perspective, ANILCA did two very important things: (1) it outlined a purpose for Alaska parks and preserves to provide for subsistence uses, with specific exceptions, and to cause the least adverse impact to subsistence users; and, (2) it provided a process, including required considerations, for closing areas to subsistence uses. Unless the Service follows the correct process to close areas open to subsistence uses under ANILCA, those areas are open to subsistence uses, notwithstanding any national regulations the Service has in place regarding those uses by the general public.

This is the "open until closed" nature of Alaska park units recognized in statute and Service regulations at 36 CFR Part 13. The proposed rule misrepresents this affirmative legal context by purporting to "open" areas to specified subsistence uses, when those areas are already open, and by proposing to condition those uses in certain areas without following the established closure process. A "closure" to subsistence uses includes requiring an administrative determination, such as a permit or other authorization. The proposed rule makes no mention of the intended restrictions being brought before the Federal Subsistence Board or the appropriate consulting agencies and bodies, and it provides no justification or description of the considerations required to close an area to subsistence uses.

While the proposed rule implements certain aspects of the 2014 Finding of No Significant Impact following the Service's Environmental Assessment on "*Subsistence Collections and Uses of Shed or Discarded Animal Parts and Plants from NPS Areas in Alaska*," it also proposes regulations and amendments which were not considered during that process. This includes the limitation on types of bait that can be used in harvesting bears, revised and new definitions and the take of live wildlife. There is no substantive indication in the proposed rule of how the

Service complied with the National Environmental Policy Act in deliberating on and deciding to incorporate these elements into this rulemaking effort. Simply noting the Service's general conclusions as to whether a categorical exclusion is appropriate is not sufficient.

Much of this and more could have been brought to the Service's attention if the required consultation process had been followed when the proposed rule was being developed. The Service lacks the authority to permanently close areas to subsistence uses, an authority delegated to the Federal Subsistence Board, yet the proposed rule fails to describe any interaction with or action taken by the Board. The Service also failed to consult the State of Alaska. Considering the number of proposed actions in this rulemaking effort which implicate state authorities, the Commission questions how this approach is consistent with federal law and longstanding agreements with the State, including the 1982 Master Memorandum of Understanding.

The Service also claims there is no need to consult with or discuss the rulemaking with affected tribes, Native corporations, or its Subsistence Resource Commissions "*because the rule will have no substantial direct effect on federally recognized Indian tribes or ANCSA Native Corporation lands, water areas, or resources.*" The proposed rule provides no information as to how this determination was made. Under Executive Order 13175, the Service is directed to "*ensure meaningful and timely input by tribal officials in the development of [regulations] that have tribal implications,*" which cannot credibly exclude rulemaking efforts directly impacting subsistence uses of Alaska park units. Further, under ANILCA, "*proper regulation*" and the "*continuation of the opportunity for subsistence*" require rural residents have a "*meaningful role in the management of fish and wildlife and of subsistence uses.*" 16 U.S.C. 3111. The Commission cannot discern a legitimate reason for failing to consult anyone, particularly rural Alaskans and other regulatory bodies, in advance of unilaterally developing and publishing the proposed rule.

The Commission requests the Service withdraw the proposed rule and revisit the need for new regulations and amendments in close consultation with the State, tribes, Native corporations, subsistence advisory groups and the Federal Subsistence Board. The Commission looks forward to that informed dialogue resulting in necessary improvements, if any, to the regulatory scheme impacting subsistence users, their opportunities for harvest and their cultural, traditional and economic needs. Thank you for this opportunity to comment.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'Sara Taylor', with a long horizontal flourish extending to the right.

Sara Taylor  
Executive Director