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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

STATE OF ALASKA Plaintiff v. SALLY JEWELL, in her official capacity as the United States Secretary of the Interior; MITCH ELLIS, in his official capacity as Chief of Refuges for the Alaska Region of the United States Fish and Wildlife Service; GREGORY SIEKANIEC, in his official capacity as Alaska Regional Director, United States Fish and Wildlife Service; DAN ASHE, in his official capacity as Director, United States Fish and Wildlife Service; JOEL HARD, in his official capacity as Acting Alaska Regional Director, National Park Service; MICHAEL REYNOLDS, in his official capacity as Acting Director, National Park Service; UNITED STATES FISH AND WILDLIFE SERVICE; NATIONAL PARK SERVICE; and UNITED STATES DEPARTMENT OF THE INTERIOR Defendants.	CIVIL ACTION NO.: 3:17-cv-00013-JWS **COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

INTRODUCTION

1. It is well established that the power to manage and protect wildlife, including on federal lands, lies with the states, except to the extent expressly preempted by Congress when acting under Constitutional grants of authority to the federal agencies.[1] The National Park Service ("NPS") and the United States Fish and Wildlife Service ("FWS")—collectively referred to as the "Federal Agencies"—separately promulgated and adopted regulations that restrict the methods and means for taking wildlife on nearly 100 million acres of land in Alaska (these regulations will be referred to as the "NPS Rule" and the "FWS Rule"). These regulations unlawfully preempt the State's authority to manage wildlife resources and adversely affect subsistence and non-subsistence hunting rights protected under federal laws.

2. Plaintiff State of Alaska ("Alaska" or the "State") brings this action to challenge the regulations adopted by NPS and FWS because the regulations 1) prohibit certain hunting methods and means authorized by the State's general hunting and trapping regulations; 2) prohibit qualified rural residents from subsistence hunting and fishing under state subsistence regulations; 3) expand the Federal Agencies' discretionary authority to prohibit the take of fish and wildlife under state regulations in the future; 4) unlawfully modified the closure procedures for both National Preserves and National Wildlife Refuges in Alaska; and 5) negatively affect the State's ability to manage for

[1] *Hughes v. Oklahoma*, 441 U.S. 322 (1979); *Kleppe v. New Mexico*, 426 U.S. 529, 545 (1976); *Geer v. Connecticut*, 161 U.S. 519, 528 (1896), *overruled on other grounds by Hughes*, 441 U.S. at 322; 43 C.F.R. § 24.3(a).

healthy wildlife populations while still providing the hunting opportunities expressly protected under state and federal law, including for state and federally qualified subsistence users. If not expressly allowed for in federal regulation, federally qualified subsistence users may no longer practice state authorized methods of harvest.

3. In adopting these regulations, the Federal Agencies failed to rigorously explore and objectively evaluate all reasonable alternatives and failed to recognize that their action will significantly affect the quality of the human environment.

4. The State brings this action under

a. the National Wildlife Refuge System Administration Act, as amended, 16 U.S.C. §§ 668dd & 668ee ("National Wildlife Refuge System Administration Improvement Act" or "NWRSIA"), which requires the FWS to provide hunting and fishing opportunities in Alaska National Wildlife Refuges under State wildlife management;

b. the Alaska National Interest Lands Conservation Act ("ANILCA"), Pub. L. No. 96-487 (1980), which provides that the taking of fish and wildlife for sport purposes and subsistence uses shall be allowed in a National Preserve under applicable state and federal laws and regulations and protects the authority of the State to manage fish and wildlife on federal public lands within Alaska;

c. the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4331–4370(h), which requires Federal Agencies to carefully weigh environmental considerations and consider potential alternatives before taking any major federal action that will significantly affect the human environment;

d. the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 et seq., which provides a right of judicial review to persons suffering a legal wrong because of agency action or adversely affected or aggrieved by agency action within the meaning of a relevant statute; and

e. the Declaratory Judgments Act, 28 U.S.C. § 2201.

5. By way of this lawsuit, Plaintiff requests that the Court declare the NPS and FWS Rules to be invalid and enjoin the Federal Agencies from imposing the regulations at issue.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. §§ 2201–2202 (declaratory judgment), and 5 U.S.C. §§ 701–706 (Administrative Procedure Act).

7. On October 23, 2015, the NPS published in the Federal Register a final rule restricting hunting and trapping in National Preserves, amending 36 C.F.R. Part 13 (the "NPS Rule") (80 Fed. Reg. 64,325-01).

8. On October 21, 2015, in conjunction with its final rule restricting hunting and trapping, the NPS issued its final decision regarding Wildlife Harvest on National Park System Preserves in Alaska, and adopted a "Finding of No Significant Impact."

9. On August 5, 2016, the FWS published in the Federal Register a final rule restricting hunting and trapping in National Wildlife Refuges, amending 50 CFR Parts 32 and 36 (the "FWS Rule") (81 Fed. Reg. 52,248).

10. On July 29, 2016, in conjunction with its final rule restricting hunting and trapping, the FWS issued its final decision regarding regulations restricting wildlife harvest on National Wildlife Refuges in Alaska, and adopted a "Finding of No Significant Impact."

11. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

12. An actual, justiciable controversy now exists between the State and Defendants, and the requested relief is proper.

13. The State has exhausted all administrative remedies and brings this suit to challenge final agency actions.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because this action is brought against officers of agencies of the United States in their official capacities and against the Federal Agencies. The subject National Wildlife Refuges and National Preserve lands are located within the District of Alaska. Most of the challenged actions and decisions were taken or made in the District of Alaska**.**

PARTIES

15. Alaska is a sovereign state, which has a compelling interest in the management, conservation, and regulation of all wildlife and other natural resources within its jurisdiction, including wildlife on federal lands, "for the maximum benefit of its people" and to be "maintained on the sustained yield principle, subject to preferences among beneficial uses." Alaska Const. Art. VIII, §§ 1, 2, and 4; AS 16.05.020; 16 U.S.C. § 668dd and § 3202. As a steward of its wildlife resources that are held in trust by the State

for the public, Alaska directly manages fish, wildlife and habitat through its Department of Fish and Game ("Department"). Alaska brings this action on behalf of itself, its citizens, and its visitors.

16. Defendant Sally Jewell is the Secretary of the United States Department of the Interior and is being sued in her official capacity. The Secretary is the federal official responsible for the administration, within the scope of federal laws, of the National Wildlife Refuge System and the National Park and Preserve System, and the resources located on those lands.

17. Defendant Dan Ashe is the Director of the FWS and is being sued in his official capacity. The Director is responsible for the administration of the National Wildlife Refuge System, under Secretary Jewell.

18. Defendant Gregory Siekaniec is the Alaska Regional Director of the FWS and is being sued in his official capacity. Regional Director Siekaniec is responsible for the administration of the National Wildlife Refuge System within the Alaska Region under Director Ashe and Secretary Jewell.

19. Defendant Mitch Ellis is the Chief of Refuges for the Alaska Region of the FWS and is being sued in his official capacity. Defendant Ellis is the signatory official for the July 29, 2016 Finding of No Significant Impact.

20. Defendant FWS is a federal agency within the Department of the Interior that has been delegated the responsibility for administering the National Wildlife Refuge System.

21. Defendant Michael Reynolds is the Acting Director of the NPS and is being sued in his official capacity. The Director is responsible for the administration of the NPS, under Secretary Jewell.

22. Defendant Joel Hard is the Acting Alaska Regional Director for the NPS and is being sued in his official capacity. Acting Regional Director Hard is responsible for the administration of the National Park System within the Alaska Region under Acting Director Reynolds and Secretary Jewell.

23. Defendant NPS is a federal agency within the Department of the Interior that has been delegated the responsibility for administering national parks and preserves.

24. Defendant Department of the Interior is an agency of the United States.

STANDING

25. The Federal Agencies' decisions to restrict methods and means for taking wildlife on nearly 100 million acres of land in Alaska will have a significant adverse impact on the State of Alaska because the restrictions infringe on the State's sovereign authority to manage wildlife in Alaska, deprives the State of the ability to manage wildlife in order to provide Alaskans certain social and economic opportunities, and negatively impacts the State's ability to provide Alaskans—including subsistence-dependent Alaskans—sufficient wildlife resources.

26. Communities throughout Alaska will be adversely affected by the FWS and NPS Rules because the existence of harvestable fish and wildlife resources in their areas is critical to community economy and health, both physical and social, and, ultimately, to the ongoing viability of the communities themselves.

27. The harm to the State's sovereignty and its management and conservation interests is actual, occurring immediately upon the Federal Agencies' adoption of their final regulations.

RIPENESS

28. The facts alleged in this Complaint depict a ripe controversy. Defendants violated NWRSIA, ANILCA, NEPA, the APA and federal regulations when they adopted final regulations that prohibit certain State-authorized harvest methods on National Preserve and National Wildlife Refuge lands in Alaska, redefine the management direction for Alaska National Wildlife Refuges, and create processes that sidestep NEPA and APA review for prohibiting State management actions.

29. A justiciable controversy exists between the parties, and a declaratory judgment will settle the controversy and is necessary to restore the State's sovereign rights and mitigate the harm that the State and its residents have suffered and continue to suffer.

30. A declaratory judgment that Defendants are required to comply with NWRSIA, ANILCA, the APA, NEPA, and federal regulations will also help to avoid future injury to the State due to the Federal Agencies' prohibition of State-authorized harvest methods. Prohibition of State-authorized activities deprives the State of the ability to manage and conserve populations of fish and wildlife.

31. An invalidation of the FWS and NPS Rules and a permanent injunction that enjoins Defendants from implementing their final regulations within the State of Alaska without complying with ANILCA, NEPA, the APA, and federal regulations will protect

the State's sovereign rights and are necessary to protect the State after resolution of these proceedings.

LEGAL BACKGROUND

A. National Park Service Organic Act.

32. The National Park Service Organic Act ("Organic Act") directs the NPS to "conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1.

33. The Organic Act also requires the NPS to prohibit activities that derogate park values, "except as may have been or shall be directly and specifically provided by Congress." 16 U.S.C. § 1.

34. As discussed below, ANILCA sets forth specific directives to NPS about the management of hunting and fishing on NPS administered lands in Alaska and serves as an exception to the general direction found in the Organic Act. Specifically, § 1313 of ANILCA allows for the taking of fish and wildlife on National Preserves in Alaska. Therefore, hunting and fishing is either a "park value" that must be protected under the Organic Act, or ANILCA serves as an explicit directive allowing for the derogation of a park value (fish and wildlife).

B. National Wildlife Refuge System Administration Improvement Act.

35. The National Wildlife Refuge System Administration Improvement Act ("NWRSIA") directs the Secretary of the Interior to administer the National Wildlife Refuge System 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. 16 U.S.C. § 668dd(a)(2).

36. The NWRSIA also directs that each National Wildlife Refuge in the system be managed to fulfill the above mission statement, as well as the specific purposes for which it was established, and where there is conflict between the two, the refuge purposes prevail (16 U.S.C. § 668dd(a)(4)(D)), or in the event of conflicts between any provision of the NWRSIA and any provision of ANILCA, then the provision in ANILCA shall prevail. 16 U.S.C. § 668dd(e)(1)(A).

37. The NWRSIA requires the Secretary to provide for the conservation of fish, wildlife, and plants and their habitats within the system; ensure the biological integrity, diversity, and environmental health of the system; and ensure effective coordination, interaction, and cooperation, and timely and effective cooperation and collaboration, with the fish and wildlife agencies of the states in which the system units are located in administering the system. 16 U.S.C. § 668dd(a).

38. The NWRSIA provides that, "Nothing in this Act shall be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System. Regulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans." 16 U.S.C. § 668dd(m); 16 U.S.C. § 668(c).

39. The NWRSIA requires the Secretary to ensure effective coordination, interaction, and cooperation, and timely and effective cooperation and collaboration in managing National Wildlife Refuge lands, with the Department. 16 U.S.C. § 668dd(a)(4)(E) and (M).

40. One of the primary purposes in developing National Wildlife Refuges is to "obtain the maximum benefits from these resources." 50 C.F.R. § 25.11(b). The NWRSIA requires the Secretary to manage and administer the National Wildlife Refuge System using fourteen factors, including recognizing compatible wildlife-dependent recreational uses (including hunting and fishing) as the priority general public uses (16 U.S.C. § 668dd(a)(3) and (a)(4)(H)). Four of the fourteen factors providing statutory administrative requirements mandate the priority of hunting and fishing. 16 U.S.C. § 668(a)(4)(H) through (K); 16 U.S.C. § 668ee(2).

C. Alaska National Interest Lands Conservation Act.

41. In 1980, Congress passed ANILCA, Public Law 96–487. ANILCA affected over 100 million acres of federal lands in Alaska, doubling the size of the country's National Park and National Wildlife Refuge systems and tripling the amount of land designated as wilderness. From the time it was introduced in the U.S. House of Representatives in 1977 until it was enacted in 1980, Congress considered more than a dozen versions of the legislation. The final act is Congress' carefully crafted compromise intended to reflect a balance between conservation of public lands in Alaska and the opportunity for satisfaction of the economic and social needs of Alaska and Alaskans, as established in the Statehood compact. 16 U.S.C. § 3101(d); Pub. L. No. 85–508, 72 Stat. 338 (1958).

42. In general, the State manages all wildlife in Alaska, including on federal lands. Title VIII of ANILCA provides a specific and limited exception by Congress that allows federal land management agencies in Alaska, through the Federal Subsistence Board, to provide a subsistence priority for rural residents on federal public lands. However, this priority only applies "[w]henever it is necessary to restrict the taking of populations of fish and wildlife on such lands for subsistence uses in order to protect the continued viability of such populations, or to continue such uses."

43. Federal subsistence management on the National Preserves and National Wildlife Refuges is only intended for allocative purposes in times of shortage when take must be restricted under ANILCA § 804, and is not intended as a replacement for the State system. While restrictions by the Federal Subsistence Board are an important part of fish and wildlife allocation in times of shortage, they fit within the larger system of State fish and wildlife management which manages populations across land ownership boundaries using the benefits of the Department's professional expertise, research, and scientific data and contributions of affected user groups through the Board of Game and Board of Fisheries process. 16 U.S.C. § 3114.

44. None of the instances presented by the Federal Agencies demonstrate the conditions that would trigger a restriction under Title VIII of ANILCA to limit harvest to federally qualified subsistence users. The requests by the public for the State regulations and the allowances by the Board of Game were in response to abundant populations of wildlife, where additional harvest can be supported. Some of the methods and means adopted by the Board of Game were also adopted by the Federal Subsistence Board.

45. ANILCA has a number of provisions that direct generally how federal public lands in Alaska, including National Wildlife Refuges and National Parks and Preserves, must be administered. One of Congress' stated policies in enacting ANILCA is that,

> consistent with sound management principles, and the conservation of healthy populations of fish and wildlife, the utilization of the public lands in Alaska is to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the resources of such lands… [and,]
>
> except as otherwise provided by this Act or other Federal laws, Federal land managing agencies, in managing subsistence activities on the public lands and in protecting the continued viability of all wild renewable resources in Alaska, shall cooperate with…appropriate State…agencies….

Section 802; 16 U.S.C. § 3112(1), (3).

46. Section 101 of ANILCA describes the Congress' purposes for enacting that law. In relevant part, Congress sought to "provide for the maintenance of sound populations of, and habitat for, wildlife species of inestimable value to the citizens of Alaska" and "preserve" "recreational opportunities including . . . fishing[] and sport hunting." This would be accomplished by managing the fish and wildlife in each conservation unit in accordance with recognized scientific principles to preserve the purpose for which each unit was created and to allow rural residents to continue their subsistence way of life. 16 U.S.C. § 3101(d).

47. Section 203 directs that "hunting shall be permitted in areas designated as national preserves." It further provides that subsistence uses by local residents shall be allowed in national preserves, and, where specifically permitted by ANILCA, in national monuments and parks. 16 U.S.C. § 410hh-2.

48. Sections 302 and 303 establish the purposes for the individual Alaska National Wildlife Refuges. One of the purposes of each reference is to "conserve fish and wildlife populations and habitats in their natural diversity." Senator Stevens, one of the key drafters of ANILCA's complicated and balanced approach to wildlife management on federal lands in Alaska, discussed "natural diversity" as used in the Refuge purpose provisions in ANILCA §§ 302 and 303:

> The term [natural diversity] is not intended to, in any way, restrict the authority of the Fish and Wildlife Service to manipulate habitat for the benefit of fish or wildlife populations within a refuge ***or for the benefit of the use of such populations by man as part of the balanced management program mandated by the Alaska National Interest Lands Conservation Act and other applicable law***.

Congressional Record, Dec. 1, 1980, S-15132 (emphasis added). Senator Stevens went on to say that even "predator control" was not precluded by "natural diversity" being included within the purpose clauses of the various Alaska Refuges. "The term also was not intended to preclude predator control on refuge lands in appropriate instances." *Id*.

49. Section 304 establishes a process for evaluating and authorizing uses and management of Alaska National Wildlife Refuges, and requires consultation with the State.

50. Section 815 sets standards for fish and wildlife populations in National Parks, National Preserves, and National Wildlife Refuges. Specifically, it provides that for uses within a "conservation system unit," the management authorities must allow for the "conservation of healthy populations" of fish and wildlife. A conservation system unit ("CSU") is defined, in relevant part, by § 102 as any National Preserve or National

Wildlife Refuge unit. Section 815 goes on to provide that uses within a national park or monument must be consistent with the conservation of "natural *and* healthy populations." (Emphasis added). 16 U.S.C. § 3125. Section 815 further provides that the taking of fish and wildlife on public lands—other than national parks and monuments—shall not be restricted unless it is necessary for the conservation of "healthy populations of fish and wildlife," is done pursuant the reasons set forth in § 816, is needed to continue subsistence uses of the population, or is done in accordance with other applicable law.

51. Congress intended the term "natural" to have a different meaning when used in Title III of ANILCA than it did when it is used in Title VIII. *See* Congressional Record, Dec. 1, 1980, S-15132. "It [wa]s well recognized that habitat manipulation and predator control and other management techniques frequently employed on refuge lands are inappropriate within National Parks and National Park Monuments." *Id.* Therefore, § 815 mandates that subsistence use must be consistent with "natural and healthy populations" on national parks and national park monuments and the conservation of "healthy" populations on National Refuge lands. But "[n]othing in the phrase 'in their natural diversity' in title III is intended to disrupt th[e] well-defined, and long recognized difference in the management responsibilities of the National Park Service and Fish and Wildlife Service." Congressional Record, Dec. 1, 1980, S-15132.

52. Section 816 closes "national parks and monuments"—but not national preserves—to the taking of wildlife except for subsistence uses to the extent they are expressly authorized by ANILCA. The Secretary may temporarily close federal public lands to subsistence uses "of a particular fish or wildlife population only if necessary for reasons

of public safety, administration, or to assure the continued viability of such population." Unless it is an emergency situation, any closure requires prior consultation with the State. 16 U.S.C. § 3126. "Public lands" are defined in § 102 of ANILCA.

53. Section 1313 addresses hunting in National Preserves. It directs that "the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve under applicable State and Federal law and regulation." The Secretary may designate zones where or a period when hunting, fishing or trapping is closed only "for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment." Except in emergencies, any restrictions require prior consultation with the State. 16 U.S.C. § 3201.

54. Section 1314 provides that the pre-existing jurisdictional regime (State management of fish and wildlife, recognized in the Statehood Act, P.L. 85-508, § 6(e)) continues to apply and is not changed by ANILCA. Under this pre-existing balance, the State exercises jurisdiction over "***management of fish and wildlife*** on the public lands," which authority is not "enlarge[d] or diminish[ed]" by ANILCA. *Id*. (emphasis added). Meanwhile, FWS, NPS, and other federal agencies exercise "authority over the ***management of the public lands***," which authority is also not "enlarge[d] or diminish[ed]" by ANILCA. *Id.* Given the overlapping nature of State jurisdiction over taking of fish and wildlife on public lands and federal jurisdiction over the underlying public lands, § 1314 provides that "the taking of fish and wildlife … shall be carried out in accordance with the provisions of this Act and other applicable State and Federal law." 16 U.S.C. § 3202.

55. Nothing in ANILCA authorizes the Federal Agencies to regulate methods and means of harvesting wildlife outside of its limited authority within Title VIII.

D. The National Environmental Policy Act.

56. NEPA is the "basic national charter for protection of the environment." 40 C.F.R. §1500.1(a).

57. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. *Id.* § 1500.1(c). NEPA's twin goals are to: (1) foster informed decision-making by ensuring that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts, and (2) promote informed public participation by requiring full disclosure of and opportunities for the public to participate in governmental decisions affecting environmental quality. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349–50 (1989).

58. NEPA requires that a federal agency proposing a major federal action with significant effects on the human environment prepare a detailed statement, which must include the environmental impacts of and alternatives to the proposed action. 42 U.S.C. § 4332(2)(C)(i) and (iii). This detailed written statement is an environmental impact statement ("EIS"). 40 C.F.R. § 1508.11.

59. To determine whether an EIS is necessary, an agency may first prepare an Environmental Assessment ("EA"). *Id.* §§ 1501.4(c), 1508.9. An EA is a concise public document that serves to briefly provide sufficient evidence and analysis for determining

whether to prepare an EIS or a finding of no significant impact. *Id.* § 1508.9. An EA must contain sufficient information and analysis to determine whether the proposed agency action is likely to have significant impacts, thus requiring preparation of an EIS. *Id.* The "touchstone [of NEPA compliance" is whether an [EA's] selection and discussion of alternatives fosters informed decision-making and informed public participation." *California v. Block*, 690 F.2d 753, 767 (9th Cir. 1982).

60. If an agency concludes, based on the EA, that an EIS is not required, it must prepare a finding of no significant impact ("FONSI"), which explains the agency's reasons for its decision. *Id.* §§ 1501.4(e), 1508(13).

61. The analysis of alternatives to a proposed agency action is the heart of the NEPA document, and agencies must rigorously and objectively evaluate all reasonable alternatives. *Id.* § 1502.14(a). These alternative analysis requirements also apply to EAs. *Bob Marshall Alliance v. Hodel*, 852 F. 2d 1223, 1229 (9th Cir. 1998); 42 U.S.C. § 4332(2); 40 C.F.R. § 1508.9(b).

62. Whether an action will have a significant impact requires consideration of both the context and intensity of effects. 40 C.F.R. § 1508.27. Context refers to the significance of the action to society as a whole, the affected region, the affected interests, and the locality. *Id.* § 1508.27(a). Impact on society necessarily refers to impact on people, including on the availability of food for people to consume. Intensity refers to the severity of the impacts.

63. A "categorical exclusion" is a class of actions that an agency has determined does not have a significant effect on the environment. 40 C.F.R. § 1508.4. A decision to apply

a categorical exclusion does not exempt an action from NEPA; rather, it is a form of NEPA compliance that requires an agency to provide procedures for determining whether "extraordinary circumstances" may cause the action to have a significant environmental effect.

64. The Federal Agencies must "consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of any Federal action within the jurisdictions ore related to the interests of these entities." 43 C.F.R. § 46.155.

65. A challenge that the Federal Agencies have violated NEPA is reviewable under the judicial review provisions of the APA. *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 858 (9th Cir. 2005).

E. Administrative Procedure Act.

58. The APA provides for judicial review of final agency action by persons "aggrieved" by such action. 5 U.S.C. § 702. The actions reviewable under the APA include "preliminary, procedural, or intermediate agency action or ruling…on the review of the final agency action," such as the final decisions at issue here. *Id.* § 704.

59. Under the APA, a reviewing court shall "compel agency action unlawfully withheld or unreasonably delayed, and hold unlawful and set aside agency action, findings, and conclusions found to be … arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(1), (2)(A).

F. State Wildlife Management.

60. The State has the full authority to manage fish and wildlife in Alaska, including on federal lands, in the absence of specific action by Congress. Statehood Act, P.L. 85-508, § 6(e); *Hughes v. Oklahoma*, 441 U.S. 322 (1979); *Kleppe v. New Mexico*, 426 U.S. 529, 545 (1976); *Geer v. Connecticut*, 161 U.S. 519, 528 (1896); 43 C.F.R. § 24.3(a); 81 Fed. Reg. 52248.

61. Article 8, § 4 of the Alaska Constitution provides that "[f]ish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on a sustained yield principle, subject to preferences among beneficial uses."

62. Alaska Statute 16.05.255(k)(5) defines "sustained yield" as "the achievement and maintenance in perpetuity of the ability to support a high level of human harvest of game, subject to preferences among beneficial uses, on an annual or periodic basis."

63. Based on these and other mandates, the State holds fish and wildlife in trust for the public and manages both predator and prey species on the basis of sustained yield.

64. In accordance with the Alaska constitution and statutes, the Alaska Board of Game ("BOG") adopts regulations, administered by the Alaska Department of Fish and Game, for the conservation, development and utilization of wildlife resources.

65. Codified at AS 16.05.255, the BOG's authorities include establishing open and closed seasons and areas for the taking of wildlife; establishing methods and means employed in pursuit, capture, taking, and transport of wildlife, including regulations that are consistent with resource conservation and development goals; and regulating general

and subsistence hunting as needed for the conservation, development and utilization of wildlife.

66. The Department and BOG are responsible for the sustainability of wildlife in the State of Alaska, regardless of land ownership, and together are the primary management authority for wildlife, which includes determining sustainable populations and allocating wildlife—including for subsistence purposes—unless specifically preempted by federal law.

67. The Department manages fish and wildlife in accordance with recognized scientific principles, which assure the health, continued viability, and conservation of fish and wildlife populations—both predator and prey.

68. All management techniques, such as harvest, are intended to provide for the conservation of the species and be consistent with principles of sustained yield. When the BOG sets seasons, bag limits, and/or methods and means it considers actual prior harvest, actual use trends, and actual hunter success rates compared to wildlife population methods and trends. The BOG uses this information to ensure that adopted regulations will result in a harvest consistent with the conservation of species and sustained yield management principles subject to preferences among beneficial uses.

69. State wildlife management practices include monitoring harvest levels, adjusting hunting seasons and bag limits, regulating harvest methods and means, evaluating and improving habitat, restricting or liberalizing harvest of predators and prey as necessary to maintain a balance with habitat and desired uses, and targeted intensive management programs when determined necessary.

70. The State's authority to manage wildlife in Alaska, including on federal lands, was not preempted by any specific action of Congress.

FACTUAL BACKGROUND

71. Certain methods and means prohibited by the Federal Agencies were adopted by the BOG in response to proposals submitted by subsistence users and reflect customary and traditional methods of harvest in Alaska.

A. The BOG's authorization to take black bears in dens using artificial light.

72. The BOG determined that taking black bears, including cubs and sows with cubs, at den sites is a "customary and traditional" practice. These methods and means are also subsequently recognized by, and were approved by, the Federal Subsistence Board for the purpose of administering a rural subsistence priority for applicable rural residents on applicable federal lands at the request of rural Alaska residents.

73. Alaska Statute 16.05.940(7) defines "customary and traditional" as "the noncommercial, long-term, and consistent taking of, use of, and reliance upon fish or game in a specific area and the use patterns of that fish or game that have been established over a reasonable period of time taking into consideration the availability of fish or game."

74. Customary and traditional activities are subsistence uses. *See* AS 16.05.940(33).

75. Most black bear seasons in Alaska are open throughout the year and many brown bear seasons extend from fall to spring. Consequently, the taking of bears while in their dens has been authorized for many years on both National Preserves and National Wildlife Refuge lands within the state. Elders from Huslia and other local villages

submitted a proposal to the BOG to allow the use of artificial light to take black bear during winter denning. Their proposal did not mention or imply a desire to exercise this customary and traditional practice for purposes of "predator control." Instead, the elders testified that they wished to engage in this common customary and traditional practice in order to share these and other past practices with youth hunters without fear of unintentionally violating regulations that may be interpreted as prohibiting the use.

76. Use of artificial light for the taking of black bears during winter denning helps hunters avoid opening a den occupied by a grizzly bear, allows hunters to avoid taking a sow with newborn cubs, and provides hunters with an opportunity to have better shot placement so that the bear is killed humanely.

77. In considering the regulations allowing for the take of black bears with artificial light at den sites, the BOG found no conservation issues and concluded that this activity did not have the potential to significantly impact the natural integrity of black bear populations and did not have the potential to create pressures on the natural abundance, behavior, distribution, or ecological integrity of black bear populations.

B. The BOG's extension of wolf and coyote seasons.

78. The standard seasons for hunting wolves and coyotes ends April 30, but the BOG extended the season in some Game Management Units ("GMUs"). For example, in eight GMUs, the wolf hunting season runs from August 10 through May 31. In two of the GMUs, the season closes on June 30. However, in the Prince of Wales Island GMU (GMU 2), the BOG shortened the season to December 1 through March 31, and reduced

the bag limit, due to concerns about a potentially high harvest. All GMUs have an annual bag limit for wolf hunting with the intent to maintain sustainable populations.

79. With the exception of Southeast GMUs 1 to 5, and GMUs 18 and 22, hunting season for coyotes is open all year, with no bag limit. This year round season is consistent with the seasons in 40 of the 49 states that allow coyote hunting.

80. The BOG implemented the changes to the harvest seasons for wolves and coyotes to fulfill Alaska's Constitutional requirement for management of sustained yield. The BOG did not implement any changes to the harvest seasons for wolves and coyotes as a method of predator control. Harvests are traditionally low, as ground-based hunters typically harvest wolves and coyotes opportunistically while hunting other species. The increased wolf and coyote seasons approved by the BOG in the referenced areas provide additional harvest opportunity where it has determined a harvestable surplus exists. The BOG found that these regulations would allow for the continuance of a sustainable population of these species.

C. The BOG's authorization of the harvest of brown bears at bait stations.

81. The harvest of black bears at bait stations has long been a lawful harvest method in Alaska. BOG regulations prohibit setting up a bait station to take bears within a mile of a home or other dwelling, business, campground or other place. BOG regulations also prohibit setting up a bait station within a quarter mile of a road or trail.

82. BOG regulations prohibit hunting big game with dogs except that the Department may issue a permit to allow the use of dogs to hunt black bear under prescribed conditions.

83. Since March 2012, the BOG adopted regulations that allow for the taking of brown bears at black bear baiting stations in specified GMUs by permit. This harvest is limited to the black bear baiting season and the hunter must complete a bear hunter clinic provided by the Department before engaging in the harvest. All bait, litter, and equipment must be removed when hunting is complete. In addition, hunters must still comply with seasons and bag limits for brown bears.

84. By allowing the harvest of brown bears at baiting stations, the BOG relied on harvest data that shows that this is not only a safe way to hunt brown bears, but it allows hunters to determine gender of a bear to avoid taking females, particularly those females with cubs.

85. The BOG found no conservation issue with bear baiting regulations and concluded that adoption would allow for the conservation of sustainable populations of brown bears. Similarly, wildlife biologists for NPS concluded that there "would be little to no conservation concern on NPS lands by extending [the black bear baiting] practice to brown bears." (Hildebrand, 2014) This was consistent with the State's finding of no evidence that the use of bait stations creates food-conditioned bears that are more dangerous than other bears. Bears that visit bait stations are likely to be harvested. Although the bears that are not harvested may become site-conditioned to re-visit that specific site, the State found no evidence to support a conclusion that these bears will become conditioned to human generated foods.

86. Although not expected, if the hunting pressure increases and harvests threaten sustainable populations, the BOG has the ability to modify seasons, bag limits, and

methods and means and the Department has the authority to protect wildlife populations through emergency order closures, including closing seasons and reducing bag limits.

D. The Federal Agencies' Regulations.

87. The State's regulations are supported by scientific data and facts, in contrast to the FWS and NPS Rules adopted by the Federal Agencies which are purposefully not supported by scientific analysis beyond general statements.

88. The Federal Agencies summarily concluded that because the BOG's decisions involved methods for the take of predator species, these authorizations constituted "predator control." However, the Federal Agencies engage in intensive management practices on lands they administer, and specifically to manipulate and favor certain populations over others.

89. The FWS and NPS Rules are based on policy, without supporting scientific evidence or rationale. The Federal Agencies provide no scientific evidence to support a conclusion that the FWS and NPS Rules were necessary for the conservation of healthy populations of fish and wildlife, nor do the Rules require scientific evidence to support closures to future state authorized uses determined under the sole discretion of Federal Agencies to have the intent or potential to be predator control or reduction efforts.

90. In the FWS and NPS Rules, the Federal Agencies grant themselves unlimited discretion to determine which state authorized uses are "intended or have the potential" to be predator control or reduction efforts and therefore prohibited on federal lands. This absolute authority in the NPS Rule is granted without any requirement to consult with the

Department as required under ANILCA § 1313, and in the FWS Rule, without any requirement to consult under ANILCA § 304.

91. The FWS referenced select language from the administrative provisions of the NWRSIA Biological Integrity, Diversity and Environmental Health ("BIDEH") Policy to "ensure biological integrity, diversity, and environmental health of these refuges are maintained" in combination with select language common to Alaska National Wildlife Refuge purposes "to conserve species and habitats in their natural diversity" in the FWS Rule's general provisions at 50 C.F.R. § 36.1. The FWS Rule elevates a single NWRSIA administrative provision and a single ANILCA Refuge purpose above all other provisions and purposes, thereby altering the intent of Congress expressed through NWRSIA and ANILCA.

92. The FWS Rule relied on irrelevant legislative history. In adopting the FWS Rule, the Federal Agencies rejected the explanation of "natural diversity" offered prior to ANILCA's adoption by Senator Stevens, one of the key drafters of ANILCA's complicated and balanced approach to wildlife management on federal lands in Alaska. Instead, FWS relied on a statement by Congressman Udall made after ANILCA was signed into law. *See* Non-Subsistence Take on Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska, 81 Fed. Reg. 887-01, 888 ("[T]he conservation of natural diversity refers . . . to 'protecting and managing all fish and wildlife populations within a particular wildlife refuge system unit in the natural "mix," not to emphasize management activities favoring one species to the detriment of another" (quoting

126 Cong. Rec. H12, 352–53 (daily ed. Dec. 11, 1980) (statement of Rep. Udall))).

93. The FWS Rule also establishes a new standard for compatibility not recognized by Congress in ANILCA. Hence, *all* refuge uses will be evaluated for compatibility with refuge purposes using this new definition of natural diversity, not just hunting and fishing, as implied by the FWS Rule.

94. Further, by equating BIDEH with ANILCA's use of the term "natural diversity," FWS ignored the savings clause in NWRSIA which provides that ANILCA prevails over NWRSIA where there is conflict. 16 U.S.C. § 688dd (e)(1)(A). The rule does not contemplate or provide for instances where managing a refuge for BIDEH may conflict with ANILCA.

95. The Federal Agencies failed to meaningfully consult with the State as required by federal law.

96. Neither the NEPA process, nor the FWS Rule itself properly informed the public of the FWS's intent to adopt major changes to the management for all National Wildlife Refuge uses. Scoping for the FWS Rule did not include changes to general National Wildlife Refuge management direction, and the proposed rule did not include general management direction in the list of substantive changes. The Federal Register Proposed Rule and Final Rule notices did not disclose the implications of specific regulatory direction for management of natural diversity and BIDEH to all National Wildlife Refuge uses. *See* Non-Subsistence Take on Wildlife, and Public Participation and Closure

Procedures, on National Wildlife Refuges in Alaska, 81 Fed. Reg. 887-01 (proposed rule); 81 Fed. Reg. 52248, 52250 (August 5, 2016) (final rule).

97. Neither the NPS Rule nor the FWS Rule abides by ANILCA's limitations. The NPS Rule and the FWS Rule each illegally impose restrictions on the methods and means of taking wildlife. In order to be valid under ANILCA, any such restrictions on methods and means of take must be necessary for the conservation of healthy populations of fish and wildlife, or to continue subsistence uses of the fish and wildlife populations, or be specifically authorized by Congress. 43 U.S.C. § 3125(c). Nothing in the NPS Rule and FWS Rule satisfies these requirements.

98. To the extent the Federal Agencies have explicit authority to manage wildlife that authority stems from Title VIII of ANILCA, which grants the Federal Agencies a specific and limited exception to provide a subsistence priority for rural residents on federal public lands. The Federal Agencies failed to meet their management responsibilities under Title VIII because the regulations adversely affect subsistence users—including federally qualified subsistence users—by impeding the State's ability to manage for sustainable populations of fish and wildlife, both predator and prey.

99. While the NPS and FWS Rules impede the State's ability to manage for sustainable populations of fish and wildlife in the future, the Federal Agencies also did not make a finding that these restrictions were immediately necessary under Title VIII in order to protect the continued viability of predator populations for federally qualified subsistence users.

100. Moreover, ANILCA provides that the taking of fish and wildlife for sport hunting and subsistence uses is allowed on National Preserves. 43 U.S.C. § 3201. Under § 1313 of ANILCA, NPS may designate "zones where and periods when" no hunting, fishing, trapping, or entry may be permitted "for reasons of public safety, administration, floral and faunal protection, or public uses and enjoyment." The ability to designate "zones" and "periods" does not extend to the authority to limit the methods and means of take. ANILCA does not grant NPS the authority to regulate the methods and means of hunting and, even if it did, NPS is required to make a showing that the restriction is needed for floral or faunal protection and must consult with the Department before implementing any closures. The NPS Rule illegally ignores these statutory requirements.

E. NPS's NEPA Process.

101. The regulations promulgated by NPS apply to the 10 national preserve units in Alaska, totaling approximately 20 million acres.

102. In September 2014, NPS issued an EA for the purpose of considering the potential environmental impacts of a proposed regulation to prohibit certain harvest methods authorized by the BOG. The NPS's actions leading up to the promulgation of the NPS Rules made it impossible for the NPS to properly assess the rule's environmental impact.

103. The EA evaluated two alternatives. NPS defined the "no action" alternative as the alternative that would authorize hunters to engage in the harvest methods authorized by the BOG. However, other than for the harvest of black bears at bait stations, NPS had previously issued temporary restrictions that prevented hunters

from engaging in the harvest methods that were the subject of the NPS Rule. Therefore, because NPS had preemptively prohibited hunters from engaging in these harvest methods, NPS had no data on how authorization of these harvest methods—other than the taking of black bears at bait stations—would affect wildlife populations or their habitat, federally authorized subsistence users, or public uses and enjoyment.

104. The NPS's actions leading up to the promulgation of the NPS Rule made it impossible for the NPS to properly assess the rule's environmental impact. NPS chose not to conduct any analysis on the impact of these harvest methods restrictions on non-NPS lands.

105. The action alternative—identified as NPS's preferred alternative—would prohibit harvest practices and activities or management actions that NPS believed involved predator reduction efforts "with the intent or potential to alter or manipulate natural predator-prey dynamics and associated natural ecological processes to increase harvest of ungulates." The EA made no attempt to assess the impact of predator-prey dynamics and associated natural ecological processes on ungulate harvests on the lands adjacent to and/or in the vicinity of the National Preserves.

106. The EA also made no attempt to assess the changes to the human environment— namely the impact on the human users of the Preserve.

107. In its EA, NPS concluded that the no-action alternative would have a substantial impact on the environment. Specifically, NPS concluded that "[t]he no-action alternative [wa]s anticipated to result in changes in wildlife populations and

habitat, relative to other factors[,]" and "[l]ocalized effects on individual animals, family groups, and packs are expected to be substantial."

108. If NPS's assessment as to the effects of the no-action alternative were correct, then logically, the NPS's other alternative—its selected action—would therefore also have a substantial effect on the environment. The NPS Rule would consequently either cause or prevent a significant impact to the human environment.

109. The NPS based its decision to adopt the regulation on policy, rather than science. It justified its rule by stating that scientific information was not needed as "the objective of this proposal is to prohibit harvest activities, like bear baiting, which are inconsistent with NPS mandates to manage for naturally functioning ecosystems and wildlife behaviors." This analysis failed to address the conflict with ANILCA which provides that fishing and hunting is to be allowed on National Preserves and that management must be in accordance with recognized scientific principles and consistent with the "conservation of healthy populations." 16 U.S.C. §§ 3101(c) & 3125.

110. In October 2015, NPS issued a FONSI in which it concluded that its selected alternative would not result in a significant effect on the human environment. NPS reasoned, in part, that the final regulations would allow NPS to prevent a significant impact to the environment by allowing it to prohibit harvest practices that it considered a predator reduction effort. At the same time, NPS issued a decision that this rule was categorically excluded from further NEPA analysis. NPS did not prepare an EIS.

111. NPS had no data upon which to base its decision that its selected alternative would not have a significant impact, or that the no action alterative would have such an impact. NPS failed to conduct a scientific analysis on the number of animals that would be harvested if the State regulations went into effect. NPS had no data on how prey populations would be impacted by prohibiting these methods of harvest. It had no data to support a finding that these restrictions were needed for faunal protection or to preserve healthy populations.

112. The NPS Rule directs the NPS Regional Director to compile a list of the methods and means authorized by State laws and regulations that the Regional Director nevertheless believes are prohibited by the NPS Rule. The NPS Rule assumes that this list of prohibited methods and means will be enforceable as regulations, even though the list will not be adopted as regulations under the Administrative Procedure Act, 5 U.S.C. § 706, will not be subject to NEPA review, and will not be subject to State consultation.

F. FWS's NEPA Process.

113. The regulations promulgated by the FWS apply to sixteen wildlife refuges within Alaska, totaling approximately 76.8 million acres.

114. In July 2015, the FWS issued an EA for the purpose of considering the potential environmental impacts of a proposed regulation to prohibit certain harvest methods—authorized by the BOG under its general hunting and trapping regulations—that have the *potential* to greatly increase efficiency for taking of predators. As with the NPS's EA, the FWS evaluated two alternatives. FWS defined the "no action" alternative as the alternative where the agency "would take no additional action to prohibit certain

methods and means for the take of predators on refuges in Alaska." The action alternative—identified as FWS's preferred alternative—sought a rule that prohibited the use of several "particularly efficient methods and means" for take of predators on Alaska National Wildlife Refuges.

115. In its EA, the FWS concluded that the no-action alternative "may have population-level effects on targeted predators because anticipated additional harvest, while unknown, may be high." Like the NPS, the FWS concluded that the "[l]ocalized effects on individual animals, family groups, and packs are expected to be substantial" for the no-action alternative.

116. If the FWS's assessment of the no-action alternative was correct, then consequently, the selected action would therefore have a significant effect on the environment because the agency's action would either cause or prevent a significant impact to the human environment.

117. In July 2016, FWS issued a FONSI that concluded the selected alternative—the action alternative—was not a major federal action that would significantly affect the quality of the human environment. The FWS did not prepare an EIS.

118. FWS had no data upon which to base its decision that its selected alternative would not have a significant impact, or that the no action alterative would have such an impact. FWS failed to conduct a scientific analysis on the number of animals that would be harvested if the State regulations went into effect. FWS had no data on how prey populations would be impacted by prohibiting these methods of harvest. It had no data to

support a finding that these restrictions were needed for faunal protection or to preserve diversity.

G. The Federal Agencies' NEPA Process generally.

119. In their respective decisions, NPS and the FWS each asserted that certain hunting methods and means allowed under State regulations are prohibited by law. However, hunters that qualify for the rural subsistence preference under applicable federal law may continue to engage in some of these methods and means on NPS and FWS lands based on regulations approved by the Federal Subsistence Board after the subject NPS and FWS Rules prohibiting state authorizations were approved. The Federal Agencies failed to explain why some hunters may engage in these methods and means—when the Federal Agencies defined these methods and means as "predator control"—while other hunters may not.

120. The NPS and FWS also asserted in their explanations for their rules that predator control to benefit a target species is prohibited by law. However both Federal Agencies historically engaged in predator control activities in managing wildlife. Neither Federal Agency has received any express direction from Congress that prohibits predator control. Indeed, the Federal Agencies ignored ANILCA's legislative history, which explained that nothing within the statute was meant to prohibit predator control.

121. The FWS improperly defined predator control to include what it determines is particularly effective methods and means of harvest, or using mechanical protections such as fences. The FWS did not address "particularly effective" methods and means of harvest or mechanical protections in its EA.

122. The FWS Rule is inconsistent with adopted comprehensive conservation plans developed under ANILCA § 304. ANILCA requires FWS to prepare comprehensive conservation plans to provide long-range guidance and management direction for Alaska's National Wildlife Refuges. *See* ANILCA § 304(g)(1).

123. The State and others affected by the NPS Rule and the FWS Rule submitted timely comments opposing the proposed rules and identifying deficiencies in each of the draft Environmental Assessments.

124. The process and procedures followed in adopting the NPS Rule and the FWS Rule failed to comply with the Federal Agencies' duty to ensure effective coordination, interaction, and cooperation, and timely and effective cooperation and collaboration, with the Department in managing wildlife.

125. The NPS Rule and the FWS Rule fail to comply with the Federal Agencies' duties to provide opportunities for continued sport hunting and subsistence uses of wildlife resources; to manage all uses of federal public lands so as to cause the least adverse impact possible on rural residents who depend upon subsistence uses of the wildlife populations; and to cooperate with the Department in doing so.

FIRST CLAIM FOR RELIEF
National Wildlife Refuge System Improvement Act

126. The State incorporates by reference each of the allegations in Paragraphs 1 through 125.

127. In addition to disclaiming any intent to preempt State jurisdiction over the taking of wildlife on Refuges, NWRSIA provides that any FWS regulations governing the

taking of wildlife on Refuges "shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans." 16 U.S.C. § 668dd(c) and (m). FWS violated the NWRSIA by adopting the FWS Rule, which is not consistent with State hunting regulations to the extent practicable. FWS created a contrived inconsistency between federal law and State law through inaccurately interpreting federal statutes as being inconsistent with State law, when they are not. It was therefore practicable for FWS to administer the Refuges in a manner consistent with the preempted State laws, and FWS was not entitled to preempt State law.

128. The NWRSIA also requires that FWS provide for the conservation, management, and, where appropriate, restoration of wildlife resources; and ensure effective coordination, interaction and cooperation, and timely and effective cooperation and collaboration, with the Department in doing so. 16 U.S.C. § 668dd(a). FWS violated the NWRSIA by failing to effectively and meaningfully collaborate with the Department.

129. The NWRSIA requires the Secretary to manage and administer the National Wildlife Refuge System using fourteen factors, including recognizing compatible wildlife-dependent recreational uses (including hunting and fishing) as the priority general public uses (16 U.S.C. § 668dd(a)(3) and (a)(4)(H)). Four of the fourteen factors providing statutory administrative requirements mandate the priority of hunting and fishing. 16 U.S.C. § 668(a)(4)(H) through (K); 16 U.S.C. § 668ee(2). FWS violated the NWRSIA by adopting the FWS Rule, which elevates one factor over the remaining thirteen factors, and disregards Congress' direction to prioritize hunting.

130. "ANILCA takes precedence over the [NWRSIA] if there is a conflict between the two, and provides the primary direction for management specific to refuges in Alaska (16 U.S.C. 668dd-668ee)." FWS EA at 17, August 13, 2015. FWS violated the NWRSIA (and ANILCA) by adopting the FWS Rule.

131. The FWS Rule violates these provisions of the NWRSIA and specifically interferes with Alaska's authority to manage, control, and regulate wildlife.

SECOND CLAIM FOR RELIEF
(Alaska National Interest Lands Conservation Act)

132. Alaska incorporates by reference each of the allegations in Paragraphs 1 through 131.

133. ANILCA requires the Federal Agencies to administer the National Preserves and Refuges so as to cause the least adverse impact possible on dependent subsistence users and to cooperate with State of Alaska agencies in protecting the continued viability of wild renewable resources. §§ 802 & 815;

16 U.S.C. §§ 3112 & 3125.

134. Title VIII of ANILCA grants the Federal Agencies a limited exception to manage wildlife, and that exception is for the purpose of providing subsistence uses for rural residents on federal public lands.

135. ANILCA is not to be interpreted to allow the FWS or NPS to prohibit the non-subsistence taking of wildlife except for enumerated reasons, none of which apply to the NPS Rule or the FWS Rule. Section 815; 16 U.S.C. § 3125.

136. The Federal Rules contravene these authorities (Title VIII of ANILCA) as well as Congress' recognition in ANILCA that the State of Alaska retains authority for managing wildlife on federal lands. *See* ANILCA § 1314.

137. The Federal Agencies fail to rely on recognized scientific principles to show that these regulations are necessary to protect healthy populations of fish and wildlife. Instead, the NPS Rule and the FWS Rule unlawfully impede the State's ability to manage for sustainable populations of fish and wildlife while also providing for hunting and fishing opportunities as required by ANILCA—both for subsistence and general uses.

138. The State has determined that sustainable populations of wildlife are healthy populations. Thus State regulations comply with ANILCA provisions requiring that wildlife be maintained in a healthy state. To the extent applicable, State regulations also comply with any ANILCA provisions requiring that wildlife be maintained in a "natural" state. There being no inconsistency between State regulation and federal statutes, there is no basis for preemption.

139. The NPS and FWS Rules also unlawfully prohibit subsistence and general uses that were authorized by the State on National Preserve and Refuge land.

140. The Federal Agencies' prohibitions, as set forth in the NPS Rule and the FWS Rule, prevent the Department's efforts to manage predator and prey populations and also violate the cooperative federalism principles embodied in 16 U.S.C. §§ 3125 and 3202.

141. Section 1313 of ANILCA requires the NPS to administer and manage national preserves in Alaska in a manner that allows the taking of fish and wildlife for sport purposes and subsistence uses, and prohibits the NPS from restricting zones or time

periods except for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment, and except in emergencies, only after consultation with the Department. *See* 16 U.S.C. §§ 410hh-2 & 1313. None of these permissible reasons for federal regulation justify the preemption of state regulation of the taking of wildlife on Preserves resulting from the adoption of the NPS Rule.

142. The NPS Rule was proposed without meaningful consultation with the State, and imposes restrictions contrary to §§ 203 and 1313 of ANILCA.

143. The Federal Agencies failed to conduct an adequate analysis that considered the significance of the immediate and future effects of all aspects of the Federal Rules on subsistence uses and needs, including blanket prohibitions on state authorized uses of fish and wildlife that the Federal Agencies unilaterally determine are predator control or reduction activities, which provide opportunities for subsistence harvest consistent with Title VIII of ANILCA and as required by § 810 of ANILCA.

144. The NPS Rule prohibits all future state authorized take of fish and wildlife determined under the sole discretion of the NPS to be predator reduction efforts without consulting with the Department of Fish and Game, as required in ANILCA § 1313.

145. The FWS improperly relied on irrelevant legislative history to re-define natural diversity, an Alaska refuge purpose common to all refuges, in a manner not contemplated by Congress, setting a new standard by which all refuge uses will be evaluated for compatibility, and omitting from consideration all other § 302 and 303 purposes of Alaska refuges.

THIRD CLAIM FOR RELIEF
(National Environmental Policy Act)

146. Alaska incorporates by reference each of the allegations in Paragraphs 1 through 145.

147. The Federal Agencies' attempts through these regulations to prohibit certain hunting methods and means authorized by the State of Alaska were "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). Thus, the Federal Agencies' failure to prepare EISs violated NEPA. *Id.*; 40 C.F.R. §§ 1501.4, 1508.9.

148. The environmental effect of the Federal Agencies prohibiting certain hunting methods is significant within the meaning of NEPA. *See* 40 C.F.R. § 1508.27. As described in ¶¶ 103–04 & 114–15 both Federal Agencies contend that the State regulations could have "substantial" effect on wildlife populations. In light of ANILCA, the Federal Agencies' decisions to usurp the State's management authority, and the impact that these decisions will have on the State's ability to manage wildlife resources and provide opportunities for subsistence and non-subsistence users, will have a substantial affect to the human environment.

149. Even within the EA, the FWS and NPS did not rigorously explore and objectively evaluate all reasonable alternatives.

150. The EAs identified Alternative 1 (no action) and Alternative 2 (adoption of proposed draft rules), and the Finding of No Significant Impact adopted the action alternative without adequate discussion and consideration of Alternative 1.

151. The Federal Agencies recognized the scientific validity of information provided to evaluate potential impacts, and then dismissed potential effects as "unlikely" without any scientific basis or analysis of that conclusion. The FWS concluded that the FWS Rule would have no significant impact, but acknowledged that ungulate populations will be reduced by restrictions on methods and means. (Environmental Assessment, August 13, 2015 at 48.) There is no analysis or explanation, and it is unreasonable, arbitrary and capricious, to admit there will be an impact and then, without an analysis of the impact, find there is no significant impact, including for subsistence users who depend on stable populations of fish and wildlife.

152. Both Federal Agencies failed to consider the effect that a prolonged loss of subsistence hunting opportunities would have on the affected regions, as well as the effect that a reduction of the wildlife populations would have on other Refuge and preserve users.

153. The Federal Agencies unreasonably failed to address economic impacts on the subsistence users, communities, hunters, guides, assistant guides, transporters, taxidermists, and all other persons engaged in hunting and handling wildlife who are affected by the restrictions. Instead of conducting a proper analysis, FWS admitted that "little is known about the level of involvement of subsistence users" and the FWS Rule "could have an impact on the mixed cash economy of communities within and adjacent to the refuges." (Environmental Assessment, August 13, 2015 at 50.)

154. The Federal Agencies unlawfully concluded that portions of the Federal Rules were categorically excluded. Although the Federal Agencies nevertheless prepared EAs

to address the environmental impacts of portions of the Federal Rules, their determinations of no significant impact were predetermined by their decision that the actions qualified for a categorical exclusion.

155. Gaps of knowledge regarding impacts, and uncertainty regarding the significance of the impacts, do not fulfill the Federal Agencies' NEPA obligations and do not support the FWS or NPS finding of no significant impact.

156. These failures violate 42 U.S.C. § 4332 and its implementing regulations.

FOURTH CLAIM FOR RELIEF
(Administrative Procedure Act)

157. Alaska incorporates by reference each of the allegations in Paragraphs 1 through 156.

158. The APA provides that courts shall set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2).

159. The Federal Agencies' conclusions that the state regulations at issue do not comport with mandates required by NWRSIA and ANILCA are arbitrary, capricious, and not in accordance with law.

160. The Federal Rules purport to be limited to Alaska, but the asserted justification for restricting management of predators and prey are national law and agency policies. It is unreasonable to restrict activities within Alaska based on general and vague policy statements that disregard other statutory goals. The Federal Agency conclusions are arbitrary, capricious, and not in accordance with law.

161. The Federal Agency decisions, that the negative consequences of allowing certain hunting methods and means would outweigh positive benefits gained by providing potential opportunity for future subsistence uses by local residents, was based, in part, on the understanding that there will be reduced wildlife populations available for subsistence users but those populations might be healthier. These conclusions are arbitrary, capricious, and not in accordance with law because they ignore the fact that subsistence hunting—an express priority in ANILCA—will be severely restricted. Allowing wildlife populations to decline, and intentionally reducing the food supply to those dependent on those resources, is arbitrary and capricious.

162. ANILCA allows restrictions on hunting needed for conservation and to protect subsistence, but the Federal Rules are not needed for conservation and have a negative impact on subsistence. The Federal Agency decisions are arbitrary and capricious and not in accordance with law by restricting hunting methods and means without a conservation need and in a manner that will have a negative impact on subsistence in Alaska.

163. The NPS Rule allowing the NPS Regional Director to prohibit state-authorized methods and means annually without notice or rulemaking violates the APA. *See* U.S.C. § 553.

164. The FWS unlawfully and unreasonably (a) defined "predator control" as "the intention to reduce the population of predators for the benefit of prey species;" and (b) concluded that this practice is unsustainable. Both findings are arbitrary and capricious.

165. The Federal Agencies' violations of their statutory obligations outlined in the above claims for relief are arbitrary, capricious, and not in accordance with law, and entitle Alaska to the relief requested below.

166. The APA provides that courts shall compel agency action unlawfully withheld, or unreasonably delayed. 5 U.S.C. § 706(1).

167. The Federal Agencies' refusal to ensure effective coordination, interaction and cooperation, and timely and effective cooperation and collaboration, with the Department and by taking or allowing action to intentionally result in a decline of subsistence resources constitute unlawful agency action and entitles Alaska to the relief requested below.

168. The FWS and NPS actions in adopting the Federal rules unconstitutionally infringes on the State's sovereignty and right to manage fish and wildlife in Alaska. Such actions are arbitrary, capricious, and not in accordance with law.

PRAYER FOR RELIEF

WHEREFORE, the State of Alaska respectfully requests that this Court enter judgment providing the following relief:

A. Declare that Defendants violated the NWRSIA, as amended;

B. Declare that Defendants violated ANILCA;

C. Declare that Defendants' actions, as set forth above, are arbitrary and capricious, an abuse of discretion, and not in accordance with law; and Defendants violated the APA;

D. Declare that Defendants' actions violated NEPA and, at a minimum, an EIS must be prepared before a federal agency may restrict the State's authority to manage fish and wildlife and to establish hunting methods and means;

E. Enjoin Defendants from implementing and enforcing the NPS Rule and FWS Rule.

F. Order the Defendants to coordinate, interact, cooperate, and collaborate with the Department in obeying its duties to conserve wildlife populations, and to manage for sustained yield of both predator and prey species, to recognize the State's authority to manage fish and wildlife, and in managing wildlife to provide for future opportunities for subsistence and other recognized uses.

G. Award Alaska its attorneys' fees and costs incurred in bringing and maintaining this action pursuant to 28 U.S.C. § 2412 and other applicable authorities;

H. Vacate the NPS Rule and FWS Rule and order compliance with the 16 U.S.C. § 668dd; with ANILCA §§ 303(1), 802, 815 and 1314; with NEPA; and with the APA.

I. Grant Plaintiff such other and further relief as the Court may deem necessary and appropriate.

DATED January 13, 2017.

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