



**Billing Code 4333-15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Parts 32 and 36**

**[Docket No. FWS–R7–NWRS–2014–0005; FF07R00000 FXRS12610700000 178 Obligation # 4500093321]**

**RIN 1018–BA31**

**Effectuating Congressional Nullification of the Non-subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska Under the Congressional Review Act**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; CRA revocation.

**SUMMARY:** By operation of the Congressional Review Act (CRA), the “Non-subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska” (non-subsistence take of wildlife rule) shall be treated as if it had never taken effect. The U.S. Fish and Wildlife Service issues this document to effect the removal of any amendments, deletions, or other modifications made by the nullified rule and the reversion to the text of the regulations in effect immediately prior to the effective date of the non-subsistence take of wildlife rule.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Previous documents related to the Non-subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska rule (non-

subsistence take of wildlife rule) of August 5, 2016 (81 FR 52248), may be found on the internet at [www.regulations.gov](http://www.regulations.gov) in Docket No. FWS–R7–NWRS–2014–0005.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Brady, Chief of Conservation Planning and Policy, National Wildlife Refuge System, Alaska Regional Office, 1011 E. Tudor Rd., Mail Stop 211, Anchorage, AK 99503; telephone (907) 306–7448. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Background**

The U.S. Fish and Wildlife Service published the Non-subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska (non-subsistence take of wildlife rule) on August 5, 2016 (81 FR 52248). The rule became effective on September 6, 2016. On February 16, 2017, the United States House of Representatives passed a resolution of disapproval [H.J. Res. 69] of the non-subsistence take of wildlife rule under the Congressional Review Act (CRA), 5 U.S.C. 801 et seq. The Senate then passed a resolution of disapproval [S.J. Res. 18] on March 21, 2017 (Cong. Rec. p. S1884). President Trump then signed the resolution into law as Public Law 115–20 on April 3, 2017. Therefore, under the terms of the CRA, the U.S. Fish and Wildlife Service non-subsistence take of wildlife rule shall be “treated as though such rule had never taken effect.” 5 U.S.C. 801(f).

However, because the CRA does not include direction regarding the removal, by the Office of the Federal Register or otherwise, of the voided language from the Code of Federal Regulations (CFR), the U.S. Fish and Wildlife Service must publish this document to effect the removal of the voided text. This document will enable the Office of the Federal Register to

effectuate congressional intent to remove the voided text of the non-subsistence take of wildlife rule as if it had never taken effect, and restore the previous language and prior state of the CFR.

This action is not an exercise of the Department's rulemaking authority under the Administrative Procedure Act, because the Department is not "formulating, amending, or repealing a rule" under 5 U.S.C. 551(5). Rather, the Department is effectuating changes to the CFR to reflect what congressional action has already accomplished—namely, the nullification of any changes purported to have been made to the CFR by the non-subsistence take of wildlife rule and the reversion to the regulatory text in effect immediately prior to September 6, 2016, the effective date of the non-subsistence take of wildlife rule. Accordingly, the Department is not soliciting comments on this action. Moreover, this action is not a final agency action subject to judicial review.

#### **Executive Order 13771**

This final rule is considered an E.O. 13771 deregulatory action. We estimate the cost savings of this rule to be negligible. The average trip-related expenditures for big game hunting (\$139 per day) yields approximately \$5.9 million annually in big game hunting-related expenditures on national wildlife refuges (NWRs) in Alaska. Since only a small fraction of big game hunters would likely have chosen to not hunt on NWRs because of the original rule, the impact is minimal. The effect to the local communities is far less than \$5.9 million annually because few hunters use the prohibited methods and those hunters that do would have likely chosen a substitute site.

#### **List of Subjects**

50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

**Regulation Promulgation**

For the reasons set forth in the preamble, and under the authority of the Congressional Review Act (5 U.S.C. 801 et seq.) and Public Law 115–20 (April 3, 2017), the Service amends title 50, chapter I, subchapter C, of the Code of Federal Regulations as follows:

**PART 32—HUNTING AND FISHING**

1. The authority citation for part 32 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i; Pub. L. 115–20, 131 Stat. 86.

2. Amend § 32.2 by revising the last sentence of paragraph (h) to read as follows:

**§ 32.2 What are the requirements for hunting on areas of the National Wildlife Refuge System?**

\* \* \* \* \*

(h) \* \* \* (Baiting is authorized in accordance with State regulations on national wildlife refuges in Alaska).

\* \* \* \* \*

**PART 36—ALASKA NATIONAL WILDLIFE REFUGES**

3. The authority citation for part 36 is revised to read as follows:

**Authority:** 16 U.S.C. 460(k) *et seq.*, 668dd–668ee, 3101 *et seq.*, Pub. L. 115–20, 131 Stat. 86.

**§ 36.1 [Amended]**

4. Amend § 36.1 by:

a. Removing paragraph (a); and

b. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c), respectively.

**§ 36.2 [Amended]**

5. Amend § 36.2 by removing the definitions for “Bait”, “Big game”, “Cub bear”, “Furbearer”, “Natural diversity”, “Predator control”, “Sport hunting”, and “Trapping”.

6. Amend § 36.11 by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

**§ 36.11 Purpose and policy.**

\* \* \* \* \*

(d) The State of Alaska is authorized to regulate the taking of fish and wildlife for subsistence uses within Alaska National Wildlife Refuges to the extent such regulation is consistent with applicable Federal law, including but not limited to ANILCA.

\* \* \* \* \*

7. Revise § 36.13 to read as follows:

**§ 36.13 Subsistence fishing.**

Fish may be taken by local rural residents for subsistence uses in compliance with applicable State and Federal law. To the extent consistent with the provisions of this part and other Federal law, applicable State laws and regulations governing the taking of fish which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

8. Revise § 36.14 to read as follows:

**§ 36.14 Subsistence hunting and trapping.**

Local rural residents may hunt and trap wildlife for subsistence uses in Alaska National Wildlife Refuges in compliance with applicable State and Federal laws. To the extent consistent with the provisions of this part and other Federal law, applicable State laws and regulations governing the taking of wildlife which are now or will hereafter be in effect are hereby incorporated by reference as a part of these regulations.

9. Revise the heading of subpart D to read as follows:

**Subpart D—Other Refuge Uses**

10. Revise § 36.32 to read as follows:

**§36.32 Taking of fish and wildlife.**

(a) The taking of fish and wildlife for sport hunting, trapping, and sport fishing is authorized in accordance with applicable State and Federal law and such laws are hereby adopted and made a part of these regulations; *Provided however*, That the Refuge Manager, pursuant to § 36.42, may designate areas where, and establish periods when, no taking of a particular population of fish or wildlife shall be permitted.

(b) The exercise of valid commercial fishing rights or privileges obtained pursuant to existing law, including any use of refuge areas for campsites, cabins, motorized vehicles, and aircraft landing directly incident to the exercise of such rights or privileges, is authorized; *Provided, however*, That the Refuge Manager may restrict or prohibit the exercise of these rights or privileges or uses of federally owned lands directly incident to such exercise if he determines, after conducting a public hearing in the affected locality, that they are inconsistent with the purposes of the refuge and that they constitute a significant expansion of commercial fishing activities within such refuge beyond the level of such activities in 1979.

(c) The following provisions shall apply to any person while engaged in the taking of fish and wildlife within an Alaska National Wildlife Refuge:

(1) *Trapping and sport hunting.* (i) Each person shall secure and possess all required State licenses and shall comply with the applicable provisions of State law unless further restricted by Federal law;

(ii) Each person shall comply with the applicable provisions of Federal law; and

(iii) In addition to the requirements of paragraphs (a) and (b) of this section, each person shall continue to secure a trapping permit from the appropriate Refuge Manager prior to trapping on the Kenai, Izembek and Kodiak Refuges and the Aleutian Islands Unit of the Alaska Maritime Refuge.

(iv) It shall be unlawful for a person having been airborne to use a firearm or any other weapon to take or assist in taking a wolf or wolverine until after 3:00 a.m. on the day following the day in which the flying occurred, except that a trapper may use a firearm or any other weapon to dispatch a legally caught wolf or wolverine in a trap or snare on the same day in which the flying occurred. This prohibition does not apply to flights on regularly scheduled commercial airlines between regularly maintained public airports.

(2) *Sport and commercial fishing.* (i) Each person shall secure and possess all required State licenses and shall comply with the applicable provisions of State law unless further restricted by Federal law; and

(ii) Each person shall comply with the applicable provisions of Federal law.

(d) Nothing in this section shall apply to the taking of fish and wildlife for subsistence uses.

(e) Nothing in these rules shall be interpreted as waiving the requirements of other fish and wildlife conservation statutes such as the Airborne Hunting Act or those provisions of subchapter C of title 50 CFR regarding the taking of depredated wildlife. Animal control programs shall only be conducted in accordance with a special use permit issued by the Refuge Manager.

11. Amend § 36.42 by revising paragraphs (a), (c), (d), (e), (f), (g), and (h) to read as follows:

**§ 36.42 Public participation and closure procedures.**

(a) *Authority.* The Refuge Manager may close an area or restrict an activity on an emergency, temporary, or permanent basis.

\* \* \* \* \*

(c) *Emergency closures or restrictions.* (1) Emergency closures or restrictions relating to the use of aircraft, snowmachines, motorboats, or non-motorized surface transportation shall be made after notice and hearing;

(2) Emergency closures or restrictions relating to the taking of fish and wildlife shall be accompanied by notice with a subsequent hearing;

(3) Other emergency closures or restrictions shall become effective upon notice as prescribed in paragraph (f) of this section; and

(4) No emergency closure or restriction shall be for a period exceeding 30 days.

(d) *Temporary closures or restrictions.* (1) Temporary closures or restrictions relating to the use of aircraft, snowmachines, motorboats or non-motorized surface transportation, or to the taking of fish and wildlife, shall not be effective prior to notice and hearing in the vicinity of the area(s) affected by such closures or restriction, and other locations as appropriate;

(2) Other temporary closures shall be effective upon notice as prescribed in paragraph (f) of this section; and

(3) Temporary closures or restrictions shall extend only for so long as necessary to achieve their purposes, and in no case may exceed 12 months or be extended beyond that time.

(e) *Permanent closures or restrictions.* Permanent closures or restrictions shall be made only after notice and public hearings in the affected vicinity and other locations as appropriate, and after publication in the *Federal Register*.

(f) *Notice.* Emergency, temporary, or permanent closures or restrictions shall be:

(1) Published in at least one newspaper of general circulation in the State and in at least one local newspaper if available, posted at community post offices within the vicinity affected, made available for broadcast on local radio stations in a manner reasonably calculated to inform residents in the affected vicinity, and designated on a map which shall be available for public inspection at the office of the Refuge Manager and other places convenient to the public; or

(2) Designated by the posting of appropriate signs; or

(3) Both.

(g) *Openings.* In determining whether to open an area to public use or activity otherwise prohibited, the Refuge Manager shall provide notice in the *Federal Register* and shall, upon request, hold a hearing in the affected vicinity and other location, as appropriate, prior to making a final determination.

(h) *Prohibitions.* Except as otherwise specifically permitted under the provisions of this part, entry into closed areas or failure to abide by restrictions established under this section is prohibited.

Dated: August 30, 2017.

Todd Willens,

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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