

STATE OF ALASKA

ANILCA IMPLEMENTATION PROGRAM

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Marcia Blaszak
Regional Director
National Park Service
240 West 5th Avenue
Anchorage, AK 99501

Dear Ms. Blaszak:

The State of Alaska reviewed the draft 2006 Superintendent's Proposed Compendiums for all park units in Alaska, as posted on the National Park Service web site. This letter represents the consolidated views of the State's resource agencies.

We appreciate the ongoing cooperative evaluation of park management issues that serves many mutual goals, including retaining public uses protected under the Alaska National Interest Lands Conservation Act (ANILCA), minimizing impacts of Service actions on state management authorities, and protecting park resources. We are committed to cooperatively assessing issues throughout the year that may require changes or additions in response to evolving needs. The ongoing cooperative approach assures that compendiums meet the intent of 36 CFR 1.5(c) to use the least restrictive measures necessary to suffice for management of park resources. We also appreciate recognition that "less restrictive measures" may include use of state authorities.

We are pleased to acknowledge additional revisions that respond to the Alaska-specific regulations finalized in December 2004. As you know, these regulations and the corresponding compendium modifications represent a major and positive change in the process for managing public uses under ANILCA. We look forward to working with you and the individual park managers on future regulations that support the continuing goal of accountable and defensible rulemaking that serves the public interest in Alaska and reduces the number of activities restricted under compendia authority.

Many of the issues below appeared in our 2005 Compendium comments, and we are aware that the Service is working to address them in this and other forums. Comments on the 2006 park specific changes are intermixed with those that reiterate our continued concerns.

GENERAL COMMENTS

Determinations

We recognize that development and portrayal of the justifications and determinations is an evolving process. While we strongly support the increasing attention to provide “determinations” required under 36 CFR Part 1 to justify all restrictions or liberalizations, they are addressed in a variety of ways and formats that can be confusing and sometimes dilute the content. Some determinations follow a compendium entry in italics, others are listed in an attachment, and some are only on file in the park office. Some of these explanations are useful additions that clarify intent.

All determinations are required to be available so the public can understand the basis for the actions, but not all are necessary in the immediate context of the compendiums. We recommend the Service consolidate all determinations for each park unit as an attachment or separate document, available with the respective compendiums, *unless* needed in the body of the document to clarify intent or to provide an important educational component. A general separation of compendiums and determinations will facilitate the continuing evolution toward better determinations (in both quantity and quality) without diluting the core compendium content.

We recommend that both the compendium and associated determinations be available on the respective park web sites, as well as the region’s centralized compendium page. As web site and document management capability increases, individual compendium entries in web-based documents could also contain a link to the relevant determination.

Use of state law

In several instances, this letter provides discussion and recommendations on the use and applicability of existing state laws in lieu of adopting new park restrictions. We appreciate the Service’s willingness to consider expansion of this approach. We look forward to further opportunities to cooperate with the Service to address enforcement issues as they arise.

Compendiums as educational tools

In addition to their role as a rulebook, compendiums can also educate the public and encourage responsible behavior. In a few cases, we suggest additions that offer relevant information about applicable non-federal rules.

Converting compendium entries into regulation

In several instances, we suggest converting several compendium entries into regulation if those entries are reasonable and not anticipated to change over time.

GENERAL COMMENTS BY SECTION NUMBER

Section 2.2(e) Designated areas for wildlife viewing with artificial light

In 2004, the State modified its hunting regulations to allow the use of artificial light by a tracking dog handler in conjunction with a single leashed dog in tracking and dispatching a wounded big

game animal [see 5 AAC 92.080(7)(D)]. For park units where hunting is allowed, we request the Service recognize this change by revising the entry to the following language:

No areas designated for closure. For hunting in the Preserve under state regulations, state law determines if artificial light may be used for taking wildlife. For subsistence hunting under federal regulations, 50 CFR 100 determines if artificial light may be used for taking wildlife.

2.3(d)(2) Fresh Waters Designated as Open to Bait Fishing

ANILCA Sections 1313 and 1314 reaffirm state management of fishing under applicable state and federal law, and both the State and federal boards regulate subsistence fishing (not just the federal board) under the cited regulations. We request one of the following two alternative revisions:

Superseded by Section 13.21(b)—State law applies. Unless modified for subsistence pursuant to 50 CFR Part 100, bait may be used in accordance with State law.

or

No waters designated as open to fishing with the types of bait identified above. Other types of bait may be used in accordance with state law. Subsistence fishing by federally qualified rural residents is allowed in accordance with 36 CFR part 13 and 50 CFR part 100.

2.10(d) – Food storage – designated areas and methods

The State encourages proper food storage consistent with state law (5 AAC 92.230 Feeding of Game). We understand the Service has concerns over the enforceability of state law; however, we wish to continue dialogue regarding best methods for food storage. We support the Service requiring responsible food storage in some areas; however, we continue to object to blanket requirements on food storage across entire park units. In many park areas, bears and other wildlife densities are low enough that food storage requirements are unnecessary (for example, at Lake Clark and the Harding Ice Field area of Kenai Fjords). In addition, we request continued opportunity to discuss and change requirements for food storage as emerging technologies, such as solar powered electric fences, arise. We appreciate the Service's interest in working with the State to tackle this multi-faceted issue.

Food storage is one of those few management issues where the compendium can play an important educational role regarding the issue, related laws, and consistent guidelines across all units to improve visitor compliance. Thus, we recommend accompanying the food storage entry with information about how to prevent making food, garbage, or harvested fish and game an attraction (such as recommended heights for hanging animal attractants in trees), storing and preparing food away from campsites, using bear resistant containers, and using deterrents such as electric fences. In areas where animal resistant food containers are recommended, we recommend the Service note the locations where the public can obtain containers from the Service free of charge. We also request any food storage provisions be cooperatively developed with state wildlife experts using the best information available and the resulting language be as consistent as possible for all units.

We recommend the Service include the same food storage information in “hand out” literature and postings for each unit. While the educational guidelines would not be enforceable, they will be applicable regardless of state and federal jurisdiction and valuable for visitors and residents alike. We find only rare situations where public conduct generally consistent with the recommended guidelines might be insufficient for public safety or to prevent impacts to resources. In those special conditions, site-specific and duration-specific criteria may need to be cooperatively evaluated and adopted in future compendiums.

2.15(a)(1) Pets

We object to the broad proposals in the compendiums for Denali, Kenai Fjords, and Glacier Bay that restrict or prohibit pets in backcountry areas. Park staff report a general concern about the impact of free ranging pets on wildlife and other resources; however, park regulations nationally already require pets be restrained on leashes. Thus for most areas the issue is largely a matter of education and enforcement. Except on an emergency or temporary and then site-specific basis, we appreciate that the Service is willing to consider permanent backcountry pet prohibitions within the context of regulations. We recognize that in some instances and with certain caveats, site-specific pet prohibitions may be warranted if resource impacts outweigh the desire of the public to allow pets. See additional park-specific comments for Denali, Kenai Fjords, and Glacier Bay.

Sec. 2.19 The towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile is prohibited, except in designated areas or routes

We recognize the value of including this provision in the compendiums. We request that the response be expanded to explicitly recognize the existing exception important for Alaskans for sleds attached with a rigid harness. Using the default approach, we suggest the following:

No designated areas or routes. This prohibition does not apply to sleds towed behind a snowmobile with a rigid hitching mechanism.

13.17(e)(4)(i) Designated existing cabins, shelters or temporary facilities that may be shared for subsistence uses without a permit

We continue to recommend that superintendents annually consider whether specific park cabins are routinely used for subsistence purposes during particular times of year and designate those cabins for use in the annual compendium. The cited regulation states: “*the Superintendent may designate existing cabins or other structures that may be shared by local rural residents for authorized subsistence uses without a permit.*” If a cabin is routinely used for subsistence purposes during particular times of year or for specific purposes, it may be more expedient to list and designate such cabins in the compendium – at least for the period of routine use.

Section 13.21(e) Temporary closures or restrictions related to the taking of fish and wildlife

We request the Service also reference the federal subsistence regulations in this section as they also apply to Preserve lands. In some instances, the federal subsistence regulations may differ from the corresponding state regulations that govern harvests on Preserve lands. To address the issue, we recommend the following language:

No closures at present where hunting, fishing, and trapping are authorized. Also see applicable State of Alaska and Federal Subsistence regulations.

43 CFR 36.11(g)(1) ORVs on established trails

Most park units do not have designated trails, even though some ORV use is unofficially recognized in some areas consistent with the protections under ANILCA and park regulations. We continue to request the Service research, recognize, and designate, where appropriate, pre-ANILCA trails, routes, or areas used by ORVs for subsistence and other traditional activities. To assess pre-ANILCA access and facilitate more active management under existing law, we encourage application of the Wrangell-St. Elias park unit model developed jointly by the park and the Alaska Department of Fish and Game.

Park-Specific Comments

DENALI

1.5(a)(1) Visiting hours, public use limits, closures

Consistent with our general comments, if the Service intends to renew this public closure at Sable Pass each year, we encourage adoption as a park-specific regulation.

1.5(a)(2) Wildlife Distance Conditions

We suggest revising the second bullet on page 2 (clarification of the compendium entry to explain why less restrictive measures will not be effective) to clarify that photography permits have no exception regarding the wildlife distance conditions rule.

2.2(d) Wildlife transport

We continue to object to the following provision:

All legally taken game from Kantishna transported on the Park Road by motor vehicle must be transported out of the Park without unnecessary delay. Meat and other animal parts must be completely covered, secured, and out of view.

We recognize that transporting game meat along the road through wildlife concentration areas may be a legitimate concern as an animal attractant. However, the Service can address this concern through enforcement of state law.

2.10(d) – Food storage – designated areas and methods

See general comments. We continue to object to the requirement that all users carry bear proof containers in most backcountry units in the old Park, even if no perishable food is being carried and the campers are well away from the park road or bear concentration areas. We also request that food storage be addressed in the same manner as recommended for other backcountry areas by keeping the focus on prohibiting animal attractants in combination with an education program and the continued availability of containers for loan from the park.

2.15(a)(1) Pets

We appreciate that the park is willing to consider pet restrictions in the context of regulations as we have requested on previous occasions. To this end, we will evaluate the justification provided by the park and make recommendations. At this time, we do not support the existing prohibition throughout the backcountry because there are many remote areas of the park which, with proper education and enforcement of existing regulations, would see few, if any, impacts from the occasional presence of pets. We request any future regulations retain the existing compendium exceptions for hunting, winter transportation, and other legal uses of pack animals, including dogs.

13.63(b) Backcountry Camping

The State maintains a longstanding concern about requiring camping permits in the winter and in remote areas where overcrowding, competition, or resource protection are not issues and where permitting is, thus, unnecessary. We continue to request deletion of this requirement during periods and in locations of extremely low visitation.

GATES OF THE ARCTIC

43 CFR 36.11(g)(1) ORVs on established trails

We request the reference to the Anaktuvuk Pass Land Exchange be accompanied by a map or web site link that illustrates the location of these designated trails.

GLACIER BAY

2.15(a)(1) Pets

Consistent with our general comments, we appreciate that the park is willing to consider pet restrictions in the context of regulations as we have requested on previous occasions.

3.3 Permits (Alek River)

Fourth bullet: We remain firmly on record opposing a federal permit requirement for all non-commercial vessels on the Alek River, a state-owned navigable water body. Our opposition is partly based on state-federal jurisdictional issues over regulation of the waterway and partly on the lack of a finding of damage as required under 43 CFR Part 36 regulations to restrict public activities in park areas. We recognize, however, that this requirement stems from an adopted river plan developed jointly with Canada so the issue is larger than the compendium. We understand that outstanding issues related to permits and boating will be considered in a future plan revision or in proposed regulations.

13.21(c) Restrictions on activities related to commercial fishing rights

We look forward to working with the park to fine tune appropriate use of off-road vehicles in the Dry Bay area and on subsequent implementation of permanent regulations that balance the needs of local users with necessary requirements for resource protection.

13.22 (c) Unattended Property

Outside Glacier Bay proper, we recommend applying the new default regulation at 36 CFR 13.22(c) that provides for a four month time period (or more with Superintendent's permission)

for unattended storage and 30 gallons of fuel. Unlike Glacier Bay proper, not all park users and travelers are recreationists who rely on small boats, small engines, and backcountry cook stoves, especially on the outer coast.

13.49(a)(2) Restrictions on cutting live timber less than 3” in diameter

We object to requiring verbal or written permission to harvest smaller trees for subsistence purposes. If there are areas in the Preserve where over-harvest has occurred or may cause potential problems, those areas can be addressed with cooperation of local residents through direct communications. We object to this burdensome requirement park-wide unless a clear need is established.

13.65(a)(2)(iii) New or expanded fisheries prohibited. List of existing fisheries and gear types for the park’s outer waters:

In addition to the appropriate gear types listed, we request acknowledgement of a minor harvest of groundfish with mechanical jig gear and allowed incidental catch by trollers. A review of the Alaska Department of Fish and Game commercial fishing database indicates there was documented harvest of fish using those gear types in affected offshore waters prior to Congress passing legislation.

43 CFR Part 36.11(d) –(e) Temporary closures to the use of motorboats and non-motorized surface transportation

We remain on record as opposing the prohibition of motorboats and permit requirements for non-commercial vessel use on the Alsek River above Gateway Knob (see Section 3.3 above).

43 CFR Part 36.11(g)(2) Use of off-road vehicles on existing trails

See park-specific comments on 13.21(c) above.

KATMAI

1.5 Wildlife Distance Conditions

We request that the written protocol regarding bear viewing referenced in compendium and in regulation accommodate the following:

If, after attempting to get out of its way and away from the concentrated food source, a bear continues to approach within 50 yards, then visitors should stop and assert themselves until the bear withdraws beyond 50 yards.

Such a caveat would allow and encourage visitors to 1) stand their ground even when a bear approaches within 50 yards, and 2) act assertively to discourage the bear from continuing this behavior. Without this exception, visitors may erroneously conclude that they need to continue to move away from curious and/or aggressive bears. People who walk or run away from curious or assertive young bears are rewarding bad behavior that may result in fatalities for either people or bears in this or subsequent situations.

If this new caveat is widely acceptable, then it may be appropriate to consider adding to the recent regulation in a subsequent rulemaking.

2.4(a)(2)(i) Carrying firearms

We request development of a new park-specific regulation that allows transport of firearms for legal purposes across the former Katmai National Monument.

13.18(a)(1) Temporary closures and restrictions to camping

While we recognize the need for careful management of camping at Hallo Bay Meadows, we request the Service look more carefully at this issue before implementing a camping closure for the upcoming season. We remain concerned that the size of the camping closure, as proposed, may unfairly favor certain groups, such as day users. The closure may also increase camping impacts or camper safety concerns in areas immediately adjacent to the closed area. We are also concerned that campers walking to the site from adjacent camping areas will not be able to access or depart from primary viewing areas except during periods of low tide.

13.49(a)(2) Restrictions on cutting live timber less than 3” in diameter

We object to the requirement for verbal or written permission to harvest smaller trees for subsistence purposes. Areas in the Preserve where over-harvest or other impacts are known or potential problems can be addressed through communication and cooperation with local residents. We object to this burdensome requirement unless a clear need is established.

43 CFR 36.11(g)(2) ORVs on established trails

We request recognition of pre-ANILCA trails used by ORVs for subsistence and traditional access, such as the Pike Ridge Trail.

KENAI FJORDS

2.15(a)(1) Determination of Need for prohibition of pets in the backcountry

See general comments about pet restrictions. We recognize that the park has reduced the backcountry pet restriction to a seasonal closure of the coastal margin, above mean high tide. Nonetheless, we believe most of the impacts identified in the Determination of Need could be avoided through enforcement of existing park regulations. As the park considers converting compendium pet restrictions into a new regulation, we hope to further modify the proposal to accommodate pets where there will be few impacts. For example, we are concerned that there appears to be no off-pavement designated dog-walking area in the Exit Glacier Developed Area in proximity to the end of the Exit Glacier Road, thus inviting violations by those traveling with pets. The prohibition also precludes visitors with pets from accessing areas within the developed area that are removed from the primary areas of human use (e.g., south of the developed area). We are also concerned that even though the backcountry pet closure applies only to the coastal margin, it effectively precludes access to the remainder of the unit.

WESTERN ARCTIC

13.49 Subsistence Harvest of standing live timber greater than 3” diameter

We request the Service work with the State of Alaska in developing the subsistence green wood harvest policy for the Western Arctic parks.

WRANGELL-ST. ELIAS

13.18(a)(1) Temporary closures and restrictions to camping

The Service again proposes to close the unofficial campground at Mile 59 of McCarthy Road from April 15 to Oct 15. We understand there remain many opportunities to camp in the area, both in private campgrounds and on other parklands in the vicinity. We are also aware of and willing to assist with Service efforts to educate visitors and residents of the area about safe camping techniques, proper bear safety, food storage, and waste management (e.g. compost piles). Consistent with our general comments on converting permanent compendium entries into regulation, if the Service concludes it is necessary for this or a modified closure to become permanent, we request the closure be implemented through regulation.

13.46 Access by local rural residents engaged in subsistence

The proposed 2006 compendium contains the identical seasonal camping closure that appeared in previous years. The Service justified these closures based on documented resource damage. We encourage the Service to work with ORV users to rehabilitate, harden or relocate the closed trails, which will allow the Service to lift or reduce the seasonal closures. We understand and appreciate that the park is interested in working with local residents to reevaluate more stable and appropriate ORV routes and uses. If the Service concludes that some of the seasonal closures will be necessary over the long term, we recommend consideration of a permanent regulation.

13.73(e) Kennecott Mines NHL and developed areas: closures and restrictions

We request deletion of the word "hunting" in the fourth bullet of the Executive Summary (under reasons less restrictive measures will not be effective) so that it reads:

Any subsistence activity that does not require the discharge of a firearm within this limited area would not be affected by this proposed restriction.

In addition, we recommend the Service provide a map of the developed area and the amount of acreage involved in the closure to inform readers about the size of the closure area.

Thank you for your consideration of these comments. We look forward to continuing to work with you and your staff to improve park compendiums in Alaska. If you have any questions, please contact me.

Sincerely,



Sally Giber
State ANILCA Coordinator