



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**ANILCA Implementation Program**

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November 18, 2016

Johnathan B. Jarvis, Director  
National Park Service  
1849 C Street NW  
Washington, DC 20240

Dear Director Jarvis:

The State of Alaska reviewed draft Director's Order 100: Resource Stewardship for the 21<sup>st</sup> Century (Order), which intends to reaffirm resource stewardship as the overarching goal of the Service in the management of park units, pursuant to the 2006 Management Policies. The following comments represent the consolidated views of state resource agencies.

The State recognizes the challenges associated with managing park resources in a changing climate. In particular, the Service is concerned that climate change may make the goal in the influential 1963 *Leopold Report* that "national park[s] should present a vignette of primitive America" unattainable or ecologically undesirable over the next century. However, despite assurances in the Order that the Service will base decision-making on "best available sound science and scholarship, accurate fidelity to the law, and long-term public interest," we are concerned that the Order significantly expands the Service's discretionary authority, and as currently written, contradicts the Service's 2006 *Management Policies* and is inconsistent with statutory direction in the Alaska National Interest Lands Conservation Act (ANILCA). Of particular concern is direction in the Order to:

- adopt "the precautionary principle" as Service policy;
- collaborate rather than consult with the State on fish and wildlife management issues; and
- extend Service authority to manage resources outside park units

The following comments are intended to be constructive and provide the State's perspective on the draft Order. However, without advance consultation with States and other public outreach efforts, the 30-day review period is not sufficient to fully evaluate the proposed policy, which could have far reaching impacts as the Service intends to integrate the Order into a wide array of "policies, plans, studies, and inventories; funding priorities and allocations; and field operations and programs" (page 11). The more detailed implementing manual, Resource Manual 100, which is not currently available for public review, is essential to understanding the full impact of this significant new policy.

*Precautionary Principle*

The Service's Policy Memorandum 12-02 "Applying National Park Service Management in the Context of Climate Change" indicated that the *Management Policies* already provided adequate guidance to address the

challenges of climate change.<sup>1</sup> However, the adoption of the “precautionary principle” is a significant addition to the 2006 *Management Policies*, and the Order does not explain why the Service no longer considers the current management policies adequate in this regard.

Rather than promoting science based decision-making and exercising caution when faced with limited data or information, the “precautionary principle,” as presented in the Order, establishes “err on the side of caution” as the default response to resource concerns. Whether or not an activity raises plausible or probable threats is an entirely subjective decision and any activity could raise plausible threat of harm at some scale. While Reference Manual 100 may contain more detailed information, the Order itself provides no thresholds or useful guidance on making that decision. Similarly, in determining the level of scientific uncertainty, the Order does not describe the region or area of analysis to be used.

The *Management Policies* also apply the impairment standard differently in accordance with the type of use - mandated or authorized pursuant to a park unit’s enabling legislation, existing, or proposed. However, there appears to be no such differentiation in the application of the “precautionary principle.” The Order states it “does not redefine unimpaired” but it does seem to redefine the consideration of impairment with regard to different types of uses. The precautionary principle should not be applied to existing uses, whether mandated or authorized, or mandated uses in general, because they are already addressed through existing law, regulation, and policy.

ANILCA recognizes the importance of public access and use in Alaska’s park units, including the ability of rural residents’ to continue their subsistence way-of-life. To ensure the Service gets input from potentially affected users and to minimize unnecessary restrictions, especially to subsistence users,<sup>2</sup> restrictions or closures to allowed uses cannot be implemented without providing justification and following specific public notice and hearing requirements pursuant to ANILCA implementing regulations at 43 CFR 36 and 36 CFR 13. In addition, to ensure all relevant science-based data and management objectives are considered, restrictions on the take of fish and wildlife cannot be implemented without first consulting with the Alaska Department of Fish and Game. In contrast, the Order opens the door to highly discretionary decisions that could close or limit statutorily authorized public uses and methods of access, such as general and subsistence hunting, fishing, and trapping. Based on experience, once regulatory closures or restrictions are in place, they rarely get removed. Therefore, reliance on the precautionary principle could easily result in unnecessary closures and restrictions that significantly impact the public for years to come, especially those living in rural communities.

The Service has essentially already implemented the “precautionary principle” in Alaska to restrict hunting under state regulations on park and preserve lands. We strongly objected to these preemptive closures on the basis that the justification for restricting allowed public uses lacked supporting data or scientific analysis. Judging by our experience with this early implementation, the “precautionary principle” also creates extraordinary hurdles in working through perceived problems because at some scale, any concern can be justified under the “precautionary principle.” This can result in management decisions that exceed the respective authorities granted state and federal governments by Congress with regard to fish and wildlife management and allocation, which in Alaska are held by the State unless specifically superseded by federal regulatory action.

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<sup>1</sup> “As our management approaches evolve within a context of greater uncertainty, *Management Policies 2006* provides comprehensive and flexible guidance to deal with the challenges of climate change, and remains as the central guidance for conserving park resources and providing for visitor enjoyment.”

<sup>2</sup> ANILCA Section 802 “It is hereby declared to be the policy of Congress that – (1) 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 resource of such lands; consistent with management of fish and wildlife in accordance with recognized scientific principles...”

To avoid unnecessarily foreclosing important public uses, we request the Order explain the inadequacies of the current 2006 *Management Policies* and provide definitive guidance on applying the “precautionary principle,” including how the principle will be applied consistent with the statutory requirements in ANILCA. It is possible that Reference Manual 100 may provide guidance to resolve these concerns; however, the manual is not publicly available for review. We therefore request the Order be released along with the reference manual for concurrent public review.

### *Consultation, Collaboration and Coordination with State Agencies*

The Order lacks specific direction for meaningful consultation with state agencies, despite specific direction to work with other entities. In addition, a higher standard is applied to working with indigenous communities than state agencies with management responsibilities within park units. For example, the Order requires the Service to “... consult with and involve indigenous communities in resource stewardship planning, training, and mandated or authorized pursuant to a park unit’s enabling legislation, existing, or proposed actions” (lines 540-541) but for state agencies, the requirement is to “... seek opportunities” (lines 542-543) and collaborate (lines 476 and 573). We understand the importance of coordination with indigenous communities, which is further required under executive Order. Yet given the overlapping responsibilities for management of fish and wildlife, and numerous requirements in ANILCA for meaningful engagement, including consultation, with the State in Alaska,<sup>3</sup> state agencies need to be granted the same level of commitment. We therefore request the Order “require” consultation, collaboration or coordination, as appropriate. Also, in describing the responsibilities of the various Service staff to partner agencies in general, the Order variously directs that they “encourage,” “work with,” or “require” collaboration with State, Tribal, regional, local, national, and global partners without further description. We request that the Order direct staff to collaborate with partners in a meaningful manner. This includes recognizing the ability of state and federal governments to work together under the exemptions in the Federal Advisory Committee Act (FACA).

### *Expansion of NPS Authorities Outside Parks*

Direction in the Order to “Expand land/seascape-scale resource management and connectivity by increasing the use of existing authorities to manage resources outside parks” appears to seek increased authorities for management of resources outside of park area boundaries. On its face, this direction conflicts with ANILCA Sections 103(c) and 1314(b), which limit the application of Service authorities in Alaska park units. We understand from recent discussions with Service staff that the Order’s intent is not to expand the Service’s management authorities, but to provide direction for the Service to work with adjoining land managers on seeking funding for collaborative projects that benefit park resources, such as research projects, wildland fire management, or removal of invasive species. We request the Order clarify that intent.

### *Traditional Ecological Knowledge*

We support the Order’s direction to increase the understanding and use of traditional ecological knowledge. This direction is particularly important in Alaska, where ANILCA provided for the continued use of most park units for subsistence, and where rural residents continue their subsistence way-of-life. Incorporating traditional ecological knowledge is vital for management of these areas, where recorded history is limited and science is sometimes in short supply, but the use and knowledge of the land and its resources goes back millennia.

### *Page-specific comments*

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<sup>3</sup> For example, ANILCA Sections 816 and 1313 both require consultation with the State before closing or restricting the take of fish and wildlife.

Page 1, line 3; page 2, line 19; and Page 3, line 67. The Order generally references extreme “social changes” and “social forces” that must be considered in resource management as the driving factors in the development of the Order. While climate change is a factor everywhere, other factors cited, including dramatic increases in visitation and social, cultural, and demographic changes, are not a reality in Alaska’s rural areas or, with a few exceptions, Alaska park units generally, nor are they likely to be in the near future.

Page 3, lines 77-78. Rather than using NPS’ longstanding “use and enjoyment” language, the Order uses the phrase “transformative experience,” a phrase which is described in the 2012 *Revisiting Leopold* report as, “This interaction should both educate and inspire.” We are concerned that setting the goal as “transformative experience” in place of the Organic Act’s more generic terminology “use and enjoyment” inappropriately places a value judgement on allowed park uses. The Order defers discussion of this term to future guidance. We request the “transformative experience” language be removed and request the Service provide applicable guidance, following an open and collaborative process with its partner agencies and the public, before implementing “transformative experience” as a goal.

Page 5, lines 158-182, Operational Definitions. We request the Service work with the other federal land management agencies to ensure that efforts at operational definitions are non-conflicting. Consistent terminology will aid cross-boundary cooperating agencies in understanding and implementing objectives.

Page 8, lines 290-291, Accurate fidelity to the law. Presumably the Service already operates with accurate fidelity to the law. It seems superfluous to implement a specific policy requiring the Service to follow its own laws. We request the Order include a savings clause stating that in the event of a conflict between the precautionary principle and existing laws, such as ANILCA, and the 2006 *Management Policies*, existing statutory authorities and policies prevail.

Page 9, lines 319-324. We request that the states be specifically referenced as “governmental partners” to indicate the states’ crucial responsibility and role in fish and wildlife management both on and off NPS managed lands, as recognized in 43 CFR Part 24. Adding “states” would be in keeping with the specificity of line 322 regarding federally and non-federally recognized tribes.

Page 17, lines 693-700, Ecological integrity. We question the need to make ecological integrity a goal and define ecological integrity in the context of this policy. The term is only mentioned briefly in the *Management Policies* without definition. The NPS term ecological integrity appears to be a corollary to the U.S. Fish and Wildlife Service’s (USFWS) term biological integrity from the Biological Integrity, Diversity and Environmental Health Policy (BIDEH). Considering the controversial nature of the USFWS biological integrity definition, it seems inappropriate to place a similar definition into the Order, which largely addresses Service administrative issues, and as such, may not be receiving the level of public scrutiny it would otherwise. Policy Memorandum 12-02 addresses the same issues that the Order attempts to address, and describes resource stewardship of “natural conditions,” which is already defined in the *Management Policies*, in terms of climate change. Given the complexity of the ecological integrity concept and the significant shift in direction away from the natural conditions concept, which is the basis for existing policies, we recommend the Service remove the ecological integrity goal and definition from the Order. The ecological integrity goal is a policy change which should be addressed in a more upfront, comprehensive way than in the “Additional Definitions” section at the end of this Order.

Page 18, lines 713-716, Visitors. Including library visitors or internet users as park visitors presents serious practical problems, especially in determining the impacts of visitors upon park resources. We request the NPS have separate definitions for physical visitors to parks and people learning about parks via the Internet or other media.

In conclusion, we respectfully request the Service honor the Order's collaborative intent by suspending completion of the Order until such time that the Service can conduct meaningful public outreach and consultation with affected States. We also request the accompanying Reference Manual 100 be released with the Order for concurrent public review.

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Magee". The signature is fluid and cursive, with the first letter of the first name being a large, stylized 'S'.

Susan Magee  
ANILCA Program Coordinator