

# OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET  
DIVISION OF GOVERNMENTAL COORDINATION

SOUTHCENTRAL REGIONAL OFFICE  
3601 "C" STREET, SUITE 370  
ANCHORAGE, ALASKA 99503-5930  
PH: (907) 269-7470/FAX: (907) 561-6134

CENTRAL OFFICE  
P.O. BOX 110030  
JUNEAU, ALASKA 99811-0030  
PH: (907) 465-3562/FAX: (907) 465-3075

PIPELINE COORDINATOR'S OFFICE  
411 WEST 4TH AVENUE, SUITE 2C  
ANCHORAGE, ALASKA 99501-2343  
PH: (907) 271-4317/FAX: (907) 272-0690

September 22, 1998

Jim Walters  
National Park Service  
Deputy Wilderness Program Coordinator  
P.O. Box 728  
Santa Fe, New Mexico 87504-0728

[Transmitted via email on September 22, 1998 to JimWalters@NPS.gov]

Dear Mr. Walters:

The State of Alaska has reviewed the National Park Service Reference Manual #41, concerning Wilderness Preservation and Management for the National Park System. This letter represents the consolidated comments of the State's resource agencies.

As stated in our advance comments on August 6, 1998, the State of Alaska reiterates the importance of developing a separate document that fully details wilderness policy and management issues as they apply in Alaska under the Alaska National Interest Lands Conservation Act (ANILCA). The manual's purpose is "to provide superintendents and staff with the information they need to achieve a comprehensive understanding of the laws, policies and procedures applicable to wilderness preservation and management." The manual does not meet this purpose with respect to Alaska.

Since Alaska contains the majority of National Park Service wilderness acreage nationwide, and since ANILCA affects the character of wilderness management here in both obvious and subtle ways, an organized policy approach to the Alaska situation is necessary. Currently, Alaska wilderness "policy" -- when it exists -- is piecemeal, subject to considerable discretion, and fluctuates with staff turnover. Every year there are fewer NPS personnel in Alaska or Washington D.C. who have a direct relationship to the legislative history of ANILCA to maintain an institutional memory. The need for an Alaska-specific policy is immediate. We are on record since 1986 requesting an Alaska wilderness policy.

The alternative to a separate policy is development of full recognition of ANILCA in the existing policy, which would create a cumbersome and potentially confusing document for all users. Before providing some examples where an Alaska-specific policy would be useful, we have a few comments of nationwide significance.

#### State Management of Fish and Wildlife

The NPS should investigate and perhaps emulate the U.S. Forest Service approach to develop workable policies affecting fish and wildlife management and research (including harvests) in wilderness across the nation. The Forest Service proposed new national wilderness policies approximately two years ago which affected or could affect state management of fish and wildlife and related activities. Since these wilderness policies were released, the Forest Service has worked with representatives of the states through the International Association of Fish and Wildlife Agencies (IAFWA) to further address wildlife management issues. New draft policies are scheduled for public review in the next few weeks which are expected to resolve many issues. We encourage the NPS to contact IAFWA and the Forest Service to gain insight into the issues and their resolution for incorporation prior to preparing public policies independent of such cooperative efforts.

#### Wilderness Reviews (page 5)

The nationwide policy presents a process of ongoing wilderness reviews. For parklands in Alaska, ANILCA mandated a single comprehensive wilderness review in Section 1317, which was conducted through the General Management Plans. Those reviews were completed in 1988 and the NPS recommendations were forwarded to the Secretary of the Interior's office, but never transmitted to Congress, as required by Section 1317.

An Alaska policy should clarify the status of wilderness reviews in Alaska. Studies outside the context of Section 1317 are inappropriate, especially in light of ANILCA Section 1326, which prohibits studies for the purpose of creating additional conservation system units (CSUs). In addition, in ANILCA Section 101(d), Congress concludes that additional CSUs are unnecessary.

#### Wilderness Criteria (pages 5-6)

**Access and other existing rights.** Unlike the current policy, the revised nationwide policy instructs managers to explore alternatives for legally terminating and/or mitigating prior rights or privileges, such as motorized activities, in designated wilderness. This runs counter to ANILCA Title XI, which provides long term continuation of motorized uses for several key purposes, subject to reasonable regulations. An Alaska policy should articulate appropriate wilderness criteria consistent with ANILCA. Similarly, rights of way established under Revised Statute (RS) 2477 are not discretionary and cannot be bargained away. RS 2477 rights of way are an issue outside of Alaska as well.

**Grazing.** Special mention is also needed concerning the Bering Land Bridge National Preserve, where ANILCA provides for reindeer grazing, including necessary facilities and equipment. The ANILCA 1317 wilderness recommendations for Bering Land Bridge provided for the continuation of reindeer grazing even in those alternatives in which the grazing operations and facilities would have been located in designated wilderness.

**Utility lines.** ANILCA Title XI and accompanying regulations at 43 CFR Part 36 include a specific process for consideration and approval of new transportation and utility system corridors in CSUs, including wilderness.

Current policy states that "if the planned scope and standard of maintenance [for historic features and trails] would result in the imprint of man's work being substantially noticeable, the trail or other feature should not be included in wilderness." (Chapter 6:2) This criterion has been dropped from the proposed revision. An Alaska policy should clarify that maintenance of trails and historic sites should not preclude an area from qualifying.

#### Wilderness Management and Waterways (page 7)

The proposed policy purports to expand wilderness management to all waters, and the lands beneath these waters, included within the boundaries of wilderness. The incorrect implication is that all waters and submerged lands, regardless of ownership, are subject to NPS management authority. The State of Alaska retains jurisdiction over state-owned navigable waterbodies, including lake and river beds. In addition, ANILCA Section 103(c) confirms that only public (federal) lands within CSUs are subject to ANILCA and applicable regulations.

#### National Wilderness Steering Committee (page 8)

What role does the National Wilderness Steering Committee have in articulating wilderness policy for Alaska?

#### Wilderness Management Plans (page 8)

In light of the requirement that wilderness management plans be developed for all parks with wilderness, it will be important to first address the generic effects of ANILCA on wilderness management in Alaska before delving into the park-specific details -- another justification for a comprehensive Alaska policy.

#### Minimum Requirement (page 9)

This section states that the superintendent's discretionary authority under 36 CFR §1.5 may be used to implement public use limits, closures, general and special regulations, permit systems, or local restrictions. ANILCA Title XI supercedes this authority through closure procedures and requirements found at 36 CFR Part 13 and 43 CFR Part 36 for Alaska park units. This is an excellent example of an important distinction for Alaska that requires separate treatment.

Cabin Construction (page 10)

Recognition of special circumstances surrounding cabin construction in Alaska wilderness is appreciated, although it raises questions about why this Alaska exception is mentioned when others are not.

"Leave-No-Trace" (page 13)

The ANILCA Section 1316 provision for use of "temporary facilities" should be addressed in an Alaska wilderness policy. Section 1316 allows on all public lands the use and construction of temporary campsites, tent platforms, shelters and other temporary facilities and equipment directly related to hunting and fishing activities, including wilderness areas within CSUs.

Motorized Uses "established prior to wilderness designation" (page 13)

The discussion regarding motorized equipment and vehicles by the public within Alaska wilderness areas should be expanded to state that their use is not subject to the "established prior to wilderness designation" standard required for wilderness areas outside Alaska.

Commercial Services (page 14)

This section should also be expanded to include the provisions of ANILCA Section 1316. Under Section 1316 temporary facilities must be removed after termination of activities and uses, but not upon regular or seasonal cessation, as would be required under the proposed policy.

Legislative History (pages 1-3)

An Alaska-specific policy should recognize the role of ANILCA legislative history, focusing on those relatively few sections generally considered valid. The State has conducted an assessment of legislative history and we are available to assist NPS in targeting relevant sections to develop wilderness-related ANILCA background information. Valid legislative history can expand one's understanding of Congressional intent in useful ways. By the same token, legislative history is a tool that can be abused, intentionally or inadvertently, leading to improper interpretations of the law. The legislative record, therefore, can provide useful background, but should not be relied upon as the primary justification for decisionmaking.

We welcome ongoing opportunities for cooperative assessment of Congressional directions in ANILCA and its legislative history which affect Wilderness Management in Alaska.

Thank you for the opportunity to provide these comments. The issues addressed in this letter are not intended to be a comprehensive assessment of all ANILCA modifications that deserve some level of recognition. We hope, however, that they will stimulate the National Park Service to comprehensively address the many special circumstances surrounding management of wilderness

in Alaska. We believe such an effort would be of great benefit to the public and managers alike. If you have any questions, please call me at 907-269-7477.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sally Gibert".

Sally Gibert  
State CSU Coordinator

cc: Robert Barbee, Alaska Region, NPS  
Judy Alderson, Alaska Region NPS  
Ralph Tingey, Alaska Region NPS  
John Katz, Governor's Office, Washington, D.C.  
Marilyn Heiman, Governor's Office, Juneau  
Diane Mayer, Director, Division of Governmental Coordination  
John Shively, Commissioner, Department of Natural Resources  
Frank Rue, Commissioner, Department of Fish and Game  
Joseph Perkins, Commissioner, Department of Transportation and Public Facilities  
Michele Brown, Commissioner, Department of Environmental Conservation