



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**ANILCA Implementation Program**  
OFFICE OF PROJECT MANAGEMENT AND PERMITTING

550 W. 7<sup>th</sup> Avenue, Suite 1430  
Anchorage, AK 99501  
Main: 907.269.7529  
Fax: 907.269.5673

April 24, 2017

Beth Pendleton, Regional Forester  
USDA Forest Service, Alaska Region  
709 W. 9<sup>th</sup> Street  
P.O. Box 21628  
Juneau, AK 99802-1628

Re: Objection to the 2016 Shoreline II Outfitter/Guide Plan  
Responsible Official: M. Earl Steward, Forest Supervisor  
Objector: State of Alaska

Dear Ms. Pendleton:

The State of Alaska reviewed the Shoreline II Outfitter/Guide Draft Record of Decision (ROD) and Final Environmental Impact Statement (FEIS). The State submitted comments both at scoping and on the Draft Environmental Impact Statement (DEIS). The State also commented separately on the Wilderness Commercial Needs Assessments (WCNA), which were incorporated into the plan and served to inform the final selected alternative, including WCNAs for the Tracy Arm – Ford’s Terror Wilderness Area, the Chuck River Wilderness Area, the South Baranof Wilderness Area, the Kootznoowoo Wilderness Area, the West Chichagof – Yakobi Wilderness Area, and the Pleasant, Lemesurier and Inian Islands Wilderness Area.

Outfitting and guiding opportunities are very important to the local and regional economies of Southeast Alaska. The Shoreline II Outfitter/Guide plan allocates a portion of visitor capacity to outfitter and guide use on lands in the Admiralty Island National Monument, and Hoonah, Juneau, and Sitka Ranger Districts. According to the ROD, the selected alternative addresses the issue of economic opportunities, which was identified as a significant issue for the plan, by providing for an overall increase in use opportunity in the planning area.

We are supportive of the intent behind the adaptive management strategy in the plan, which allows for increased allocation in areas where guided use is both desired and sustainable. In response to comments received on the DEIS, the Forest Service indicates adaptive management is intended to be a collaborative and transparent process (Appendix E -7 and 8). We encourage the Forest Service to periodically assess whether the strategy is working as intended. In particular, we request consideration of the economic viability of the program for commercial service providers and whether the cost recovery aspect of the program is sustainable so that it does not unintentionally discourage requests for increased allocation.

## **OBJECTION ISSUES**

We are concerned that the following issues, being largely procedural and not necessarily limited to the Shoreline II planning area, could lead to unnecessary reductions in guiding opportunities forest-wide, compounding the lost economic opportunities associated with former Secretary of Agriculture Tom Vilsack’s recent direction implemented in the final Tongass Land Management Plan Amendment to transition the Tongass from old-growth to young growth timber harvest.

We appreciate the opportunity to submit this objection and respectfully request your thoughtful consideration of the following issues.

1. **Guided deer hunting closures were not properly identified in draft plan, lack justification, and circumvent the Alaska Board of Game and Federal Subsistence Board processes.**

The State's scoping comments, dated July 31, 2014, and comments on the DEIS, dated April 25, 2016, requested that the Forest Service recognize and fully utilize the Alaska Boards of Fisheries and Game (BOF and BOG, respectively) and the Federal Subsistence Board (FSB) to address user conflict issues associated with the allocation of fish and wildlife. The State's comments also requested the Forest Service consult with the Alaska Department of Fish and Game (ADF&G) on issues involving fish and wildlife resources and state management activities. The State's comments further requested the plan provide documented examples of user conflicts, including explanations for how perceived conflicts are reported, documented and quantified, to ensure that appropriate and effective solutions are implemented.

The plan imposes guided deer hunting closures in Use Area 04-05A SW Admiralty, and 04-11A Port Frederick. The proposed closures were identified in the use area cards in Appendix A of the plan (Use Area 04-05A SW Admiralty, Appendix A, page 89, and Use Area 04-11A Port Frederick, Appendix A, page 120); however, both closures were incorrectly listed in the subsistence sub-sections under Management and Resource Considerations, rather than the Design Features and Mitigation section. As such, the State did not become aware of the closures until the release of the FEIS, which indicated the use area card was corrected for Use Area 04-05A SW Admiralty to appropriately identify the closure under the use card's Design Features and Mitigation section. Use Area Card 04-11A Port Frederick was not corrected in the FEIS.

The plan also did not appropriately substantiate the closures to guided deer hunting. The respective use area cards generally state the reason for both closures is to avoid competition between subsistence and guided hunters. The environmental consequences section of the plan does not discuss the Port Frederick closure. The discussion in the environmental consequences section for the Admiralty SW closure merely cites concerns expressed by the adjacent community of Angoon of the "potential" for competition and user displacement as justification. The same discussion affirms the speculative nature of the issue, indicating there is very little guided deer hunting occurring in the proposed closed area and that much of the guided deer hunting is incidental or in combination with other hunts. No reported incidents are cited and the discussion further clarifies that the area surrounding the community of Angoon is outside of the planning area.

*Competition between guided hunters and subsistence users for hunting areas **may also occur**. Generally, subsistence users harvest in traditional use areas surrounding their communities (fall 2014). If these areas are being used by guided hunters, subsistence users **may be displaced, even if the target species is plentiful**. Outfitters and guides can provide access to important subsistence use areas for people who would not likely be able to access these areas otherwise. Guided big game hunting allocations would not vary by alternative. Therefore, all alternatives could increase guided deer hunter access to important subsistence use areas. Concern about this type of competition is shown in a resolution submitted by the Angoon Community Association (ACA) in response to project scoping. The ACA stated that they oppose commercial outfitters and guides hunting deer around the community of Angoon. **The area surrounding the community of Angoon is outside the project area** (see Figure 1-1) and no outfitter/guide activities are proposed there. In addition, the Admiralty National Monument Ranger has proposed to close use area 04-05A SW Admiralty, south of Angoon to guided deer hunting (see Appendix A, Use Areas). This would have minor effects on guided use as there is **little reported guided deer hunting in the proposed closed area**. **Based on actual use reports, the area is not used yearly**. From 2010-2014 guides reported using this area during 2 years for a total of 17 service days.*

*This closure would not apply to other guided use activities.* (Emphasis added, DEIS, page 3-206 and FEIS, page 3-152).

Despite the plan's commitment to work cooperatively with ADF&G and documentation of discussions with State area biologists on other issues (FEIS, page 1-14), the Forest Service did not consult with ADF&G on these wildlife-related closures, nor to our knowledge, was there any effort to bring the issue before the BOG or the FSB. ADF&G is responsible for the management and sustainability of all fish and wildlife in Alaska, including for subsistence purposes, regardless of land ownership, unless specifically preempted by federal law. The BOF and BOG address issues related to the allocation of fish and wildlife among all user groups, including for subsistence. The FSB assures Alaska's rural residents a subsistence priority opportunity among consumptive uses of fish and wildlife on federal lands under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA). These existing regulatory processes are the appropriate venue for addressing any issues related to harvest allocation or methods of take. Prohibiting guided hunts based solely on unsubstantiated allocation concerns through this plan circumvents these existing public regulatory processes. In addition, and as acknowledged in the plan, ADF&G could use its emergency authority to restrict or close hunting if necessary, and the State and Federal boards may issue closures, change seasons, or restrict use by non-subsistence hunters if populations decline such that competition may become an issue, as occurred in GMU 4, following the winters of 2006-2009.

We therefore request that the Forest Service continue to permit guided deer hunting in use areas 04-05A, SW Admiralty, and 04-11A Port Frederick. In lieu of closures, we recommend the Forest Service rely on the adaptive management provision in the plan to monitor and document incidents of conflict between user groups. Should allocation-related conflicts occur in the future, the Forest Service will have the necessary data and information to provide to the appropriate Boards for their consideration.

## **2. Guided fishing closures were not properly identified in draft plan, lack justification, and circumvent the Alaska Board of Fisheries and Federal Subsistence Board processes.**

The State's scoping comments, dated July 31, 2014, and comments on the DEIS, dated April 25, 2016, requested that the Forest Service recognize and fully utilize the BOF, BOG, and the FSB to address user conflict issues associated with the allocation of fish and wildlife. The State's comments also requested the Forest Service consult with ADF&G on issues involving fish and wildlife resources and state management activities. The State's comments further requested the plan provide documented examples of user conflicts, including explanations for how perceived conflicts are reported, documented and quantified, to ensure that appropriate and effective solutions are implemented.

The plan imposes new prohibitions on guided sport fishing in Use Areas 04-02B Whale Bay, 04-12 Tenakee Inlet, and 04-14 Slocum Arm, which apply seasonally (time periods vary per location), on weekends and holidays at specific sites in the Sitka Ranger District. The proposed closures were identified in the use area cards in Appendix A of the plan. While the closures were identified on in the Design Features and Mitigation section of the use area cards and the fisheries section generally discusses the existing use, including the presence of subsistence and unguided fishing activities; explicit justification was not provided on the use cards or in the fishing resources sections of the environmental consequences chapter. Like the deer hunting closures, related discussion is only found in the subsistence section, even though the closures affect guided use. Further, the ANILCA Section 810 analysis for the entire planning area concludes that there is no impact to subsistence use. Instead, the apparent justification for the closures is social concerns that the plan claims will always be present when subsistence and guided use coincide.

*Despite no impacts to abundance, distribution, competition or access there is a social concern that guided use could impact subsistence users. This social issue would occur if guided users and subsistence users were in an area at the same time. Social conflicts could occur and currently there is*

*no direction or regulation to reduce the risk of this effect. This is a social issue, not a resource issue and is addressed elsewhere in the project record.* (Emphasis added. Subsistence Fishing, DEIS page 325 and FEIS page 181).

The plan does not explain why the social concerns, should they occur in these three areas, cannot be mitigated by placing stipulations on guide use permits or actions by the BOF or the FSB. Nor does it explain why there are not similar social concerns in other areas where subsistence and guided use coincide.

Without discussing these parameters explicitly, closures imposed on guided sport fishing use are not justified, and the need for and consequences of these actions cannot be assessed. We note that similar closures were imposed in the 2004 Shoreline Outfitter/Guide Final EIS (Use Areas 01-04A Berners Bay, 01-04C Taku Inlet, 04-01A Gut Bay, 04-01B Port Armstrong, 04-02A Redoubt Lake, 04-04B Kelp Bay, and 04-09B Pack Creek Zoological Area), which have been carried forward in the Shoreline II FEIS. Even though these closures have been in place for more than ten years, they have not been identified as existing, nor is there any discussion or analysis of the effectiveness of the closures and whether they are achieving their intended goal.

Despite the plan's commitment to work cooperatively with ADF&G (FEIS, page 1-13), the Forest Service did not consult with ADF&G on these fisheries-related closures, nor to our knowledge, was there any effort to bring the issue before the BOF or the FSB. ADF&G is responsible for the management and sustainability of all fish and wildlife in Alaska, including for subsistence purposes, regardless of land ownership, unless specifically preempted by federal law. The BOF and BOG address issues related to the allocation of fish and wildlife among all user groups, including for subsistence. The FSB assures Alaska's rural residents a subsistence priority opportunity among consumptive uses of fish and wildlife on federal lands under Title VIII of ANILCA. These existing regulatory processes are the appropriate venue for addressing any issues related to harvest allocation or methods of take. Prohibiting guided fishing based solely on unsubstantiated concerns through this plan circumvents these existing public regulatory processes. In addition, and as acknowledged in the plan, ADF&G could use its emergency authority to restrict or close fishing if necessary, and the State and Federal boards may issue closures, change seasons, or restrict use by non-subsistence users if stocks decline such that competition between user groups becomes an issue. It is our understanding that no conservation concerns have been identified for fishery stocks located in the new closure areas.

We therefore request that the Forest Service continue to permit guided fishing in use areas 04-02B Whale Bay, 04-12 Tenakee Inlet, and 04-14 Slocum Arm. In lieu of closures, we recommend the Forest Service rely on the adaptive management provision in the plan to monitor and document incidents of conflict between user groups. Should allocation-related conflicts occur in the future, the Forest Service will have the necessary data and information to provide to the appropriate Boards for their consideration.

### **3. Internal WCNA decision process unnecessarily forecloses guided use opportunities.**

The State's scoping comments dated July 31, 2014, and comments on the DEIS, dated April 25, 2016, address the process for considering requests for guided use either found to be "not necessary" or not evaluated in WCNAs written in support of this planning effort. In addition to comments specific to the Shoreline II Outfitter and Guide Plan, the State also commented on this issue numerous times in the context of individual WCNAs.

The WCNAs are internal documents prepared by the Forest Service to determine the categories of commercial recreational activities that will be allowed within specific designated wilderness areas pursuant to Section 4(d)(6) of the Wilderness Act. We understand that the Forest Service is responsible for maintaining wilderness character to the extent allowed by law; however, the Wilderness Act also established this allowance to ensure that these areas are "administered for the use and enjoyment of the American people" (Wilderness Act, Section 2(a)). This is especially important in Alaska, where an outfitter or guide's knowledge, skills and abilities are often essential for many members of the public to gain safe access to these remote and undeveloped areas.

*Commercial services may be performed within the wilderness areas designated by this Act to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas.* [Emphasis added, Section 4(d)(6) of the Wilderness Act]

The WCNA's indicate they will be updated only "...when *substantial* changes occur in natural systems and/or commercial recreation service markets" (Emphasis added). According to the Forest Service's response to the State's comment (FEIS, Appendix E), a new activity would constitute a "change" in commercial recreation service markets, warranting further consideration by the Forest Service. Upon receipt of an application for a new activity, administrators would examine whether the newly proposed activity fits under the categories evaluated in the applicable WCNA (i.e. remote setting nature tours, camping, fishing, hunting and floatplane landing tours) to evaluate if a determination has already been made. If not, the new use would be assessed and evaluated to determine "whether or not there is a need for it in wilderness." Findings would then be reflected in an updated WCNA (Appendix E, page 45).

We appreciate this clarification and request both the ROD for the Shoreline II plan and the individual WCNA's include this important clarification. The WCNA's have been removed from the final plan, and individually they continue to state that they will not be revisited until "*substantial* changes occur in natural systems and/or commercial recreation service markets" (emphasis added).

The State's comments also expressed concern that the current WCNA process, which pre-determines the necessity for certain commercial service activities in advance of a specific request from an operator, forecloses economic opportunities without consideration of mitigation measures that could reduce or eliminate impacts to wilderness resources or other users, such as limiting hours of operation in certain high use areas. Negative determinations for floatplane landing tours were provided as an example; however, this concern applies to any category of use that is determined to be "not necessary" independent from an actual proposal.

We understand this exercise is rooted in the Wilderness Act and that Forest Service policy guidance generally requires managers to "ensure that outfitters provide their service to the public in a manner that is compatible with use by other wilderness visitors and that maintains the wilderness resource" (FSM 2323.13g); however, the process for determining that threshold is not specified. The WCNA conducted for the Tongass National Forest in 2007 indicates it is "a long and continuous process" that involves "dialogue with interested parties, commercial users and the general public."<sup>1</sup> We therefore request the WCNA process allow for further evaluation of proposals that fall within all categories evaluated, including those determined to be "not necessary." This will ensure proposals that address unique needs not previously considered, satisfy concerns expressed in a WCNA, or address other public purposes specified in the Wilderness Act (i.e. recreation, scenic, scientific, educational, conservation, and historical use), are given full consideration by managers and not dismissed out-of-hand based on a prior generalized analysis.

We also reiterate our previous requests to the Forest Service to provide the public with an opportunity to comment on new or updated draft WCNA's prior to finalization or inclusion as supporting documentation in a plan. We appreciate that applicable WCNA's have been included in the appendix of recent outfitter and guide plans, including Shoreline II; however, WCNA decisions have the potential to have far greater impacts than conveyed to the public in the plans,<sup>2</sup> especially if our procedural concerns are not addressed as requested above.

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<sup>1</sup> Determination of Need for Commercial Services within Wilderness Areas on the Tongass National Forest, August 2007, page 1.

<sup>2</sup> References to WCNA's in the plan do not explain that "not necessary" determinations permanently foreclose commercial service opportunities, without consideration of mitigation measures that could offset impacts to wilderness character (e.g., in Shoreline II, float plane landing tours were found "not necessary"). For example, the following are explanations for the WCNA's in the Shoreline II plan, "At the Forest level and the local District level, the Forest Service also conducts: \*wilderness commercial needs assessments to apply administrative standards pertaining to commercial use in Wilderness, and \*monitoring to ground-truth the status and trends of wilderness character." (page 3-17 and 18); "The wilderness commercial needs assessments for the six wilderness areas find a need for some commercial services for the role they play in realizing the public purposes of wilderness while conforming with the preservation of wilderness character (USDA Forest Service, 2013, 2014(a), b, c, and d)." (page 3-18); and "The Wilderness Commercial Needs

These internal decisions affect the management of public lands, individual guiding operators, and the overall economy of southeast Alaska. The public deserves an opportunity to provide feedback on draft WCNAs to inform both the analysis and outcome.

Thank you for your careful consideration of these issues. Pursuant to 36 CFR 218.11, we request an opportunity to meet to discuss the issues raised in this objection. Please contact me at (907) 269-7529 to schedule a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Magee", written in a cursive style.

Susan Magee  
ANILCA Program Coordinator

Enclosures