



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources
OFFICE OF PROJECT MANAGEMENT AND PERMITTING

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January 22, 2024

Director, Bureau of Land Management
U.S. Department of the Interior
Room 5646, 1849 C St. NW
Washington, DC 20240
Attn: Regulatory Affairs: 1004-AE89

Submitted electronically at <https://www.regulations.gov>

Re: Temporary Closure and Restriction Orders, RIN 1004-AE89

Dear Director:

The State of Alaska (State), Departments of Natural Resources (DNR) and Fish & Game (ADF&G), reviewed the Bureau of Land Management (BLM) proposed rule regarding temporary closure and restriction orders. and provides the following comments.

We appreciate the statement in the preamble indicating the proposed rule will not negate any of the public comment opportunities provided for under NEPA, the Dingell Act, and ANILCA. However, the proposed rule fails to address the interactions the proposed rule will have with other statutory requirements in the Dingell Act and ANILCA especially. The Dingell Act, for example, specifically limits temporary closures to a maximum of 180 days and only allows a renewal of a temporary closure three times.

We request BLM continue to provide flexibility under any closure regulations. We request the final rule match the limits on closures Congress directed in the Dingell Act, as well as include the allowances for certain activities allowed under ANILCA. We also request the final rule require, in accordance with the Dingell Act, ANILCA and 43 CFR part 24, consultation with State management agencies prior to any temporary closures to BLM lands.

Alaska National Interest Lands Conservation Act

The Alaska National Interest Lands Conservation Act (ANILCA) created conservation system units (CSUs) across Alaska, including on some BLM land, and protects access for traditional activities in these areas. Additionally, ANILCA protects access for subsistence activities for rural residents on all public lands and temporary access in the National Petroleum Reserve – Alaska (NPR-A). To recognize congressional intent in ANILCA, access to BLM lands should not be managed more restrictively than CSUs in Alaska. The State requests BLM reference ANILCA in the final rule and acknowledge that ANILCA applies where temporary closure or restriction orders impact access for traditional activities on CSUs, access for subsistence activities on public land, or temporary access in the NPR-A.

In Alaska, ANILCA provides a definition for the term “public lands.” We request the final regulation note that in Alaska, the definition found in ANILCA will prevail.

The proposed regulation also fails to discuss how it will interact with the provisions of ANCSA and ANILCA in Alaska. Due to the inherent complexities these statutes impose on federal land management in ANILCA, we recommend exempting Alaska from these regulations and develop Alaska-specific regulations.

Alaska-specific regulations

The State requests the BLM develop Alaska-specific closure regulations. Adopting closure regulations for Alaska allows BLM to consider the unique requirements of ANILCA and follows the lead of the Department of the Interior (43 CFR Part 36), the NPS (36 CFR Part 13.50), and the U.S. Fish and Wildlife Service (50 CFR Part 36). This approach would also support BLM’s articulated intent to bring temporary closure and restriction order regulations into alignment with those at the National Park Service (NPS) and the U.S. Forest Service (USFS).

The State requests the BLM incorporate the following elements in its final temporary closure and restriction order regulations (either in an Alaska-specific regulation or, if BLM chooses to proceed with a national regulation, in the final rule):

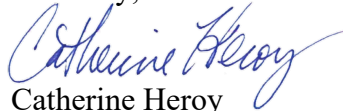
- Add a requirement to consult with state fish and wildlife agencies before issuing temporary closures or restrictions related to fish, wildlife, hunting, fishing, or trapping; this could fit in §8364.1(a). For example, see NPS regulations at 36 CFR 13.50.
- Define the length of temporary and emergency closures consistent with Alaska regulations for NPS (36 CFR 13.50) and USFWS (50 CFR Part 36): *temporary* closures are less than 12 months and not reoccurring annually; *emergency* closures cannot exceed 60 days. This could be added to 8364.1(b)(3).
- Add a specific exemption to the final national rule for:
 - Alaska provisions, potentially in 8364.1(b)(4).
 - Access for subsistence activities in Alaska pursuant to ANILCA Section 811
 - Special access for traditional activities and access to inholdings on CSUs
 - Temporary access in NPR-A

Additionally, the BLM cites 16 U.S.C 877 in the list of authorities for part 8360, but this authority does not appear to exist¹. Please clarify which act or authority should be referenced in the authority section.

Closing

Thank you for the opportunity to comment. Please contact me at (907) 269-0880 or by email at Catherine.heroy@alaska.gov to coordinate any follow up discussions.

Sincerely,



Catherine Heroy

Federal Program Manager and ANILCA Coordinator

¹ <https://www.govinfo.gov/link/uscode/16/877> returns no results when attempting to view this information.