

# STATE OF ALASKA

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March 20, 2000

Loren Fraser  
National Park Service  
Office of Policy  
Room 2414, Main Interior Building  
Washington, D.C. 20240

Dear Mr. Fraser:

The State of Alaska has reviewed the January 2000 Draft National Park Service Management Policies. This letter contains the consolidated comments of the State's resource agencies and focus on two primary areas of concern: (1) coordination with and deference to the State's management authorities for fish and wildlife, and (2) full recognition of provisions of the Alaska National Interest Lands Conservation Act (ANILCA). We also note additional jurisdictional concerns that would be corrected by appropriate reference to the enabling legislation for each park.

We appreciate the number of proposed policies which require coordination with the states and anticipate these will substantially improve interagency relationships to the benefit of the fish and wildlife resources. However, several policies overlook the State's role, management authorities, regulatory responsibilities, and permit requirements. We strongly recommend the Service revise the Policies to more consistently clarify required deference to and coordination with state authorities for fish and wildlife, as well as navigable waters.

### GENERAL COMMENTS

The Introduction contains a dichotomy between statements that all policy will be in writing and statements that the Policies document sets "*the framework and provides direction for all management decisions.*" (Introduction: page i) According to the first paragraph, "*the Park Service . . . develops policy to interpret the ambiguities of the law and fill in the details left unaddressed by Congress in statutes.*" Similarly, the second paragraph states: "*any of the statutes and other guidance affecting the various facets of NPS administration and management are cited for reference purposes throughout NPS*

*Management Policies. Other laws, regulations, and policies related to the administration of federal programs, **although not cited, may also apply.***” (emphasis added)

This seeming intent that the Policies interpret, fill in details, and provide guidance is in sharp contrast to paragraph 4: “*All policy will be articulated in writing, and be approved by a National Park Service official authorized to issue the policy*” and paragraph 6 (p.ii): “*Adherence to policy will be mandatory unless specifically waived or modified in writing by an appropriate authority.*” Thus individual managers may interpret “*laws, regulations, and policies*” which they believe apply; yet may make no changes in applying the written Policies without a high level official concurrence. This unresolved dichotomy could be troublesome.

This is particularly striking in Alaska. Page iii of the Introduction, paragraph 2 states:

*For example, many, but not all, of the legislative exceptions of the Alaska National Interest Lands Conservation Act (ANILCA) are cited at different places throughout Management Policies. The additional legislative exceptions of ANILCA, although not cited, must also be considered in the interpretation and application of these policies, as must all other applicable legislative exceptions and requirements.*

The example states that additional legislative exceptions must be considered in interpreting and applying these policies. ANILCA alone in creating and redesignating 13 park units in Alaska contains many significant differences in the enabling legislation for management of public uses; e.g., access is open until closed. Managers transferred into Alaska would be unaware of the extent and application of these differences if they are not appropriately cited in the Policies. We imagine this might be true for other park units as well in that the introduction does not give specific deference in the application of the Policies to the enabling legislation. **We request the Policies be revised to more emphasis on the enabling legislation than subsequent regulations and management policies.**

More than half of the acreage in the entire National Park System is located in Alaska and subject to ANILCA. Consistent with the State's recommendations to the Draft Management Policies on June 10, 1988, the State urges the Service to develop a separate, yet parallel, policy document that merges nationwide policies with the numerous special provisions of ANILCA. Such a document would be extremely valuable to park managers and the public in Alaska who are continually called upon to make judgements about the relationship between ANILCA-based and nationwide policies . . . a separate set of policies would be more meaningful to both the public users and federal managers of Alaska park units, and would avoid burdening the general reader with complex discussion pertinent only to Alaska. The 2000 Policies contain references to ANILCA, which we appreciate. However, these references imply to the reader and manager that ANILCA is comprehensively addressed.

The proposed ecosystem approach focuses on natural system functions and processes, which is generally appropriate for managing habitat on park system lands. There are, however, many new conceptual ideals for which there are no measurable standards or objectives; e.g., management for “*natural ambient odorscape*.” These concepts must be better defined in relation to the activities and conditions which were recognized by the original enabling legislation. Setting goals and objectives which counter statutorily protected activities on park lands sets the Service up for unnecessary public expectations as well as user conflicts. Where activities regulated by the State, such as management of resident fish and wildlife, may be affected by new approaches, close cooperation must be exercised to reach mutual goals.

## **PAGE-SPECIFIC COMMENTS**

**2.3.1 General Management Planning.** This chapter (Chapter 2:3-2.5) presents general guidelines for park planning. ANILCA Section 1301 contains more specific requirements for general management plans in Alaska and all subsequent plans or revisions, specifically calling for more rigorous agency and public involvement and more comprehensive analysis of resources, transportation, and other activities. We request this be recognized in this chapter.

**3.2 Land Protection Methods, 3.5 Land Acquisition Authority.** We request this chapter recognize that ANILCA Section 1302 imposes restrictions on the acquisition of non-federal lands in Alaska. ANILCA was also recently amended to require the Service to provide options for land exchange when acquiring lands within Alaska parks prior to pursuing purchase.

### **Chapter 4**

This chapter puts considerable emphasis on a primary management objective for all parks to preserve “*naturalness*”, which “*denotes minimal human influence*.” This objective must be implemented on a unit by unit basis depending upon the original purposes for the park in the enabling legislation. Preserving a park unit which has legislated directives to allow public uses and activities, e.g., aircraft access, hunting, may not be viewed as “*minimal human influence*” by some managers. Some park units were established around relatively untrammelled settings in which great numbers of people relished fishing for non-native stocked fish. Obviously, these factors must be fairly considered in establishing the objectives for that park.

Although there are references to coordination and consultation with state agencies on issues related to fish and wildlife, there should be a more direct recognition of state authorities, responsibilities, and regulatory roles in management of fish and wildlife. Unless Congress specifically reserved that authority, it remains vested in the State. Decisions made to “*re-establish natural functions*” where the state’s fish and wildlife management is affected should be coordinated prior to making those decisions. Further, in many states such as Alaska, the collection, handling, release, and transport of fish and wildlife species requires specific permits of public and private entities. These issues are

resolved in the Master Memorandum of Understanding signed by the Service and the Alaska Department of Fish and Game. However, we request the Policies be revised to more directly recognize these respective responsibilities overlay the park.

#### **4.1.7 Partnerships**

Where state authority for handling and management of fish and wildlife activities occurs on the park lands, we request the Policies be revised to explicitly recognize Service actions will be conducted consistent with state requirements.

#### **4.2 Studies and Collections**

Throughout this section (Chapter 4:5-8), state regulatory authority and permit requirements for collection and handling of fish and wildlife needs to be clearly recognized. We request the Policies explicitly require such collection receive applicable state authorization. As written, most of this chapter refers to the state in more veiled terms such as “*other appropriate*” authorizations.

We also urge the Policies to be revised to clearly instruct managers to direct all studies affecting species managed by the states to be designed in close cooperation with the state. There have been too many instances of lost effort where the Service or other organizations have conducted studies using methodologies, technology, or study objectives which were proven unsatisfactory or not compatible with data acquired through other long-term scientific programs with peer review.

#### **4.3.1 Research Natural Areas**

These areas may be more difficult to establish in Alaska given the constraints of the enabling legislation which prohibit the restriction of access and other public use activities except under specific criteria and formal rulemaking. Prior to establishing these areas, the Policies must recognize enabling legislation and coordination with the state if management of fish and wildlife may be affected.

#### **4.4.5.2 Harvested Aquatic Species**

In all discussions of “*stocking of native or exotic species*”, we request inclusion of explicit recognition of state regulatory authorities for transport, handling, and release of fish and wildlife species. All such stocking should be evaluated in cooperation with state fish and game agencies and be conducted consistent with state requirements.

#### **4.4.7 Genetic Resources**

Although a laudable goal, we wonder if the requirements that genotypes be identified specifically before any management actions can occur is reasonable. Genotyping is a relatively new science and genetics work is still in early research stages. Lack of availability of geneticists may further limit the Service’s ability to take action if they must identify “*closely related genetically and ecologically as possible*” and also require “*research on genetic compatibility of populations.*” We request the Policies be revised to include some criteria for exercising a degree of flexibility by managers to act when this information is not available (nor agreed upon among respected scientists).

Any of the identified programs, such as planting of fish and transplants of wildlife should include cooperative evaluation with state agencies having fish and wildlife management responsibility. We also request recognition that these programs must be conducted consistent with state management policies, laws, and requirements.

We are particularly concerned about how managers may interpret the last sentence (Chapter 4:17): “*When individual plants or animals are removed for any reason—such as hunting, fishing . . . —the Service will maintain appropriate levels of genetic diversity in the residual populations.*” This Policy could be interpreted to require considerable genetic research prior to the conduct of routine state fish and wildlife management programs. We request this be deleted and replaced with explicit recognition of state authorities for management and handling of fish and wildlife.

#### **4.4.8 Restoration of Native Plants and Animals**

We request additional criteria to include provisions for relocations/transplants of species which disappeared for other reasons than just “*human-induced*”. Ecological disaster or unknown reasons may be the cause for disappearance of a species prior to science’s ability to absolutely discern either the genetics of the original species or the cause of extirpation. If environmental factors indicate the other conditions now exist to support successful restoration of a similar species, then it should be allowed consistent with the guidelines established by the IUCN (International Union for the Conservation of Nature).

#### **4.4.10.2 Management of Exotic Species Already Present**

We request inclusion of a commitment to develop management plans and decisions in cooperation with state fish and wildlife agencies, particularly if the species is under the regulatory jurisdiction of the state or other species under state management may be impacted by the Service’s desired management action.

#### **4.9 Soundscape Management, 4.10 Lightscape Management, 4.11 Odorscape Management (Chapter 4: 34-37)**

Care must be exercised in pursuing the unquantifiable goals in these sections. Activities for which the park is to be managed under enabling legislation must take priority over the goals of these sections. These goals all give the impression that the Service intends to try to restrict activities and non-park developments, e.g., aircraft overflights and landings, highway sounds, legal snowmachine access, remote parcel generators, and smells from campfires, all of which may occur outside the parks or be protected by federal laws.

Goals such as the following may be an unrealistic mandate to a manager: “*The Service will restore degraded soundscapes to the natural ambient condition wherever possible and will protect them from degradation due to human –caused noise.*” Legislated protections for visitor use opportunities should not be limited because a manager believes it “*exceeds levels that have been identified as acceptable.*” Similarly, the following goal is questionable: “*The National Park Service will preserve the natural ambient lightscaapes of parks, which are natural resources and value that exist in the absence of human-caused light.*” While seeking cooperation of adjacent land owners, the Service

should not exercise extended authority to regulate the lighting of homes and communities or visitor developments outside of parks, nor the conduct of routine fish and wildlife management and use activities which require equipment, light, and activities on a short-term basis.

**Page 4:37** states: *“In providing for use of motorized conveyances in air, on land, and on water, the Service may allow emission of exhaust that can cause low and intermittent levels of disruption of the natural ambient odorscape in selected corridors used for human travel. In situations where there is likely disruption of sensitive natural resources, the Service may limit motorized uses to only types of motors that cause minimal release of chemicals.”* This contradicts clear statutory protections in ANILCA for guaranteed access via snowmachines, motorboats, and aircraft except where resource damage occurs. For example, motorized use in Alaska is not restricted to corridors.

## **6.2 Identification and Designation of the Wilderness Resource**

The Policies state: *“All lands administered by the National Park Service, including new units or additions to existing units since 1964, will be evaluated for their suitability for inclusion within the National Wilderness Preservation System.”* ANILCA Section 101(d), commonly referred to as the “no more clause”, states that *“. . . disposition of the public lands in Alaska pursuant to this Act are found to represent a proper balance between reservation of national conservation system units and those public lands necessary and appropriate for more intensive public use and disposition, and thus Congress believes that the need for future legislation designating new conservation system units . . . has been obviated thereby.”* ANILCA Section 102 defines such units to include Wilderness. ANILCA Section 1317 required the federal agencies to conduct studies of all those lands not designated Wilderness by the Act for possible addition. The agencies completed those studies in the late 1980s and forwarded those to the Secretary. We urge the Service revise the Policies to exclude Alaska from the unnecessary expense and controversy of additional Wilderness studies in light of the completed studies and the Congressional directives.

We also observe that the Policies quoted above to conduct evaluation for Wilderness suitability apply only to lands legislatively under the management of the Service, not all lands “*administered*” by the Service. The Service does not have authority to recommend Wilderness designation over state waterways, for example, or for private lands under management agreement by the Service.

Activities necessary for the conduct by the state for management and research of fish and wildlife should be coordinated by the State with the Service to apply the minimum tool requirement. However, we request the Policies be revised to clarify that such activities shall not be prohibited where their occurrence in the general area pre-dates the creation of the wilderness designation without following the applicable regulatory procedures.

ANILCA Section 1316 allows, subject to a compatibility determination, temporary facilities on all public lands where the taking of fish and wildlife is permitted; Section 206 protects valid existing rights.

**Chapter 6:11** states: “*No . . . airstrips will be allowed in wilderness unless specifically authorized by statute or legislation.* ANILCA specifically allows the use of aircraft, including landings, on traditional sites such as tundra (undeveloped) strips in Wilderness. Obviously to keep these access sites safe, maintenance by those who use them should continue to be allowed, and not just for emergencies. (See General Management Plans for Alaska park units.) We request the Policies be revised to reflect these statutory exceptions.

### **6.3.11.3 Waters in Wilderness**

The Service cannot manage state owned waters or lands under state navigable waters that may occur within the exterior boundaries of a designated Wilderness area. The Service can only manage those lands and waters which are legislatively within its jurisdiction, not over those waters it administratively attempts to extend jurisdiction.

### **7.5.3 Resource Issue Interpretation and Education**

Where interpretation and education programs involve resources under the management of the state fish and wildlife agency, we request the Policies be revised to direct that the managing agency coordinate with the State. When state agencies are largely responsible for data or management information, the Service should coordinate with the affected agency(s) to assure accurate and coordinated releases to the public.

### **8.1 General, Use of the Parks**

We again request the Policies clarify that all activities regulated under state authority affecting fish and wildlife be appropriately and specifically recognized throughout this section.

### **8.2.2 Recreational Activities**

First paragraph, last sentence of this section (Chapter 8:4): aircraft use, bicycling, snowmobiling and other activities are allowed in ANILCA units without “*special, park-specific regulations*” We request the Policies include this exception. Similar corrections need to be made for **8.4.8 Airports and Landing Sites**; use of aircraft in Alaska parks is permitted (commonly “open until closed”); designation of landing sites would render all traditional tundra landings as illegal, contrary to the spirit and intent of ANILCA Section 1110(a).

8.2.2.1 goes on to state (Chapter 8:5) that local restrictions, public use limits, closures, and designations can be implemented under the discretionary authority of the superintendent in 36 CFR 1.5. These authorities are significantly restricted by the provisions ANILCA and the Alaska specific regulations at 36 CFR Part 13 and 43 CFR Part 36.

**8.2.2.3 River Use:** The Policies direct each park to develop a river use management plan. Most rivers subject to public uses are navigable and thus under the jurisdiction of the state unless Congress specifically withdrew the submerged lands. Park management plans for the uplands surrounding the rivers should be developed cooperatively with the state to protect resources and consider limiting impacts of public uses. The Service has no jurisdiction over state waters except to regulate public safety within the exterior boundaries of the park units.

**8.2.2.5 Fishing and 8.2.2.6 Hunting and Trapping**

While these discussions specifically recognize states will be consulted, we believe the policies should more appropriately defer to close coordination with the states in their resource assessment and regulatory processes. Federal regulations should only be adopted where absolutely necessary and the state process has been exhausted, not just to duplicate state regulations.

**8.3 Recreation Fees and Reservations**

ANILCA Sec. 203 prohibits the charging of admission and entrance fees to Alaska parks.

**8.6.5 Access to Private Property**

We request the Policies be amended to recognize access to state and private inholdings in Alaska parks is guaranteed by ANILCA Section 1110(b) and regulations occur in 43 CFR Part 36.

Thank you for the opportunity to review these Management Policies. If you have any questions, feel free to call me at 907-269-7477.

Sincerely,

/ss/

Sally Gibert  
State CSU Coordinator

cc: John Katz, Governor's Office, Washington, D.C.  
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