

STATE OF ALASKA

ANILCA IMPLEMENTATION PROGRAM

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RE: Minimum Requirement Decision Guide

The State of Alaska reviewed the January 9, 2004 draft Minimum Requirements Decision Guide (Guide). We were advised on March 17 that state agencies could submit comments at any time since there was no formal announcement of a review period when revisions were made available on the web site. These comments represent initial consolidated concerns of Alaska's resource agencies. We look forward to discussing these comments and revisions to the Guide to assist your efforts.

General Comment

The Guide appropriately recognizes the role of subsequent legislation in determining the minimum tool in conducting administrative activities in wilderness areas; however, it must specifically recognize that the Alaska National Interest Lands Conservation Act (ANILCA) (P.L. 96-487) contains multiple provisions that significantly amend implementation of the Wilderness Act in Alaska. Approximately 54 percent of all Wilderness in the United States is in Alaska and Wilderness designated under ANILCA has unique provisions involving facilities, motorized access, and equipment use provisions. In order to accurately provide guidelines that reflect this legislation, we request one of the following options:

- Modify the Guide to explicitly recognize ANILCA differences wherever they are applicable,
- Exempt the Alaska Region from the requirements in the Guide, and/or
- Develop a regional Guide for Alaska that appropriately modifies the national guidance for Alaska based on ANILCA

While our page-specific comments below are focused on the first approach, in part to illustrate the difficulties of using the Guide in Alaska, this is not our first choice. We recommend a Regional Guide tailored to the legislation and administrative needs of Alaska. In September 2003, the Alaska Region adopted Alaska Regional Policy (R-10 Supplement), which addresses some of our concerns in part; however, this document was

not developed with the State of Alaska's input and contains some deficiencies which we will not address here. Development of a Guide specific to the Alaska Region would provide an opportunity to comprehensively address wilderness issues in an appropriate context.

Page-Specific Comments

Page 1 & 2, Overview

Consistent with our general comment regarding ANILCA, we request the following language where the term "subsequent legislation" is used in the Guide.

For wilderness areas in Alaska, the Alaska National Interest Lands Conservation Act (ANILCA) specifically allows motorized uses for subsistence, traditional activities, and fish and wildlife management, among other provisions for generally prohibited uses.

Page 2, Instructions Step 1: Determine if the action is necessary:

We request the Guide clarify that activities necessary for state fish and wildlife research management are exempt from Step 1. Both the Wilderness Act and ANILCA provide clear direction regarding the responsibilities of the state to manage fish and wildlife within designated wilderness. Scientific sampling of fish and wildlife populations is essential to the management of natural populations in wilderness and to meet the minimum requirements for the administration the area.

Page 3, Instructions E. Wilderness Character.

Though it is later noted in this section that the four listed components on wilderness character (Section 2 (c)) do not comprise a comprehensive list, the listing of the four components appears to give primacy over other components that define a particular wilderness. We request this section also provide examples of other wilderness components, such as ANILCA and other applicable legislative direction.

Page 3, E. Wilderness Character, 4th sentence.

Please revise the fourth sentence by adding the term "subsequent legislation" as follows:

It is recommended that particular attention is paid to the general guidance in the Wilderness Act, as outlined in the boxes on Page 2 of the Overview . . . , subsequent legislation, and to agency policy.

As mentioned above, ANILCA substantively influences the ability to manage for wilderness character as defined here in any given unit.

Page 2, Worksheets, Valid Existing Rights or Special Legislation.

Please revise the worksheet to recognize ANILCA, as follows:

A. Describe Valid Existing Rights or Special Provisions of Wilderness Legislation

Are there valid existing rights or is there a special provision in wilderness legislation (the Wilderness Act of 1964, the Alaska National Interest Lands Conservation Act, or other subsequent wilderness laws) that allow consideration of actions involving Section 4(c) uses? Cite law and section.

Page 3, Worksheets, E. Wilderness Character.

Please delete or clarify the listed qualities to preserve wilderness character, or add ANILCA Wilderness provisions - consistent with the comments addressing Page 3 of the Instructions.

Page 6, Worksheets, Decision: What is the Minimum Tool?

Delete the section containing checkboxes with Wilderness Act Section 4(c) prohibitions, or modify to recognize when one or more of these activities is statutorily allowed. The current language causes confusion with any subsequent wilderness legislation that allows uses prohibited under Section 4(c).

Agency Guidelines - U.S. Forest Service

This document states use of the Guide “is not required by law or agency policy,” though it is later stated that the Guide process “should be applied to all administrative actions being considered in wilderness.” We are concerned that use of the Guide could lead to an overly restrictive application in Alaska because the Guide does not fully recognize the ANILCA provisions that statutorily protect uses and activities that are generally prohibited outside of Alaska.

Regarding motorized use for fish and wildlife management, for example, the Forest Service Manual clearly provides that scientific sampling of fish and wildlife populations is **essential** to management of natural populations in wilderness (2337.37 (2)) and falls under conditions approvable for motorized equipment in FSM 2361.1 -5 b. The proposed Guide, however, does not contain any references to the policies on fish and wildlife management outlined in FSM 2323.3. We recommend those policies be added to or referenced in the Guide. This along with the nationwide “Policies and Guidelines for Fish and Wildlife Management in Wilderness and Primitive Areas,” developed jointly by the Forest Service, Bureau of Land Management, and the International Association of Fish and Wildlife Agencies, provides nationwide guidance for land managers to determine the minimum tool necessary for fish and wildlife management in wilderness.

We note that neither 36 CFR 261.16 and 293.6, nor the Nationwide Forest Service Manual, reflect the ANILCA Wilderness provisions. Instead they imply that all wilderness areas are closed to motorized use unless opened under delegated authority. In

Alaska, access by snowmachine, motorboats, airplanes, and non-motorized surface transportation is considered open until closed under ANILCA. These ANILCA provision are recognized in the Alaska Regional Forest Service Policy (R-10 Supplement). Because the Nationwide Forest Service Manual has geographical regional supplements, we recommend the Service develop regional Minimum Requirements Decision Guides for consistent and uniform application. At a minimum such a regional Guide would be valuable for Alaska where there are so many exceptions covering such a large area.

Agency Guidelines Page-Specific Comments

Page 2, U.S. Forest Service Agency Guidelines, Subsequent Legislation.

Please include the following statement at the end of the section:

Please review any enabling or relevant legislation for special provisions or exceptions for management of the designated area.

Page 5, U.S. Forest Service Agency Guidelines, Objectives and Policy for Use . . .

We request the first sentence in this section be deleted. It is conjecture whether Forest Service mission and policy is more restrictive than other land management agencies over the use of motorized equipment and mechanical transport and this statement is out of context in a decision guide.

Please contact me at (907) 269-7476 or by email at don_perrin@dnr.state.ak.us if you have questions regarding these comments. We are continuing to assess the implications for the Guide to our various state management authorities for fish, wildlife, and waters as well as our abilities to conduct activities on wilderness areas. Due to our upcoming summer field season, we request hearing from you within the next 30 days about improvements to the Guide that recognize the significant differences under ANILCA for management of wilderness areas in Alaska. In our experience, these issues substantially affect our management abilities and we are anxious to resolve concerns as soon as possible.

Sincerely

/ss/

Don Perrin
Assistant ANILCA Coordinator