

STATE OF ALASKA

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ANILCA IMPLEMENTATION PROGRAM

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Marcia Blaszak
Acting Regional Director
National Park Service
240 West 5th Avenue
Anchorage, AK 99501

Dear Ms. Blaszak:

The State of Alaska reviewed the National Park Service Part 13 draft regulations published in the Federal Register on April 2, 2004. This letter represents the consolidated comments of State agencies. The State commends the Service for persevering in the larger effort to sort out the appropriate uses of formal rulemaking and the superintendent's compendium to manage public uses in Alaska park units pursuant to the Alaska National Interest Lands Conservation Act (ANILCA). Starting in 2001, we have witnessed a dramatic improvement in the Service's willingness and ability to correct the longstanding over-extension of the compendium authority. This package of draft regulations is a major step forward in correcting a number of lingering procedural and substantive problems related to restricting public uses under ANILCA.

While the details of this letter, of necessity, focus on the relatively few areas where we suggest further improvements, we cannot underestimate the positive contributions these regulations as a whole will make for both the public and the Service. As a result, the park resources will continue to be protected and the public will benefit from:

- more consistent management between park units, as appropriate,
- defensible use of superintendent's discretion,
- improved consistency with state management, and
- improved recognition of ANILCA provisions that set Alaska park units apart from the remainder of the national park system.

13.1 Definitions

13.1(c): We appreciate the intent to define airstrips in order to adopt the change in 13.10. We recognize the challenges associated with defining commonly used but not formally designated airstrips. The language appears to reasonably distinguish between bush airstrips and areas merely susceptible to aircraft lands. We request, however, deletion of the word "water" within the Service's final definition due to the State's jurisdiction to regulate activities in state waterways. This revision avoids the jurisdiction

issue and retains the Service's ability to enforce the regulation's intent to prohibit obstructions.

13.1(g): We support this definition of facilities. The proposed definition will resolve the problem of using closure regulations intended for general parklands. Such closure procedures are inappropriate and unnecessarily burdensome if applied to specific developed "facilities" as defined herein.

13.4 Information Collection

The State supports this technical amendment to bring the regulations into compliance with subsequent laws and policies.

13.10 Obstruction of Airstrips

The State supports this provision which prohibits obstructions of airstrips similar to the obstruction prohibition within state law.

13.18 Camping and Picnicking

Except for some minor revisions suggested in the next paragraph, the State supports these camping and picnicking provisions. Modeling the camping rule on existing state rules for general state land will improve protection of park resources statewide and insure greater consistency and compliance in areas of mixed ownership, such as along navigable waterways.

To more clearly articulate the intent, we request a minor rewording in the second sentence of the proposed regulation 13.18(a)(2). As written, the phrase "*All camps and associated equipment must be relocated . . .*" can be misinterpreted to close an area to all camping rather than a specific campsite (e.g., one tent or party) that is causing a specific impact or interference with public activities due to its precise location. To more closely mimic the stated intent, we suggest the sentence be reworded to read: "*A specific camp and associated equipment must be relocated . . .*" We also suggest that the sentence be moved to the end of 13.18(a)(1), to consolidate the provisions for restrictions under Section 13.30 and the exceptions to the 13.30 closure process for the Superintendent to narrowly apply specific restrictions.

13.19 Weapons, Traps, Bows and Nets

With the following important exceptions and additions, the State supports these revisions to resolve several longstanding concerns. These regulations will legitimize commonly practiced and prudent activities in Alaska park units.

13.19(a): The State strongly supports the proposed changes that allow the carrying and use of "bear spray" in all park areas in Alaska. Because ANILCA clearly re-designated the pre-ANILCA park units, this modification aligns the Service's regulations with Congressional intent to manage all park areas in Alaska to protect the Alaskan way of life and unique Alaska conditions.

13.19(b): We request extending the application of this regulation for transport and use of weapons to all park areas in Alaska. The exclusion of the pre-ANILCA park areas is a relic of pre-ANILCA regulations and not justified. The 1981 regulations incorrectly or inadvertently retained some of the pre-ANILCA unit management rules. The analysis of changes to Section 2.4 of the 1983 national regulations recognized, however, the need

to be more liberal in the large western park areas where access is needed to hunting and fishing sites adjacent to or effectively cut off by the park configuration. (FR Vol. 48, No. 127, p 30256.) This analysis was also intended to be applied to subsequent revisions to fine-tune the Alaska regulations, such as Section 13.19. The 1986 Alaska regulations in 43 CFR Part 36 addressing ANILCA Title XI access and other public uses in parks and refuges contain discussion in the Section-by-Section Analysis which concludes that Congress did not intend for the pre-ANILCA units to be managed differently than the new and expanded units.

13.19(c): Please delete “*and Sec. 2.4*” in the regulation. Section 2.4 is part of the national regulations, which are superceded by any specific Part 13 regulations applying solely to Alaska park units. Section 2.4 cross-references to other sections of the national regulations, causing the resulting regulation to be confusing.

13.20 Preservation of Natural Features

13.20(a): We request all park areas in Alaska be treated uniformly. Congress intended to protect the Alaska lifestyle in all parks consistent with the specific provisions of their legislation. The special restrictions on the pre-ANILCA units are a relic of the pre-ANILCA regulations. There is no justification for regulations for the pre-ANILCA units to differ from the Alaska regulations until the Superintendent determines different resource conditions warrant site or park-specific restrictions.

We support the proposed regulations that clarify the public’s ability to collect natural products (e.g., hair, unoccupied shells, berries, and mushrooms) for use as part of the Alaska way of life that Congress intended to protect. We urge the Service to apply the regulations consistently to all park areas and only restrict collection on a case-by-case basis as needed to protect park resources.

13.20(c) and (d): We support the collection of dead and downed wood for campfires. We also support the new paragraph (d) addressing standing dead wood. We specifically support giving the park Superintendents discretion to allow or prohibit use of standing dead wood, with appropriate justification, since circumstances vary greatly between and even within park units.

13.21 Taking of Fish and Wildlife

We greatly appreciate and support the proposed paragraph (5) in which the Service clarifies procedures for transport of wildlife across park areas in Alaska. This provision appropriately removes numerous burdensome requirements, such as pre-hunt permit or notification requirements, previously contained in park compendia and replaces them with a simplified, consistent procedure. We are concerned about the application of Section 2.2 from the national regulations, however, and request the Service delete the cross-reference in the Section-by-Section Analysis. Instead, it is very important that the regulations reinforce the Service’s commitment to the Alaska way of life, and minimize the impacts on harvest opportunities due to Alaska conditions (terrain, distance, limited travel corridors). We also request that the final regulations contain a commitment to consultation with the state fish and game agency prior to implementing any restrictions involving the take and transport of fish and wildlife.

13.22(b) Unattended or Abandoned Property

We originally objected to reducing the time period that property may be stored from one year to the proposed four months. With the proposed opportunity to arrange for additional time, we now support the four-month guideline as adequately allowing routine seasonal activities, such as fishing, hunting, trapping, subsistence, and other public uses that are part of the Alaskan way of life. We request the response to comments reinforce the intent to minimize bureaucracy's involvement in these activities by specifying the process the Superintendent will use to alter the 4-month rule. Our support for this reduction from one year is dependent upon a more liberal policy to allow storage for longer time periods with the concurrence of the Superintendent but without a cumbersome permit process. For example, some fishermen store gear on shore after one period of use while crossing large tracts of water or land to participate in another use (e.g., crabbing, commercial fishing) and might not return for 6 to 8 months. Permission to store appropriately marked gear for longer periods should be available via alternate methods such as by phone.

We support the corresponding requirement that property be labeled with owner information. We suggest the Service consider providing an option for labeling that gives enforcement personnel the ability to access necessary contact information in a manner that is not necessarily readable by every passerby to, for example, reduce the likelihood of vandalism.

We oppose the limit of 30 gallons for fuel storage. This limit is unrealistically small in remote areas and amounts to a defacto permit requirement for Alaskans to conduct activities occurring historically, with little problem, in both pre and post ANILCA park areas. Members of the public who regularly fish and hunt along waterways through most of the parks will find the 30-gallon fuel limit burdensome. Almost all such users will be obliged to acquire permits to store additional quantities. Congress intended rural Alaskans to be spared cumbersome permit requirements to participate in traditional hunting, fishing, trapping, and commercial fishing activities. Boaters often store two 55-gallon drums at two different sites along the major waterways such as the Kobuk and Yukon Rivers before embarking on lengthy game hunts in the fall. Similarly, rural residents who operate summer fish camps will find the proposed 30-gallon limit untenable.

The favored fuel storage container in rural Alaska remains the 55-gallon drum, so limiting storage to 30 gallons is also confusing and will require inspection and enforcement of fuel depth to calculate volume in drums. From our perspective, the size isn't as important as safe, leak-free storage. We would rather see four 55-gallon drums registered to one owner for a large hunting party stored safely in one or two locations, than each member of the party having a 30-gallon barrel stored at numerous locations all along the river. The latter scenario may lead to difficulties relocating small barrels and cans in remote, brushy, weather restricted situations; or increased abandonment of fuel. We see protection from fuel spills as the primary goal. We, therefore, support the existing pattern of use throughout Alaska that allows storage of fuel in spill proof containers up to 300 gallons under State law. We urge the Service to substantially raise or delete the limit on quantity.

We also urge the Service to delete the requirement that fuel be stored a specified distance from water. Waterways are dynamic throughout Alaska and Alaskans are

familiar with water levels changing with weather and seasons. Because of this familiarity and the expense of fuel, people will store fuel where it is “safe,” which may be very close to the waterway in some locations or 1000 feet away in other locations, depending on the topography. For example, some waterways do not have locations where topography allows safe fuel storage beyond 100 from the water. Even the Service stores 55-gallon drums close to water fueling at its field and enforcement sites for ease of access, minimum transfer of containers, and safe handling.

The Section-by-Section Analysis illustrates that the Superintendent of Yukon-Charley Rivers National Preserve understands that the circumstances in that area do not justify the proposed fuel limits or required distance from water. We urge the Service to delete this significant restriction from the existing regulations. We do support the current situation, limiting Alaskans’ storage of fuel only in specific instances or locations where there is a problem or specific resource concern, and where the limitation is inconsistent with state law.

13.30 Closure Procedures

We support the housekeeping deletion of the duplicative and outdated provisions in this section and other revisions intended to align more closely with ANILCA and subsequent 1986 43 CFR Part 36 regulations.

13.30(h) Facility closures and restrictions. We specifically support this new paragraph. We agree the Superintendent should have discretion to restrict activities in or on developed facilities for public safety and to protect public property.

13.60 Aniakchak National Preserve

13.60(b): The State strongly supports this provision. We agree with the rationale provided in the Section-by-Section Analysis and confirm the considerable effort invested in this proposal by state and federal wildlife experts and commercial operators.

13.62 Cape Krusenstern National Monument

13.69 Kobuk Valley National Park

We strongly support the adoption of a region-wide resident zone for the communities and rural residents that live throughout these two regions. This provision reduces the need for individuals living between communities to acquire permits, reduces the divisiveness between communities and individuals, and decreases the regulatory burden on the Service. In fact, we encourage the Service to provide background information about this approach to communities of other applicable park areas for their consideration.

13.63 Denali National Park and Preserve

13.63(b): We support the *proposed revision* of this existing rule to delete reference to the Frontcountry Developed Area addressed in Section 13.63(i). On the other hand, we retain a longstanding objection to the original rule itself. It is inappropriate to authorize limits on camping subject to a future plan or plans and without independent proposed rulemaking, as required for camping closures governing other park units under 13.30. We oppose granting the Denali Superintendent this level of discretionary authority outside of the rulemaking process.

13.63(i): The State supports the designation of a Developed Area for the specifically described frontcountry portion of Denali National Park. This tightly defined area includes the primary visitor facilities and high use areas that are reasonably subject to management actions for public health, safety, and well-defined resource needs.

13.63(j) and (k): We support the prohibition of bicycles, roller skates and similar devices on the specific listed trails to protect public safety. We would not support general prohibitions of these uses in other portions of the backcountry without sufficient rationale and additional rulemaking pursuant to 43 CFR Part 36.

13.65 Glacier Bay National Park and Preserve

Important caveat: As you know, the State and the Service are in court over the ownership and jurisdiction of waters within the exterior boundaries of Glacier Bay National Park. Consequently, until this legal dispute is resolved, there is little value in conducting a line-by-line objection of all proposed Glacier Bay regulations affecting state-owned waters and their uses. With this in mind, our silence on water-related proposals does not indicate concurrence.

13.65(b)(3)(ix)(C)(2)(v) – Bartlett Cover Public Use Dock: We object to the apparent default prohibition of commercially buying or selling fish on the dock. So few fishermen still use these waters during the commercial fishing phase out, and transportation to other areas may be prohibitive for safe handling and the safety of the crew. People in Gustavus as well as visitors enjoy the opportunity to acquire fresh seafood, particularly knowing it is so tightly regulated and locally fisheries are phasing out. The Service could use this activity, minimal as it is, to educate visitors. We also remain concerned whether the proposed language sufficiently tracks the statute and Congressional intent. We request that the Service provide adequate outreach to affected fishermen and crew members regarding any final rule or related compendium entry that may follow from this initial proposal.

13.65(b)(3)(ix)(C)(5) The State supports authorizing the collection of naturally shed goat hair in Glacier Bay National Park and Preserve and agrees that this cultural practice is an appropriate use of resources found in the park unit.

13.65(b)(3)(ix)(C)(6): We support the decision to monitor public camping in the Bay and to provide orientation to assist public safety in lieu of more intrusive public management options such as mandatory camping permits. We suggest the Service modify the required orientation slightly to accommodate repeat visitors and those who access camping areas via authorized commercial transporters and guides.

13.66 Katmai National Park and Preserve

13.66(c): We appreciate the Service adopting this statutory direction and state authorized “red fish” fishery into formal regulations. Regarding paragraph “(c),” we urge the Superintendent to coordinate with the state Board of Fishery and state fishery managers before attaching conditions to this fishery.

13.66(d): We support the designation of a Brooks Camp Developed Area, subject to the caveat that the State claims ownership and jurisdiction over waters in the pre-ANILCA park unit. The boundary is narrowly and appropriately defined to include the areas of highest use by both bears and humans requiring more rigorous management compared to general parklands.

13.67 Kenai Fjords National Park

We support the individual cabin camping restrictions based on local terrain and circumstances to maximize opportunities for park visitors while protecting the park cabins.

13.68 Klondike Gold Rush National Historical Park

13.68(a): We recognize and support that these provisions are intended, in part, to support the joint US/Canada management agreement regarding use of the Chilkoot Trail.

13.68(b): We support the allowance for the collection of mushrooms consistent with our comments that pre-ANILCA parks should be managed like the park units designated by ANILCA.

13.68(c): We appreciate the proposal to clarify that remaining regulations prohibiting weapons, traps, and nets do not apply to state land.

13.69 Kobuk Valley National Park

13.69(a)(1): Consistent with our comments on the same proposed rule for Cape Krusenstern National Monument, we support the creation of a single, regional subsistence residence zone.

13.72 Sitka National Historic Park

We continue to encourage the superintendent to coordinate with the City on development of bike planning and education. We encourage working toward the goal of designating the route open to community use to the greatest extent possible.

13.73 Wrangell-St. Elias National Park and Preserve

The State supports the designation of the specified Developed Areas and the Kennecott National Historic Landmark. These areas appear to be tightly defined to reasonably respond to existing or expected public health, safety, and resource protection needs.

Thank you for your consideration of these comments. If you have any questions, please call me at 907-269-7477.

Sincerely,

/ss/

Sally Gibert
State ANILCA Coordinator