

# STATE OF ALASKA

**FRANK H MURKOWSKI**  
**GOVERNOR**

## **ANILCA IMPLEMENTATION PROGRAM**

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September 12, 2004

Sharon Metzler  
Content Analysis Team  
P. O. Box 221150  
Salt Lake City, UT 84122-1150

RE: Proposed Rule for Designated Routes and Areas for Motor Vehicle Use

Dear Ms. Metzler:

The State of Alaska reviewed the draft Forest Service proposed rule at 36 CFR Parts 212, 251, 261, and 295, published in the Federal Register on July 15, 2004. The proposed rule intends to clarify national policy related to motor vehicle use, including off-highway vehicles, on lands administered by the U. S. Forest Service. These comments represent the consolidated views of the State's agencies.

The proposed rule would require the establishment of a system of roads, trails, and areas designated for motor vehicle use and would prohibit the use of motor vehicles off these established systems. The State of Alaska has significant concerns with this nationwide direction primarily because the proposed rule does not address multiple statutory authorities under the Alaska National Interest Lands Conservation Act (ANILCA) [P.L. 96-487] that authorize motor vehicle use on National Forest System lands in Alaska. In addition to our ANILCA concerns, we also request clarification regarding RS 2477 rights of way, discussed later in this letter.

Before implementing regulations affecting motor vehicle use on these lands, we request your adoption of one of the following options to accurately reflect this legislation:

- Revise the draft national regulations to recognize and provide for motorized uses in Alaska as authorized under ANILCA
- Develop a parallel set of regulations specifically for the Alaska Region that properly implement provisions of ANILCA authorizing motorized vehicle use.
- Exempt the Alaska Region from the proposed rule.

The State acknowledges the brief reference to ANILCA Sections 811 and 1110(a) in Section 212.55(d) Rights of access. The active language "shall take into account" does not, however, sufficiently convey that implementation of these regulations cannot modify ANILCA's statutory direction; nor does it recognize other relevant ANILCA provisions.

To illustrate some of the other shortcomings of the proposed rule with respect to motor vehicle access in Alaska's National Forests, below is an outline of specific sections of ANILCA that are not adequately recognized.

**Section 811** ensures that rural residents engaged in subsistence uses "shall" have reasonable access to subsistence resources on all federal public lands in Alaska by use of snowmobiles, motorboats, and other means of surface transportation traditionally employed for subsistence purposes. Such access includes off-highway vehicles where such methods were used generally in the area prior to ANILCA. Such access is subject to "reasonable regulations" (which have not been adopted for Forest Service lands).

**Section 1109** ensures any valid right of access which existed prior to ANILCA.

**Section 1110(a)** ensures the use of snowmachines, motorboats, airplanes, and non-motorized surface transportation methods for traditional activities "shall" be allowed on conservation system units, national recreation areas, and national conservation areas, and those public lands designated as wilderness study. In Alaska's two National Forests, this provision applies to units in the National Wilderness Preservation System, National Wild and Scenic Rivers System, National Trails System, and National Forest Monuments.

**Section 1110(b)** ensures adequate and feasible access "shall" be allowed to inholdings and other valid occupiers within or effectively surrounded by conservation system units (e.g. designated monuments and Wilderness areas) and wilderness study areas in Alaska, including valid mining claims and subsurface rights. Such access may include off-highway vehicles.

**Section 504(g)** ensures holders of unperfected mining claims in Misty Fjords and Admiralty Island National Monuments the same access rights as inholders under Section 1110(b).

**Section 1111** allows access across conservation system units and wilderness study areas to adjacent State or private lands for the purposes of survey, geophysical, exploratory, or other temporary uses. Such access may include off-highway vehicles.

**Section 1310** allows the use of reasonable access (including off-highway vehicles) for operation and maintenance of new and existing air and water navigation aids, communication sites and related facilities, and facilities for weather, climate, and fisheries research.

**Section 1315(b)** authorizes the State of Alaska to conduct fishery research, management, enhancement, and rehabilitation in Forest Service wilderness and wilderness study areas. This allowance includes reasonable access, such as temporary use of motorized equipment, for "furtherance of research, management, rehabilitation, and enhancement activities subject to reasonable regulations as the Secretary deems desirable to maintain the wilderness character, water quality, and fish and wildlife values of the area."

**Section 1323(a)** states that “the Secretary [of Agriculture] shall provide such access to non-federally owned lands within the boundaries of the National Forest System as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, that such owner comply with rules and regulations applicable to ingress and egress to or from the National Forest System.” This access may include off-highway vehicles.

Valid Existing Rights

The State supports the clarification in the Preamble that state law would govern motor vehicle use on legally documented rights of way held by a State, County or local public road authority. We also support the definition of a road or trail under Forest Service jurisdiction that excludes Revised Statute (RS) 2477 rights of way. To clarify the implications of non-federal interests in the specific context of the prohibition provision, we request the purpose and scope at Section 212.50(a) be similarly revised as follows (new language in underlined italics):

The purpose of this subpart is to provide for a system of National Forest System roads, National Forest System trails, and areas on National Forest System lands that are designated for motor vehicle use. After these roads, trails, and areas are designated, and subject to valid existing rights, motor vehicle use, including the class of vehicle and time of year, not in accordance with these designations is prohibited by 36 CFR 261.13. Motor vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.13.

State Consultation

We request consultation with the State on any follow up actions affecting Alaska. In addressing the State’s concerns, we call your attention to the Executive Order by President George Bush, issued on August 26, 2004, that promotes the inclusion of local participation in federal decisionmaking. We particularly wish to stress the provision that agency heads shall implement natural resource laws that respect the legally recognized interests of other governments and landowners. This includes the State’s management of state land and waters and of fish and wildlife on all lands.

Thank you for your consideration of our suggestions for addressing Alaska’s interests. If you have any questions, please call me at 907-269-7477.

Sincerely,

/ss/

Sally Gibert  
Manager  
State ANILCA Implementation Program