

STATE OF ALASKA

ANILCA IMPLEMENTATION PROGRAM Office of Project Management and Permitting

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Lee A. Benson, District Ranger
Yakutat Ranger District
USDA Forest Service – Alaska Region
P.O. Box 327
Yakutat, AK 99689-0327

Dear Mr. Benson:

The State of Alaska received the January 24, 2008 letter, which outlines the Yakutat Ranger District's proposed alternatives for the forthcoming Access and Travel Management (ATM) Environmental Assessment (EA). The following consolidated state agency comments were compiled by the State's Alaska National Interest Lands Conservation Act (ANILCA) Implementation Program and cover ANILCA-related issues and other state interests, excluding coastal zone management. The Alaska Department of Natural Resources, Division of Coastal and Ocean Management (DCOM) implements the Alaska Coastal Management Program (ACMP). Correspondence relative to consistency with the ACMP must be directed to DCOM.

As you are likely aware, the State appealed the Sitka District ATM decision because it does not comply with ANILCA. We also recently provided scoping comments for the Ketchikan-Misty Fiord District ATM, which addressed both District-specific issues and general information needed to bring the project into compliance with ANILCA. For the Yakutat District's benefit, relevant information from our Ketchikan-Misty scoping letter (either whole or in part) is repeated below. To ensure the public is adequately informed of its access rights under ANILCA and to assist the public and the State in its evaluation of the proposed action, we urge the Yakutat District to include this essential information in the EA *prior* to its release for public review.

We appreciate the Service's previous efforts to involve the public in providing information on traveled routes within the planning area. This information will likely prove invaluable when assessing maintenance needs and access issues throughout development of the EA.

Compliance with ANILCA

The State of Alaska filed a formal appeal of the Sitka District Access and Travel Management (ATM) decision on January 7, 2008. This appeal was brought because the Sitka ATM project does not comply with ANILCA. We strongly urge you to review the appeal at

http://www.dnr.state.ak.us/opmp/nilca/pdf/08_01_07_FS_Stka_ATM_Appeal.pdf and take whatever measures possible to ensure that the Yakutat District ATM complies with ANILCA. Our Sitka concerns are summarized for the record, which apply equally to the Yakutat District:

- By 2009, the national Travel Management rule of 2005 will convert most Forest Service land to a “closed until open” management approach; yet ANILCA Section 811 requires a default “open until closed” approach.
- Access closures under ANILCA must be implemented by formal regulation, not mere publication of an ATM map developed pursuant to the national rule.
- The national Travel Management rule is therefore inconsistent with ANILCA because an administrative regulation cannot trump a federal statute.
- Based on ATM Plans and proposals we have seen to date, little – if any – attention is focused on the requirements of ANILCA Section 811, including acknowledging the rights of access for subsistence purposes under this provision and the specific justification for individual proposed closures. ATM plans to date do not adequately address these ANILCA provisions. In fact the Yakutat alternatives letter actually contains incorrect ANILCA information (see specific comments below). The public is neither properly informed of its ANILCA access rights nor Forest Service responsibilities to conduct an accountable process for closures when necessary for resource protection or other legitimate purposes.

Section 811 of ANILCA describes the requirement for access for subsistence purposes on all public lands in Alaska: (emphasis added)

- (a) *The Secretary shall ensure that rural residents engaged in subsistence uses **shall have reasonable access** to subsistence resources on the public lands.*
- (b) *Notwithstanding any other provision of this Act or other law, the Secretary **shall permit** on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, **subject to reasonable regulation.***

In addition to requiring “*reasonable regulation*” for any ultimate closures, we request the Yakutat EA include the following elements that mirror the implementing Section 811 regulations and procedures used by the National Park Service and the US Fish and Wildlife Service. Using the Department of the Interior approach as a guideline in your NEPA work will give your District a head start in ANILCA compliance.

- An explanation of the Forest Service’s ANILCA obligations under Section 811, including to “*ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources.*”

- Description of affected subsistence uses and how the proposed decision will affect such use (i.e., the required ANILCA Section 810 analysis),
- Sufficient geographic information for the public and resource agencies to understand the location of all routes being addressed. For example, the Office of Habitat Management and Permitting (OHMP) requests detailed maps of stream crossing locations, along with the following additional information needed for the concurrence process.
 - Stream name and classification (anadromous, high value resident or hydraulic conveyance)
 - ADF&G catalog number, if anadromous
 - Specific information about fish species present at the crossing sites
 - Description and diagrams of proposed stream crossing structures (i.e. bridge, culvert, ford)
 - Description of stream and riparian habitat at the crossing
 - Proposed timing of instream work
- Current and proposed status of all roads, including the proposed status of all “closed” roads (decommissioned, closed pending repairs, closed pending authorizations, etc.) to allow the public to understand which routes could be opened later and why.
- Route and/or area-specific justification for each closure. For example, Department of Interior agencies are required to determine that continued use “...*is causing or is likely to cause an adverse impact on public health and safety, resource protection, protection of historic or scientific values, subsistence uses, conservation of endangered or threatened species, or other purposes and values...*” (50 CFR 36.12) This information could be provided in Table format for simplicity.
- If a road is to be closed to cars and trucks but open to ATVs, the EA needs to explain how fisheries resources will be protected and what types of stream crossing structures will be used (crossing structures should be cross-referenced with road numbers in the EA). The Forest Service will need to work with OHMP through the concurrence process prior to conducting any related in-stream work in fish-bearing streams.

Southeast Alaska Transportation Plan

The Southeast Alaska Transportation Plan (SATP) needs to be clearly integrated into the assessment and decision process to the extent it is applicable. Specifically, the SATP includes essential transportation and utility corridors that may align with existing roads under assessment. We request that, wherever possible, the District reserve and protect these corridors for future transportation and utility purposes. Electronic copies of the SATP are available at:

http://dot.alaska.gov/stwdplng/projectinfo/ser/newwave/SATP_FINAL/index.shtml

Federal-Aid Highway Funding Restrictions

We appreciate that the alternatives letter does not often use the term “trail.” Use of the word “trail” could be problematic in some instances with respect to the future use of federal-aid highway funds, which carry more burdensome restrictions when proposed development would displace a designated recreational facility or area. Our concern, therefore, does not involve trails per se, but the implication of designating the trail and surrounding area as recreational. Our understanding is that the term “trail” will be used in

the context of this ATM for the purposes of roadway management and funding resources. Essentially, these are intended to be short-term decisions that do not bind future management of the forest. Please clarify in the EA and decision notice that any designations of “ORV trails” do not convert a roadway corridor to a designated recreational facility, unless there may be some overriding stated reason for doing so in a site-specific situation. In particular, we assume that the Forest Service is retaining the management prerogative of converting an “OHV trail” into a ML 2 (or higher) road in the future.

SPECIFIC COMMENTS REGARDING THE ALTERNATIVES DESCRIPTIONS

We request that the Service avoid using language that incorrectly implies that some areas or routes are currently formally closed. For example, the third paragraph of Alternative 4 states that certain roads will not be “*re-opened*,” which can be interpreted as meaning an administrative closure is already in place. Roads that are simply impassable or “*undrivable*” are not actually closed at this time.

We note several of the Alternatives address routes referenced in a letter dated September 7, 2005, which was sent to the District Ranger from the Alaska Departments of Natural Resources and Fish and Game. From the brief discussions in the various Alternatives, it is difficult to tell whether or how the State’s concerns were addressed. We request greater detail in the EA.

Alternative 1: No Action

The No Action alternative is admittedly difficult to address in this planning context. A true “no action” would result in no designated trails and thus a complete closure of the entire District (subject, of course, to ANILCA regulations for subsistence access). We suggest characterizing this alternative as designating (as open) all routes and areas that are currently open.

The current three miles of road maintained at ML-1, which to our knowledge is a closure to motorized access, would require regulations implementing this closure in each alternative (including the No-Action Alternative) pursuant to ANILCA Section 811 if any of the roads have been used for subsistence purposes. Any effort to restrict access by traditional means would also require regulations, regardless of the selected Maintenance Level, unless that Level allows for all forms of surface transportation traditionally employed for subsistence purposes (811(b)). This would include all access, on- and off-trail, in designated Wilderness as well. The 75 miles of unclassified roads identified as “*not available for vehicle travel*” because they were “*closed following their authorized use*” would also require regulations to effectively close access for subsistence purposes, unless public access was not originally intended and these roads were actively and immediately closed following their prescribed period of use. We would appreciate clarification that the natural attrition of accessible routes due to gradual revegetation of the area is not an administrative closure.

The second paragraph is not consistent with ANILCA subsistence access provisions. Off highway vehicle (OHV) use, even in Wilderness, is permitted for subsistence purposes as an example of “*other means of surface transportation traditionally employed.*” Any areas closed by Forest Order would also require regulations pursuant to ANILCA Section 811. We agree that ANILCA does allow the use of snowmobiles in the Russell Fjord Wilderness, but the sentence is misleading in that other methods of access are also authorized pursuant to ANILCA Sections 811 and 1110.

We are encouraged to see the inventory of OHV track that was performed in 2000. Providing this information in the EA would be especially useful in evaluating types and methods of access, as well as identified resource concerns. A regulation consistent with ANILCA Title VIII would need to be developed to officially limit subsistence use of the 10-mile Bog Trail to OHV less than 50 inches wide.

Alternative 2: Proposed Action

We appreciate the detailed analysis of how maintenance priorities would be applied, and especially the description of resource concerns for routes in the planning area. These relevant details indicate an obvious effort on the part of the Service to ensure closures are performed for cause (a key ANILCA element) and in consideration of existing access and future infrastructure needs.

We request that the EA address the suggestions made during public meetings to have specified routes available for access, and include any information obtained from the public about methods and means of access. Information about access for subsistence purposes is especially important.

Contrary to the third sentence in the first paragraph under Alternative 2, neither the Wilderness Act nor the Tongass Timber Reform Act supersedes the access guarantees in Section 811 of ANILCA. We also request that the EA help educate the public about the types of activities and access allowed pursuant to ANILCA and what specific concerns may justify their closure by regulation.

As noted earlier, all roads maintained as ML-1 would require regulation to initiate closure to access by federally-qualified subsistence users. This condition also applies to the 29 miles where a vehicle size restriction is described, the seasonal closures proposed for the Blacksand Spit North route, and any additional closures proposed in the “Road System changes under Alternative 2” section.

Paragraph 4: Regarding the discussion about OHV use by hunters, we presume this is a general description of the *affects* on the ATM decisions on hunters, rather than any prescriptive closures targeted at hunters. Targeting closures to a specific user group would be an inappropriate management action.

When describing the permits required to cross anadromous streams, please identify the permitting body as the “State of Alaska” Office of Habitat Management and Permitting. The Office will be leaving the Department of Natural Resources within the year.

Fording an anadromous stream requires a permit, which may include limits on the timing and/or number of crossings allowed. This comment also applies to Alternative 4.

Alternative 3

Per previous comments, the Service will need regulations to implement these closures.

The last sentence in the first paragraph says “*Hunters would not be able to use OHVs off of designated routes to retrieve big-game.*” See previous comments about inadvertent but implied hunting restrictions for paragraph 4 under Alternative 2.

Alternative 4

See previous comments about closure regulations and implied restrictions of OHVs for hunting.

The State’s review of the proposed action as described in this letter is not yet complete; however, since we are aware the District is currently in the process of writing the EA, we are providing what we have received to date. Additional District-specific comments will soon follow in a supplemental letter.

If you have any questions or wish to further discuss any of our comments, please contact me at (907) 269-7529. State agency representatives are also available to work with your staff as the EA is prepared to facilitate completeness and accuracy.

Sincerely,



Susan E. Magee
ANILCA Project Coordinator

cc: Sally Gibert, ANILCA Program Coordinator