



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

ANILCA Implementation Program

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Joseph Adamson
Recreational, Heritage and Volunteer Resources Staff
USDA Forest Service
1400 Independence Avenue SW., Stop 1125
Washington, DC 20250-1125

Dear Mr. Adamson:

The State of Alaska reviewed the Federal Register Notice regarding amending the Forest Service's travel management rule (TMR) at 36 CFR 212 and 261 to require designation of National Forest System (NFS) lands where over-snow vehicle use is allowed, restricted, or prohibited.

The Alaska National Interest Lands Conservation Act (ANILCA) allows snowmachine use in conservation system units (CSUs) on NFS administered lands in Alaska, which includes eleven congressionally designated wilderness areas on the Tongass National Forest, and the Nellie Juan-College Fiord Wilderness Study Area and the Iditarod National Historic Trail on the Chugach National Forest. In addition, certain provisions, such as ANILCA Section 811, apply to all federal public lands in Alaska. The current rule and the proposed amendment cannot modify the statutory direction in ANILCA.

The proposed amendment appropriately directs the responsible official to recognize Sections 811(b) and 1110(a) of the Alaska National Interest Lands Conservation Act (ANILCA) when implementing the rule in Alaska. We support this important recognition; however, other provisions of ANILCA also allow for snowmachine use (e.g. Sections 1109, 1110(b), 504(g), 1111, 1310, 1315(b), 1323(a) - see attachment for provision descriptions). We therefore request the proposed rule reference both snowmachine use authorized under Sections 811, 1110 *and other applicable provisions of ANILCA*.

In addition, ANILCA mandates that snowmachine use under Sections 811 and 1110(a) "...*shall be permitted...subject to reasonable regulation...*" and therefore must be implemented in Alaska under the "open until closed" scenario identified in the proposed amended rule. For perspective, the original 2005 TMR was inconsistent with ANILCA's "open until closed" mandate in Alaska. After considerable effort by the State to engage with the Forest Service at both the national and local levels, culminating in an appeal of the Sitka District Access and Travel Management Plan (ATM), the Forest Service and the

State worked cooperatively to ensure the original 2005 Rule was implemented in Alaska consistent with ANILCA¹.

We support including the option to implement the amended rule under the “open until closed” scenario. However, because the Forest Service does not have ANILCA Title XI implementing regulations and the above referenced Interim Guide for the Alaska Region applies only to ANILCA Section 811 access, we request the Forest Service again work cooperatively with the State to ensure the amended rule is implemented consistent with ANILCA, the established process in the Interim Guide for subsistence access, and the Title XI process followed by other federal land management agencies in Alaska, pursuant to Department of Interior regulations at 43 CFR Part 36.

We also support the proposed amendment’s area by area decision making approach under section 212.81, which provides for decisions that are tailored to local conditions and use. The broadened definition of “area” under section 212.1 is better suited to managing cross-country snowmachine use, which has different use patterns and impacts than wheeled off-road vehicles.

As recognized in the Master Memorandum of Understanding between the Forest Service Alaska Region and the Alaska Department of Fish and Game (ADF&G), ADF&G has the authority, jurisdiction, and responsibility to manage, control, and regulate fish and wildlife populations on NFS lands, except to the extent that such authority is superseded by federal law. We request that the list of uses exempted in the proposed section 212.81(a) also include administrative use by state fish and wildlife management agencies. We also request an exemption for all administrative use as the qualifier “limited” is not defined and is redundant considering agency administrative field work and travel is presumably necessary rather than superfluous. In regards to designated wilderness in Alaska, administrative use of snowmachines by governmental agencies is currently allowed pursuant to ANILCA and Forest Service Manual Supplement No. R-10 2300-2003-2, 2326.1, Conditions Under Which Use May Be Approved.

6. Public Use. Section 1110 of ANILCA provides that the Forest Service shall permit the use of snowmachines (during periods of adequate snow cover), motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities and for travel to and from villages and homesites.

7. Administration Use. (Applies to Forest Service and other governmental agencies.) The Forest Service will set an example by minimizing the impacts of its own activities on wilderness and the experience values of visitors.

The administrative use of motorized equipment will be limited to the following:

a. Access

(1) Airplanes, motorboats, and snowmachines as described for public use.

(Emphasis added)

To address both of these concerns, we recommend the following edit to section 212.81(a):

(1) ~~Limited~~ Administrative use by the Forest Service and State fish and wildlife management agencies.

¹ Interim Guide Providing Access for Subsistence Purposes (ANILCA 811) During Access and Travel Management Planning, Alaska Region Forest Service, May 23, 2008.

In summary, in recognition of our respective management authorities and to ensure consistency with ANILCA, we reiterate our request for the Forest Service to work with the State prior to implementing the amended rule in the Alaska Region.

Thank you for this opportunity to comment. Please contact me at (907) 269-7529 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Magee', written in a cursive style.

Susan Magee
ANILCA Program Coordinator

cc: Beth Pendleton, Alaska Regional Forester
Rebecca Nourse, Deputy Regional Forester
Forrest Cole, Tongass Forest Supervisor
Terri Maceron, Chugach Forest Supervisor

Attachment
Select ANILCA Provisions

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.

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, Wilderness areas, Wilderness Study Areas, and National Trails) and wilderness study areas in Alaska, including valid mining claims and subsurface rights.

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 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.”

