



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

OFFICE OF PROJECT MANAGEMENT AND PERMITTING

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April 28, 2023

Mark Sturm, Superintendent
Katmai National Park and Preserve
Alagnak Wild River
PO Box 7
1000 Silver Street, Building 603
King Salmon, AK 99613

Submitted electronically via email to Superintendent Sturm and via
<https://parkplanning.nps.gov/commentForm.cfm?documentID=127497>

Dear Superintendent Sturm:

The State of Alaska (State) reviewed the Katmai National Park and Preserve's (the Park) request for input on the permanent seasonal Brooks River Corridor Permit System (permit system). The following comments represent the consolidated views of state resource agencies regarding the permit system's closure of access for traditional activities, public safety concerns, and the permit's mandatory booking fee.

To avoid any miscommunications of perspective on the access closure using the permit system, we would like to clearly state:

- We understand the Park's perceived need to make changes to management in the Brooks River Corridor Area to better ensure negative human-bear interactions do not occur. We understand this is a serious concern for park staff. We are requesting data to explain what has changed to raise the current issues for the Park other than increased visitor use.
- Historically, there have been few conflicts between fishing and bears. As public visitation increases, the Alaska Department of Fish & Game (ADF&G), as the manager of wildlife on all lands within the State, is ready to jointly evaluate proposals to modify visitor and wildlife management within Park boundaries.
- ADF&G has not received data beyond anecdotal explanations describing the changed circumstances in the park that necessitate a permit. We look forward to continuing our conversations with the Park to better understand the occurrence of conflicts between anglers and bears and other public safety issues.
- We are not dismissing the Park may have on-the-ground issues with visitors not complying with current Park regulations. We are stating the Park has extensive regulations and enforcement authority to address these concerns and minimize the need for closures.
- We are not stating the Park does not have the ability to implement closures. We are stating access is provided for in the park by statute and the Park must adhere to access closure requirements in Alaska National Interest Lands Conservation Act (ANILCA)

Section 1110(a) and implementing regulations at 43 CFR 36.11(h). To date we are unaware of any findings that foot access within the Brooks River Corridor is detrimental to any resource values of the area.

The State has continued concerns with the Brooks River access closure being implemented by the park and we continue to urge the National Park Service (NPS) not to close the Brooks River corridor via permitted entry.

The Brooks River Corridor Permit is an access closure under ANILCA and 43 CFR Part 36 applies

The State's continued concern with the Brooks River access closure is that closing access to public lands in Alaska propels Katmai and other Alaska parks further down a path that is contrary to the public trust. While it is possible that a permit system is the most administratively simple tool to give a land manager the desired level of control, we encourage Katmai and the NPS to seriously consider the consequences of implementing a tool that, by design, excludes people. Public lands in Alaska were intended to be open to all, including local Alaskans, without any barriers. Permits – even “unlimited permits” – represent a real barrier to access and can become tools of exclusion with the addition of quotas or requirements. Often, those most impacted by the burden of permits and permit requirements are residents who no longer have open access to their backyards and people with income or other constraints that make obtaining a permit and paying fees challenging to the point of exclusion.

The proposed permit system has no protection to guarantee that the permit will remain unlimited or free of future quotas or other requirements. It is for these reasons that we emphasize the process by which this permit program has been implemented. We see the NPS avoiding the closure regulations agreed to in ANILCA 1110(a), which we believe must apply in this matter. The regulations that govern closures for traditional access are the tools by which Alaskans and Americans can hold land managers accountable to ensure fairly and thoughtfully implemented closures to public lands in Alaska.

The State requests:

- the NPS reconsider several elements of the permit system as discussed below,
- if the permit system remains, follow the ANILCA access closure procedures at Department of Interior (DOI) regulations 43 CFR Part 36.11, and
- remove all fees before implementing the Brooks River Corridor permit system.

The current request for comment omits any discussion regarding the NPS authority for this permanent closure to access for traditional activities. Through recent correspondence with both Katmai National Park and Preserve and the NPS Alaska Region office¹, the State understands that the NPS considers their authority to operate the permit system to be NPS regulations 36 CFR Part 13. Additionally, the State understands the NPS does not consider the closure procedures at

¹ Letter from Mary Creachbaum to Doug Vincent-Lang, 10-26-2022

DOI Regulations 43 CFR § 36.11(h) to be applicable in this matter. To support this, the NPS makes two distinctions: that the permit program does not restrict the uses protected by ANILCA Section 1110(a) because it is a restriction on activities within the corridor rather than on transportation methods; and that the NPS does not consider foot traffic to be non-motorized transportation for purposes of ANILCA Section 1110(a).

The State appreciates that the NPS has acknowledged that the permit system is a restriction or closure, and that specifically exempted from the proposed permit system are the subsistence redfish fishery and access for travel to and from homesites and villages – both types of access are protected in ANILCA. The State disagrees that the permit program does not constitute an access closure and that DOI regulations at 43 CFR Part 36 do not apply, regulating access controls the use of fish and wildlife because use is strongly affected by access to those resources. The State requests the NPS follow the process outlined in 43 CFR 36.11(h).

Closure procedures at 43 CFR Part 36 apply

By requiring a permit to access the Brooks River Corridor for traditional activities, the park is implementing a closure to the access provided for in ANILCA Section 1110(a) and codified at 43 CFR Part 36. ANILCA Section 1110(a) is not just a protection of access methods—it is a protection of access necessary for traditional activities (i.e., the protection of the public’s right to continue pursuing traditional activities on federal lands in Alaska). After all, if the use is allowed but entry onto the land is closed the ability to carry out the traditional activity cannot occur (i.e., is closed). Additionally, the implementing DOI regulations at 43 CFR Part 36 broaden use for motorboats (36.11(d)), aircraft (36.11(f)), and non-motorized surface transportation (36.11(e)) for *any* activities².

In Katmai, entry to the Brooks River corridor is closed or restricted by the permit. The result is the ability to conduct the traditional activities – primarily fishing and photography but also paddling the Brooks River as well as the use of motorboats – is closed to all but those who are permitted by the Park. The Special Access provisions of ANILCA Section 1110(a) state, “Notwithstanding any other provision of this Act or other law,” preempting all other legislated authorities and regulations that allow limits on public entry by snowmachines, motorboats, airplanes and “nonmotorized surface transportation methods for traditional activities.” Both paddling watercraft and walking are forms of nonmotorized entry (access) to federal land.

Additionally, closures must indicate the resource degradation concern, which has not been articulated here. The State does not support access that will result in detrimental impacts on fisheries and wildlife resources or negative human-bear interactions. However, opportunities to collect visitor use data and making visits more enjoyable are not sufficient reasons to implement a closure.

We disagree that requiring a permit without limiting a specific access method allows the NPS to bypass the statutorily-required process for permanently closing access for traditional activities.

² *Section 36.11 Special Access*. Federal Register. Vol. 51, No. 171. September 4, 1986. Page 31626.

Other Alaska park-specific regulations have similar provisions for developed areas/facilities (Wrangell-St. Elias, Denali, Glacier Bay, and Kenai Fjords) where user restrictions and closures are appropriately enacted through a public process in the compendium for temporary or less than 1-year closures, or rulemaking for permanent closures. Katmai-specific authorities at 36 CFR § 13.1242 *BCDA closures and restrictions*, which allow the Superintendent to “prohibit or otherwise restrict activities in the BCDA to protect public health and safety or park resources,” do not supersede the closure procedures of 43 CFR Part 36. The State requests that the NPS follow the process outlined in 43 CFR 36.11(h). This regulation requires publication in the Federal Register and hearings for permanent closures. While the State appreciated the multiple public meetings³ hosted by Katmai, the meetings were not structured with time to collect public testimony, indicating they were not intended to be public hearings.

ANILCA Section 1110(a) non-motorized access includes foot traffic

The State believes it is incorrect for the NPS to exclude foot traffic from the methods of access protected by ANILCA Section 1110(a). Foot traffic (e.g., walking, running, standing, hiking) was and continues to be an important form of non-motorized transportation used in Alaska for traditional activities. Non-motorized transportation is not defined in ANILCA or federal regulations. 43 CFR 36.11(e) provides examples but neither suggests the list is exhaustive nor specifically excludes foot traffic. It is impractical to assume that Congress intended to exclude foot traffic from allowed methods of non-motorized access for traditional activities because foot traffic is meaningfully similar to many other forms of non-motorized transportation (e.g., snowshoeing, cross-country skiing) and is part of many traditional activities (e.g., berry picking, wildlife observation). Additionally, foot traffic is inherent in most other forms of transportation for traditional activities, motorized and non-motorized (e.g., stepping away from a parked aircraft or snowmachine; leading a dog team or horse). The NPS does not provide specific rationale supporting their exclusion of foot traffic from non-motorized transportation for traditional activities in ANILCA Section 1110(a). In Appendix F of the Katmai General Management Plan, in applying the provisions of ANILCA Section 1110(a), the NPS “has relied on...definitions of “tradition(al)” from *Webster's Third New International Dictionary of the English Language*...To qualify under ANILCA, a “traditional means” or “traditional activity” has to have been an established cultural pattern, per these definitions, prior to 1978 when the unit was established.”⁴ Sport fishing and bear viewing both occurred within the corridor prior to 1978 and access to these activities was via foot.

The State requests the NPS consider foot traffic to be non-motorized transportation for traditional activities under ANILCA Section 1110(a) and follow the DOI access closure procedures under 43 CFR Part 36 before implementing the Brooks River Corridor Permit program.

³ State staff attended the public meeting in Anchorage on April 3, 2023.

⁴ Katmai General Management Plan, Appendix F, 1986

Public safety

It is not apparent how this closure and the new permit conditions will improve safety in the park. The river corridor has clear sightlines unlike the trail system between the falls platform and bridge where recent pawing incidents⁵ and paparazzi-like chasing of bears occurs. The park already has a toolbox to provide for public safety, unnecessarily duplicated by this permit, for visitors in the Brooks Camp Developed Area (BCDA):

- 36 CFR 13.1242 Anyone who violates wildlife distance conditions, food restrictions, or lawful orders from NPS personnel may be required to immediately stop all activities within the BCDA and repeat a NPS-approved bear orientation prior to continuing activities within the BCDA. Failure to repeat the NPS-approved bear orientation when notified by an NPS employee is prohibited.

This provision, coupled with park laws regarding interactions with bears and managing food, should allow the Park to remove a person from the river corridor if their unlawful behavior necessitates temporary removal.

The Park has acknowledged that most violations during the 2022 permit pilot season were by guided visitors. Given this, alternatives exist to achieve greater immediate control of unlawful behaviors in the river corridor, including cooperative efforts with the commercial service providers (e.g., the Denali Aircraft Overflights Advisory Council or the Tongass Outfitter/Guide Best Management Practices Agreement). In our view, public safety concerns should not be used to justify unnecessarily broad public use restrictions where sufficient existing enforcement tools could be utilized.

Fees non-compliant with ANILCA Sec. 203 and FLREA Sec. 6802

We request that the NPS, after following the access closure procedures in 43 CFR Part 36 as discussed above, develop a method of administering the permit system without booking or other fees. The State's position is that having a fee associated with access is a violation of ANILCA Section 203 and FLREA 16 U.S.C. § 6802(d)(3)(G).

The State acknowledges and appreciates our communication on this topic with Superintendent Sturm, and we support his intent to eventually eliminate fees for the proposed permit system. The State's perspective, though, is that a fee associated with access – even a temporary fee – is a violation of ANILCA Section 203. Other Park units in Alaska (e.g., Kenai Fjords) have avoided this same issue due to the prohibitions set forth in ANILCA Section 203.

ANILCA Section 203 is clear: “no fees shall be charged for entrance or admission to any unit of the National Park System in Alaska.” The State holds that Congress' intent was to keep access to Alaska's public lands truly free of charge, including access to distinct areas within Alaska's National Parks. This is evidenced by the acts of Congress required to implement entrance and

⁵ <https://www.adn.com/alaska-news/wildlife/07/26/2018>, viewed 4/13/2023.

other fees in Denali and Glacier Bay National Parks. Congress reiterated their intent that no entrance fees would be charged on Alaska lands managed by the National Park Service or the United States Fish and Wildlife Service when they passed the Federal Lands Recreation Enhancement Act (FLREA) in 2004 (16 USC Ch. 87).

The Secretary shall not charge an entrance fee or standard amenity recreation fee for the following:

...(G) An area or unit covered under section 203 of the Alaska National Interest Lands Conservation Act (Public Law 96-487; 16 U.S.C. 410hh-2), with the exception of Denali National Park and Preserve.

Through recent correspondence with the NPS Alaska Region office⁶, the State understands that the NPS considers the \$6 non-refundable booking fee assessed for each permit under the proposed Brooks River Corridor permit system to be an “expanded amenity recreation fee” pursuant to FLREA (16 U.S.C. § 6802(g)(1)). The NPS perspective is that because the fee is not charged for entrance to Katmai National Park and Preserve, it is not in conflict with ANILCA Section 203.

We refute the classification of the permit system as an expanded amenity recreation fee under 16 U.S.C. § 6802(g)(1) because the proposed permit area of the Brooks River Corridor is not a “specific or specialized facility, equipment, or service.”⁷ The permit area does not include any of the developed area around Brooks Camp—it is simply a reach of stream (albeit popular) without any specialized facilities, equipment or services provided to visitors. FLREA does not allow expanded amenity recreation fees for “general access” or for fishing access protected by law (e.g., ANILCA protects access for traditional activities which includes fishing).⁸ Additionally, the booking services of Recreation.gov are not included in FLREA’s list of approved recreation fees.⁹

We request a description of what amenities and services are provided under the permit, as our understanding is that an “expanded amenity recreation fee” is charged in situations where “specific amenities and services are provided.”¹⁰ The NPS indicates that “Permits are not

⁶ Letters from Mary Creachbaum to Doug Vincent-Lang, 8-12-2022, 10-26-2022

⁷ 16 U.S.C. § 6802(g)(1)

⁸ 16 U.S.C. § 6802(d)(1)(I) prohibits charging standard amenity recreation fee or expanded amenity recreation fee for any person who has a right of access for hunting or fishing privileges under a specific provision of law or treaty on Federal recreational lands and waters administered by the [BLM], the Forest Service, or the Bureau of Reclamation, as Congress did not intend these fees to be charged by the NPS or USFWS, they were left off this list.

⁹ Expanded Amenity Fees: Fees for facilities or services that provide direct benefits to people. Understanding the Federal Lands Recreation Enhancement Act, USDA Recreation Resource Advisory Committee, [Microsoft PowerPoint - recreation-rac-intro.ppt \(usda.gov\), accessed April 27, 2023](#)

¹⁰ Notice of Intent To Establish Recreation Fees on Public Lands in the Central Yukon Field Office, Alaska, FR 1307, March 9, 2022

required for the graveled roads and trails, boardwalks or viewing platforms within the Brooks Camp area.”¹¹

We also note 16 USC 6802(g)(1) grants that the Secretary may charge an expanded amenity recreation fee except as limited by subsection (d), which is the prohibition from charging an entrance fee or standard amenity fee in an area or unit covered under Section 203 of ANILCA.

In this circumstance at Katmai, the process sets a poor precedent that use of a third-party contractor like Booz Allen Hamilton Inc. (Booz Allen Hamilton) (i.e., Recreation.gov) and their “Junk Fees”¹² are a way to circumvent the requirements in ANILCA and FLREA.

No-cost option

A free permit is not in reality free if a mandatory fee is assessed at booking with no available method of obtaining a fee-free permit. The State understands that a fee-free permit system is difficult or impossible to achieve via Recreation.gov and we are sympathetic to the strain on resources that an alternative distribution system (e.g., email, webform) has the potential to cause for staff at Katmai. However, allowing technical and resource limitations to excuse compliance with federal law would set a damaging precedent. We ask that the NPS adequately support its Alaska parks to allow for compliance with the unique provisions of ANILCA and find a way to implement a no-cost permit system before moving forward.

It was our understanding last fall that a no-cost option to fish the Brooks River would be an option for the foreseeable future when the NPS Alaska Director wrote in the August 12, 2022, letter to the Commissioner of the Alaska Department of Fish and Game:

...the staff at KATM and I are committed to assuring that there is a mechanism for visitors to obtain this permit, on site at no cost. The specifics have not been resolved but we are hoping to test the process in September and **will assure that there is a no-cost option for this permit in future years.** We will keep the State apprised of that effort as we move ahead. [emphasis added].¹³

Yet, less than a year later, the NPS proposes eliminating the no-cost option. The NPS has acknowledged in meetings with the State that visitors with Recreation.gov permits were less compliant with permit stipulations than visitors who acquired the no cost permits at Katmai. We remind the NPS that Katmai intends to issue fee-free permits as soon as infrastructure upgrades are made at the Brooks Camp Developed Area – support for an interim solution is all that the

¹¹ Letter from Mary Creachbaum to Doug Vincent-Lang, 8-12-2022

¹² “Junk Fees,” as used here, refer to fees that are charged through recreation.gov and the recreation.gov App and paid to Booz Allen, including, but not limited to, “park access reservation fees,” “processing fees,” “reservation fees,” “permit fees,” “lottery fees,” and “cancellation fees.” “Junk Fees” does not include any amounts that are ultimately retained by the Federal Agencies instead of Booz Allen.

¹³ Letter from Mary Creachbaum to Doug Vincent-Lang, 8-12-2022

Park needs at this time. Interim methods that could enable Katmai to provide a no-cost option on-site include:

- Assigning the staff person who demonstrates how to use Recreation.gov to also be authorized to issue the permit as is done at other NPS Alaska units.
- Permits could be issued as visitors exit the Park's mandatory bear training.
- Bring on Volunteers in Person (VIPs) to assist the park during the high visitation season as is done at other NPS Alaska units.
- Administer a no-cost permit option via email, fillable PDF, or simple webform. Administrating staff could be located at the Park, the Alaska Region, the Denver Service Center, or headquarters.

Alaska is a special place with primarily free access to the vast undeveloped areas of our Parks. Free access is especially important for local access and needs to remain that way. We request that the NPS, after following the access closure procedures in 43 CFR Part 36 as discussed above, develop a method of administering the permit system without booking or other fees.

Junk Fees

Notwithstanding the State's regulatory positions above, we also have real concerns about the increased frequency with which the NPS is allowing junk fees to attach to required permits, access lotteries, and other methods of controlling access to public lands and collecting user data. We believe that allowing a Ticketmaster-like firm to profit from our Alaska national parks is in opposition to clear Congressional direction per ANILCA Section 203. We see this matter, charging a Junk Fee to fish or walk the Brooks River (traditional activities Congress sought specifically to protect under ANILCA), as a problematic precedent-setting action.

Katmai National Park is the first park in Alaska to require the visiting public to pay Junk Fees to the contractor Booz Allen Hamilton for admission to an area of the park. Fortunately, Katmai is the exception and not the rule in Alaska. Both Denali and Glacier Bay National Parks, the only Park units requiring backcountry permits, provide these backcountry permits in person at no cost to the public.

Junk Fees collected on Recreation.gov for the proposed Katmai permit do not go to the NPS, but rather to Booz Allen Hamilton. And despite arguments that Booz Allen Hamilton must collect a fee to process the Katmai permit, a random check through various Alaska facilities available on the site shows that not all reservations incur an additional user fee, indicating that either the federal agency or the contractor has the leeway to waive collection of these fees. Please explain why the reservation system for the Brooks River Corridor permit requires a reservation fee when there appears to be some discretion about when the fees are charged.

We are not alone in our opposition to the NPS permissiveness of Recreation.gov and its associated Junk Fees. For examples, see the recent *Kotab v. BLM* decision¹⁴ and the ongoing class action complaint¹⁵ against Booz Allen Hamilton's operation of Recreation.gov. These cases aim to hold Booz Allen Hamilton responsible for imposing Ticketmaster-style Junk Fees on reservations for the use of federal lands and amenities.

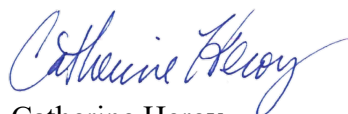
The Regional Director and Department of Interior should reconsider allowing Junk Fees to be required for accessing public lands in Alaska.

Conclusion

Thank you for the opportunity to comment. We appreciate the efforts of the NPS to address the impacts of increased visitation and consider the safety of wildlife and visitors to the Brooks River Corridor.

We look forward to working with the NPS as this planning effort moves forward. Please contact me at (907) 269-0880 if you have any questions or for follow-up discussions with State staff.

Sincerely,



Catherine Heroy
Acting ANILCA Program Coordinator

Ecc: Sarah Creachbaum, NPS Regional Director

¹⁴ “Case No. 2:20-cv-01957-JAD-EJY 2022-03-31” *Kotab v. Bureau of Land Mgmt.*, 595 F. Supp. 3d 947, (D. Nev. 2022)

¹⁵ ROBYN WILSON, TAMERA STREETER, DANA OLIVER, KRISTEN JONES, NATALIA LOGINOVA, JOSH BERGER, and NICK LAURITZEN, on behalf of themselves and all others similarly situated, Plaintiff, v. BOOZ ALLEN HAMILTON, INC. and DOES 1-20, Defendants