

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

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December 6, 2001

Mr. Robert Arnberger  
Regional Director  
National Park Service  
2525 Gambell Street, Room 107  
Anchorage, Alaska 99503

Dear Mr. Arnberger:

In response to the Katmai Superintendent's invitation to review the April 10, 2001 Superintendent's Compendium for Katmai, Aniakchak and the Alagnak River, state agencies conducted a detailed analysis of the document. For the National Park System as a whole, compendia typically contain a superintendent's park specific rules applying to public activities. They are designed to be flexible documents which may be modified any time at the discretion of the Superintendent. As indicated informally in several discussions this fall with Regional Office staff and a number of Alaska park rangers, we found the April 2001 Compendium did not meet the standards required by statute and regulation for restricting public use in Alaska. Among the problems, many compendium rules are not legally enforceable until a formal rulemaking process as prescribed in 36 CFR Part 13 and 43 CFR Part 36 has been completed.

We first encountered similar problems in the late 1980s and early 1990s. With much effort over several years, the National Park Service and the State subsequently achieved substantial agreement about appropriate corrections. Consequently we were surprised to see the latest compendium did not reflect that progress. Based on our recent discussions with your staff, we understand we have encountered the results of staff turnover at the park level, combined with some apparent Service-wide lose of continuity. We very much appreciate the Service's willingness to allow us to assist in restoring previous understandings for use of compendia.

We suggest that an updated set of standard Service procedures or policy document(s) that guide the development of future compendia in Alaska consistent with applicable national and Alaska-specific regulations would be the most valuable outcome of this dialogue. Understanding the legal process by which the Service adopts restrictions either under compendia or formal rulemaking is essential for those who prepare and review compendia, and for those who are subject to its provisions. Adherence to required procedures will also increase the effectiveness of enforcement actions.

In an even larger context, cooperative efforts with the state and public to identify genuine management concerns up front will help build support for needed responses and broaden the tool chest of options. For example, use of state "tools," such as the Boards of Fish and Game, or special use area designations, may alleviate the need to initiate time consuming federal rulemaking procedures.

This letter, therefore, is offered to benefit all Alaska parks preparing or revising compendia, and to assist the Service in achieving a standardized approach to address the many unique issues faced by the individual park units.

The remainder of this packet is organized into three parts:

**Part One** analyzes the applicable Alaska-specific and national regulations and their rationale.

**Part Two** briefly reviews the history of relevant Service/State compendia correspondence and actions. (Copies of historical correspondence are attached).

**Part Three** details the state's specific comments on the April 2001 Compendium for Katmai, Aniakchak and the Alagnak River. We understand the April 2001 document is already undergoing modifications, partly resulting from our informal dialogue over the last few months; so some of our comments may no longer be applicable.

Thank you for the opportunity to continue the productive dialogue on compendium issues. I am optimistic that these efforts will streamline and increase the effectiveness of park management.

Sincerely,

/ss/

Sally Gibert  
State CSU Coordinator

cc: Deborah Liggett, Superintendent, Southwest area park units  
John Katz, Governor's Office, Washington, D.C.  
Pat Galvin, Director, Division of Governmental Coordination  
Pat Pourchot, Commissioner, Department of Natural Resources  
Frank Rue, Commissioner, Department of Fish and Game  
Joseph Perkins, Commissioner, Department of Transportation and Public Facilities  
Michele Brown, Commissioner, Department of Environmental Conservation  
Deborah Sedwick, Commissioner, Dept of Commerce and Economic Development

## PART ONE: APPLICABLE REGULATIONS

### Alaska-Specific Regulations

The Alaska National Interest Lands Conservation Act (ANILCA) significantly reduced the scope of compendia for Alaska park units by requiring managers to conduct formal rulemaking with full public involvement before implementing many types of public use closures and restrictions. Rulemaking for Alaska units following ANILCA (36 CFR Part 13) further clarified Alaska's procedural distinctions. Subsequent revisions to the national regulations (36 CFR Parts 1-7) reiterated that closures of public activities in Alaska would follow the Part 13 regulations. Then special access regulations for Title XI of ANILCA were adopted (43 CFR Part 36) which even more clearly laid out formal rulemaking requirements to implement closures. The sequence of this rulemaking is highlighted here:

**June 1981.** The so-called "Interim Regulations" were adopted to implement ANILCA for management of park units in Alaska. The following are relevant quotes from the Federal Register—Department of the Interior National Park Service 36 CFR Part 13 National Park System Units in Alaska, Final Rule, Federal Register Vol. 46, No. 116, Wednesday, June 17, 1981, Rules and Regulations:

***SUMMARY:** . . . This rulemaking has a three-fold purpose. First, it relieves otherwise applicable regulatory provisions of 36 CFR Parts 1-9 which are generally inappropriate in the unique Alaska setting (e.g., restrictions on firearms, camping, picnicking, access, use of natural features). Second, it establishes administrative procedures necessary to implement or clarify various provisions of ANILCA (e.g., access, use of cabins). Third, with the new management direction provided by ANILCA, this rulemaking seeks to remove public confusion on what public use activities are now authorized for National Park System units in Alaska.*

[emphasis added]

#### ***Need for Expeditious Rulemaking and Immediately Effective Date***

. . .

*First, many of the provisions relieve the otherwise applicable restrictions of 36 CFR Parts 1-9, which are inappropriate in the unique Alaska setting. For example, **standard restrictions on access, firearms, preservation of natural features, abandoned property and camping and picnicking are relieved by these regulations.***

[emphasis added]

#### ***Section-by-Section Analysis***

. . .

*Closure Procedures—Section 13.30 authorizes the Superintendent to close an area or restrict an activity on an emergency, temporary or permanent basis. A determination to close an area or restrict an activity will be based on factors such as public health and safety, resource protection, and subsistence uses.*

#### ***§ 13.30 Closure procedures.***

*(e) Permanent closures or restrictions. Permanent closures or restrictions shall be published as rulemaking in the Federal Register with a minimum public comment period of 60 days and shall be accompanied by public hearings in the area affected and other locations as appropriate.*

**June 1983.** Revisions to the national regulations (36 CFR Parts 1-7) reiterated that restrictions on public uses in Alaska would follow 36 CFR Part 13 regulations. The following references are from the Federal Register—Department of the Interior National Park Service General Regulations for Areas Administered by the National Park Service, Federal Register Vol. 48, No. 127, Thursday, June 30, 1983, Rules and Regulations:

***Analysis of Comments Section 1.2 Applicability and scope.***

*Alaska. Several commenters in Alaska questioned the applicability of these regulations to park areas in that State. In general, the rules found in 36 CFR Part 13 apply to Alaska park areas and supersede the general regulations found in 36 CFR Parts 1-6 in those specific instances where the provisions of the general regulations are in conflict. For example, Alaskan park areas have specific regulatory provisions concerning snowmobiles, motorboats, aircraft, weapons, traps and nets, hunting, trapping, off-road vehicles, nonmotorized surface transportation (including dogsleds), unattended or abandoned property, camping, picnicking, permits, access, and cabins.*

[emphasis added]

**September 1986.** Final rulemaking to implement the access, transportation, and utility system provisions in ANILCA Title XI was adopted—Department of the Interior Office of the Secretary, Fish and Wildlife Service, National Park Service, Bureau of Land Management, 43 CFR Part 36, 50 CFR Part 36, 36 CFR Part 13, 51 FR 31619, September 4, 1986, Transportation and Utility Systems in and Across, and Access into, Conservation System Units in Alaska:

***53 Section 36.1 Applicability and Scope***

*Another commenter proposed an additional paragraph to expressly establish the precedence of these regulations over the general regulations of the Federal agencies insofar as transportation and access in Alaska CSUs are concerned. The requested statement is unnecessary. These regulations establish uniform procedures for the managing agencies to use in administering the body of applicable law pertaining to authorization and administration of TUSs. In other words, these regulations provide the procedural methodology regardless of an agency's existing regulations.*

[emphasis added]

Thus permanent restrictions on public entry cannot be implemented in Alaska park units through compendium procedures under the national regulations at Section 1.5. A permanent restriction on public activities in Alaska park units requires completing the federal rulemaking process, including hearings and public notice, before it can be enforced. For example, any restrictions on camping, public entry, or other public uses which will occur repeatedly for certain hours, days, or seasons, is a permanent closure requiring rulemaking. Unlike “lower 48” parks, Alaska park units are considered “open until closed” to public activities not otherwise prohibited by law. Further discussion of what types of limits (e.g., hours, seasons, methods) constitute permanent restrictions is contained in the context of the specific comments in Part Three.

### **Applicable National Regulations**

Even though Alaska-specific rulemaking supercedes specific portions of the national regulations, some provisions of the national regulations remain applicable, including parts of 36 CFR Part 1. According to 36 CFR Section 1.5, a superintendent's authority to issue a compendium to restrict public uses is required to be:

*(a) Consistent with applicable legislation and Federal administrative policies, and **based upon a determination that such action is necessary** for the maintenance of public health and safety, protection of environmental or scenic values, protection of natural or cultural resources, aid to scientific research, implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities”*

[emphasis added]

It is important to understand that authority to take action through a compendium under 36 CFR Section 1.5(a) is, however, limited by Section 1.5(b). In particular, any actions affecting activities that are “*of a nature, magnitude and duration that will*” significantly alter the public use pattern, parks values, result in a major modification of resource management, or are highly controversial “*shall be published as rulemaking.*” Determining whether an action is significant or controversial is a subjective process, and we urge consultation with the state where such actions affect the state's interests prior to inclusion in a compendium.

In addition, the Part 1 authority requires a written justification, much like the determination required in ANILCA Section 1110(a), in 36 CFR Section 1.5(c):

*(c) Except in emergency situations, prior to implementing or terminating a restriction, condition, public use limit or closure, the superintendent shall prepare a **written determination justifying the action**. That determination shall set forth the reason(s) the restriction, condition, public use limit or closure authorized by paragraph (a) has been established, and **an explanation of why less restrictive measures will not suffice** . . . This determination shall be available to the public upon request.*

[emphasis added]

Early identification of issues and outreach about why they are important will greatly assist fellow agencies and other stakeholders in understanding Service intent, building support for a management response, and broadening the scope to include alternative approaches. Note the above regulation also requires that actions be exercised via the least restrictive measure, further supporting the benefits of taking a broad view of the issues and possible solutions.

Under the national regulations, implementation of a public use restriction through a compendium also requires public notification:

*§1.5(e) Except in emergency situations, the public will be informed of closures, designations, and use or activity restrictions or conditions, visiting hours, public use limits, public use limit procedures, and the termination or relaxation of such, in accordance with §1.7 of this chapter.*

**§1.7 Public notice.**

*(a) Whenever the authority of §1.5(a) is invoked to restrict or control a public use or activity, to relax or revoke an existing restriction or control, to designate all or a portion of a park area as open or closed, or to require a permit to implement a public use limit, the public shall be notified by one or more of the following methods: (1) Signs . . . (2) Maps available in . . . places convenient to the public. (3) Publication in a newspaper of general circulation in the affected area. (4) Other appropriate methods, such as . . . electronic media, park brochures, maps and handouts.*

All current compendia, with applicable maps, must be generally available to the public accessing park areas. Unlike most “lower-48” parks, Alaska parks do not have centralized entrance points where all visitors obtain use information. Local residents and visitors alike often enter remote park areas from dispersed communities, large and small, via a variety of private and commercial transportation modes. In July and August, we checked the National Park Service web sites for the Alaska parks and were unable to locate any Alaska park compendia. In light of Section 1.7 above, compendia rules which are not readily available to the public are vulnerable to legal challenge.

We also recognize the benefits to the public of providing information about park rules and etiquette in a format that is more “visitor-friendly” than a 10 or 20 page technical/legal document like a compendium. Such maps and brochures should reference the existence of supporting documentation as compendia and regulations and note where they may be obtained.

### **Additional State Recommendations**

We recommend a thorough assessment of the applicable national and Alaska-specific regulations so that each park’s compendium and regulatory strategy relies on the same assumptions. A good starting point is the compendium template that was prepared by the Regional Office in 1994. (See Part Two for more about the 1994 template.) Each compendium could then include an introduction clarifying which national regulations are superseded by Alaska-specific regulations or if they are replaced by compendium designations that allow additional activities otherwise prohibited.

Applicable portions of Parts 1-5 of the 36 CFR regulations which are not superseded by 36 CFR Part 13 or 43 CFR Part 36 should be cited when used to restrict public use. We suggest that those Parts 1-5 that have been superseded should not be cited or listed in the template, with an explanation in the introduction that if they are not listed then they are not applicable.

We recommend each compendium clarify enforcement authorities and rationale for each provision modifying public use, and note those that are prosecutable as a violation of park rules, that may be advisory, or where rulemaking may be underway. The public should understand the possible consequences (to themselves as well as park resources) of non-compliance.

Regulatory or compendium restrictions may impact the state’s management of fish, wildlife, water, lands, and related public activities; therefore consultation is warranted to coordinate management restrictions, assess alternatives, and/or defer to the state’s authorities. A cooperative approach will help insure the Service has evaluated less restrictive measures per Section 1.5(c), and may alleviate the need for regulations.

We would also like to take this opportunity to revive a long standing request for the Service to conduct park-specific studies of pre-ANILCA activities and methods and means of access. One such study, conducted jointly by the Service and the Alaska Department of Fish and Game, has been completed for the Wrangell-St. Elias National Park and Preserve. This comprehensive effort offers a useful model for other parks. Closures or restrictions of public access without such baseline knowledge will become increasingly problematic as it becomes more difficult to identify what activities were "traditional" when ANILCA was enacted. The more time passes the more difficult it will be to gather this important baseline information

## **PART TWO: CHRONOLOGY OF COMPENDIA CORRESPONDENCE AND ACTIONS**

**pre-1986.** During review of park General Management Plans (GMPs), the state commented that proposed public use restrictions (e.g. group size limits at Gates of the Arctic) could not be implemented solely through the plan as initially proposed, but required subsequent rulemaking.

**1986.** GMPs recognize that formal rulemaking is required for closures and public use restricting (e.g. November 1986, Gates of the Arctic GMP, pages 134, 163-164.)

**July 1993.** The State of Alaska first became aware of a park compendium and its use in limiting public use activities in Alaska park units. The state was initially concerned that these documents were not readily available for review by the state and public.

**July 28, 1993 State of Alaska letter to National Park Service:** The state's first review of a park compendium resulted in our initial systematic analysis of legal requirements under ANILCA for limiting public activities.

**August 17, 1993 (meeting).** The Regional Director informed the state and the Citizens' Advisory Commission on Federal Areas<sup>1</sup> (CACFA) that the Solicitor agreed with the state's analysis. The Chief of Enforcement also concurred that most compendium restrictions were not enforceable. The Service agreed to provide other park compendia to the state for review.

**August 23, 1993 State of Alaska letter to Regional Director:** The state offered to assist the Service in pursuit of appropriate rulemaking to implement necessary restrictions, and asked that existing compendia restrictions be withdrawn.

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<sup>1</sup> The Citizens' Advisory Commission on Federal Areas, an independent commission of Alaskans, was established by the Legislature in 1981. Executive Director Stan Leaphart worked closely with the state on many ANILCA issues. In particular, he provided lead technical support to the state on matters pertaining to park compendia. In the context of compendia discussions, there is no practical distinction between CACFA and the "state."

**December 1993.** The state met with the Chief of Enforcement to discuss remaining compendia, noting similar regulatory deficiencies in many. Again the Chief of Enforcement acknowledged the need for alternative measures, but was reluctant to withdraw the documents in the interim.

**January 20, 1994 State of Alaska letter to Regional Director:** Following up on the December meeting, this state letter compiled a detailed analysis of each park compendium.

**March 22, 1994 Regional Director memo to Superintendents:** This memo transmitted a template to all superintendents for use in completing revised compendia designed to address “*every regulation that can be modified by a compendium provision*” and to ensure “*they comply with law, regulation and policy.*” The attached template favorably reflected the state’s analysis. A month later, twelve revised compendia using this template were provided for state review.

**May 17, 1994 State analysis of compendia transmitted by CACFA to the NPS:** The analysis noted the revised compendia were “*much improved*” through use of the new template, but also noted that several of the compendia retained unenforceable closures and/or restrictions.

**June 29, 1994 (meeting).** The Chief of Enforcement and state representatives jointly reviewed progress made. Additional agreement was reached, which was followed up in writing:

**August 18, 1994 Chief of Enforcement letter to CACFA.** The Service agreed that many of the proposed restrictions necessitated completing the ANILCA-required regulatory process.

Additional correspondence between the State of Alaska and Service contain relevant analysis and are also attached.

**List of attached correspondence:**

July 28, 1993 State to NPS  
August 23, 1993 State to NPS  
January 20, 1994 State to NPS  
March 22, 1994 NPS Regional Director to Superintendents  
May 17, 1994 CACFA to NPS  
August 18, 1994 NPS to CACFA  
September 8, 1995 State to NPS  
June 17, 1998 CACFA to DGC  
April 21, 1999 State to NPS  
July 10, 2000 State to NPS

### **PART THREE: SPECIFIC COMMENTS ON THE APRIL 2001 COMPENDIUM**

The full text of the April 2001 Compendium for Katmai, Aniakchak, and Alagnak is quoted below (*in a 10 point Arial italic font*), followed by the state recommendations wherever we identify a concern, request a clarification or modification, or suggest an alternate approach for implementation. We also compared this 2001 compendium to the compendia template that was circulated to all Alaska park superintendents by the Regional Director in March 1994. We have inserted and noted accordingly those terms addressed in the template that are omitted in this compendium; thus we have essentially created an updated checklist.

#### **Compendium (page 1):**

*Compendium for*

*KATMAI NATIONAL PARK AND PRESERVE  
ANIAKCHAK NATIONAL MONUMENT AND PRESERVE  
ALAGNAK WILD RIVER*

*National Park Service (NPS) regulations applicable to the protection and equitable public use of units of the National Park System grant specified authorities to a park superintendent to allow or restrict certain activities. NPS regulations are found in Titles 36 and 43 of the Code of Federal Regulations (CFR), created under authority and responsibility granted the Secretary of Interior in Titles 16 and 18 of the United States Code. The following compendium comprises a listing of all NPS regulations that provide the Superintendent with discretionary authority to make designations or impose public use restrictions or conditions. The larger body of NPS regulations that do not provide discretionary authority to the Superintendent is not cited in this compendium. A complete and accurate picture of regulations governing use and protection of the park can only be gained by viewing this compendium in context with the full body of applicable regulations found in Titles 36 and 43 CFR. Please contact Katmai National Park and Preserve, PO Box 7 King Salmon, Alaska 99613 at (907) 246-3305 for questions relating to information provided in this compendium.*

*. . . For the purpose of this compendium, the term Parks will refer to Katmai National Park and Preserve, Aniakchak National Monument and Preserve, and the Alagnak Wild River. The regulations contained within this compendium apply to all areas unless otherwise specified.*

#### **General Recommendations:**

Referring to all restrictions as "regulations" is inappropriate. We request an expanded introduction clarifying authorities, enforcement and other implementation measures, and the status of provisions in cases where regulations may be desired but are not yet promulgated.

Determination of need. As noted in the cover letter, 36 CFR 1.5(a) and (c) regarding development of compendia call for a written determination of need. We request copies of all such determinations supporting the 2001 Compendium. To the extent that additional documentation may not exist, or will be revised or generated for future compendia, we request consultation and coordination with the State during development of these determinations.

Least restrictive measures. Some compendium provisions may not be the least restrictive necessary to suffice for management of the park and its values as required in 1.5(c). (Examples

are provided in specific comments below.) Discussions with the State could help identify additional options. In some cases, use of state management tools would suffice, thereby alleviating the need for additional formal rulemaking.

**Public notice requirements.** We also note a lack of compliance with the public notice and outreach requirements in Sections 1.5(e) and 1.7(a). The April 10, 2001, signing of the compendium indicates it was enforceable immediately, yet public notice and copies remain unavailable to the public accessing these remote park areas. Other than providing copies to the commercial service providers, we have found no reference to the compendium or its provisions, or permit requirements, in Katmai brochures, Service web sites, or newspapers. Many people enter from adjacent remote communities, or by private and commercial aircraft and watercraft from more distant locations such as Kodiak and Anchorage. Providing park information to users from widely dispersed locations requires a multifaceted outreach effort.

**Maps.** In some cases maps are referenced as attachments, but are not included. In other cases, maps are not noted but are necessary to depict locations of referenced facilities or areas. On August 10, 2001, we requested copies of the “attached” maps currently referenced in the April 2001 Compendium, but we have not yet received them. Inclusion of applicable maps is an important component of the Section 1.7 Public Notice requirements.

**State consultation.** We appreciate the opportunity to review this compendium and your expressed desire to continue such consultation as it is revised. Where possible, our comments below provide constructive suggestions and recommendations during the revision process.

### **Compendium (page 1):**

#### **TITLE 36 CODE OF FEDERAL REGULATIONS**

#### **PART 1. GENERAL PROVISIONS**

##### **1.5(a)(1) Visiting Hours**

*Visiting hours at the Falls and Riffles bear viewing platforms and surrounding areas will be from 7:00 AM to 10:00 PM daily. The area affected is marked on the attached Brooks Camp Developed Area Map.*

*A schedule of visiting hours is required per the Finding of No Significant Impact for the Brooks River Bear-Viewing Facility. The schedule is intended to provide bears access to Brooks Falls and vicinity during a predictable period of time in which the general public is absent from the viewing structures.*

### **Recommendation:**

This is a permanent public entry closure of federal public lands from 10:00 PM to 7:00 AM daily. Such a permanent restriction on public entry cannot legally be implemented through a Section 1.5 compendium restriction. A permanent restriction on public activities in Alaska park units requires completing the Section 13.30(a) rulemaking process, including public notice and hearings, before it can be enforced.

The term “surrounding areas” must be defined, e.g. 300 yards, ½ mile, and a map provided. Also, if the definition of “surrounding areas” includes access to, and any portion of, the river and lakes, this provision may also be a defacto sport fishing closure, more properly regulated by the

State of Alaska in the waterways above and below the closed viewing area. Closing the viewing platform(s) and immediate portion of the trail accessing the upper platforms would parallel the State's policy at McNeil River. Some bears use the falls at night that are not normally seen during the day, so some bears may benefit by reducing human traffic at the falls.

The number of fishermen has remained stable in this area for decades, and the fishery resources are healthy. Most fishermen are engaged in catch-and-release fly-fishing and are careful to avoid contact with bears. If data indicate that fishermen walking along the river do impact bear movements, further education of alternative access to fishing sites may be an effective management tool consistent with a "least restrictive" approach. Any management actions that affect sport fishing should be coordinated in advance with the State. Any needed restrictions on sport fishing should first be addressed by the Alaska Department of Fish and Game (ADF&G) and the Board of Fish.

When the trout fishery opens in June, the majority of unguided anglers fish during the night (with virtually 24-hours of daylight) and continue fishing primarily in late evening and early morning hours. Access for fishing above the falls is dispersed and only occasionally follows the footpath to the upper viewing platform, and, therefore, is not believed to be concentrated in the area frequented by bears crossing, resting, and feeding at the falls and lagoon. Those people that do fish in the area, particularly at the lagoon, are well aware of the Service's rules regarding bear avoidance. The area of most likely human/bear contact is near the floating bridge that the public uses to cross the lagoon. The State has repeatedly requested the floating bridge be replaced with an elevated walkway to reduce bear-human encounters, thereby allowing bear movement and fishing to occur.

Alternative: We suggest consideration of closing only the viewing platforms and the adjacent portion of the short trail accessing the upper platforms during the night under Section 1.5(a)(1) to reduce those facilities as destinations and decrease trail traffic. This measure would not adversely impact the sport fishing user group.

### **Compendium (page 1):**

#### **1.5(a)(2) Wildlife Viewing Conditions**

*Persons may not be within 50 yards of a bear or any large mammal or within 100 yards of a bear or any large mammal with young. This regulation does not apply to persons engaged in a legal hunt, persons on a designated bear viewing structure, or if otherwise directed by NPS personnel.*

*This restriction upon the activity of wildlife viewing is meant to apply a minimum buffer zone around wildlife. It does not imply that 50 or 100 yards is always a safe distance from which to observe wildlife. Bear encounters with humans are escalating throughout the Parks as their habitat is increasingly encroached upon. All animals have different comfort levels around humans.*

### **Recommendation:**

We object to this condition being applied as an enforceable compendium restriction throughout the entire park. While this may be a reasonable rule-of-thumb, this ignores a number of facts learned through the management of bears and bear viewing sites throughout the state. Furthermore, the supporting paragraph contains a number of questionable assumptions. What

definition is used for “bear encounters?” Are “encounters” always viewed as negative? What data document “escalating” encounters? Regarding loss of habitat “throughout the Parks,” we know of no supporting data. The two park units to which the compendium applies have seen little new development since their establishment. Public use numbers indicate declines in the last 5 years in the parks and along the Alagnak River.

The 50/100-yard rule, however well meaning, does not promote public safety and protection of brown bears, and may even create additional safety problems in the future.

- **Backing away from bears, particularly juvenile brown bears, may invite pursuit.** Occasionally young bears approach humans. In the State's experience, moving away from curious bears invites their approach. At McNeil River, if a bear approaches for any other reason than aggression, management personnel respond with the lowest level of appropriate aversive reaction. In the case of a curious adolescent bear, the lowest level of aversive reaction is not moving away. Retreating from a young, curious bear constitutes a “reward” for its approach. We do not want to reinforce approaching behavior.
- **Bears are more disturbed by moving groups of visitors than by stationary groups.** Groups who are moving away from bears in order to comply with the 50/100-yard rule may be causing more stress to bears in the area rather than alleviating stress.
- **Groups of moving visitors may hinder bears’ access to food and their ability to deal with aggression from other bears.** The 50/100-yard rule assumes that bears are protected from impacts by visitors just by having their “personal space” protected. Bears should not be approached; yet additional factors are equally important: 1) unobstructed access to their food source; and 2) an unimpeded escape route from pursuit by other bears. If a viewing site/program is designed to allow these conditions to occur, bears will habituate to humans and may be much closer than 50 yards without compromising their ability to feed and interact with other bears.
- **The 50/100-yard rule ignores the benefits and the processes of habituation.** In 1994, Larry Aumiller and Colleen Matt published a paper based on state management of bear viewing at McNeil River State Game Sanctuary (attached). Based on the experiences documented there and elsewhere, the success of the McNeil River bear-viewing program is largely due to the habituation of bears. Habituated brown bears are less threatened by humans and are, therefore, less likely to react aggressively to human proximity.

For example, the process and benefits of habituation already occur at the viewing platforms at Brooks River. Visitors stand closer than 50 yards to bears. The bears fish for salmon and ignore the visitors. The bears have become habituated to visitors both at this site and throughout the river corridor, often apparently unbothered while fishing alongside visitors. Fish caught by sport fishermen may attract bears that become food-conditioned to approach anglers; so steps to reduce food-conditioning are necessary. The safety record at Brooks Camp is very good, primarily because bears have learned that visitors in close proximity are harmless.

However, it must be emphasized that habituation and safety are compromised when visitors approach bears too closely. At McNeil River, we consciously and consistently refrain from approaching bears. As stated by Aumiller and Matt,

In all areas of the sanctuary, with exception of camp and personal boundaries, we tried not to violate bears' comfort zones. More specifically, we allowed bears to choose their proximity to humans. When bears made the choice to come near humans, they generally showed little or no signs of stress. However, when humans made that choice for bears (i.e., we approached them), we could induce high stress.

In conclusion, we recommend re-evaluation of the 50/100-yard rule. A viewing program and policies should prevent visitors from 1) approaching bears intentionally, b) fishing in close proximity to bears, and c) blocking bears' access to salmon. The Service should consider options for managing visitors' approach, position relative to salmon concentrations, and visitor activities instead of making visitors constantly move to maintain the 50/100-yard separation. We also encourage cooperative efforts with ADF&G to clarify distinctions between recommended human behavior in the Brooks Camp/Falls area and the remaining park backcountry.

### **Compendium (page 2):**

#### **1.6(f) Compilation of Activities Requiring a Permit**

##### ***Title 36 CFR***

- *Possess Weapon, 2.4(d)*
- *Collecting Research Specimens, 2.5*
- *Creating Audio Disturbances, 2.12(a)(2-4)*
- *Air Delivery, 2.17(a)(3)*
- *Recreation Fees, 2.23(b)*
- *Soliciting, 2.37*
- *Explosives and Fireworks, 2.38*
- *Special Events, 2.50(a)*
  - *Public Assemblies and meetings, 2.51(a)*
  - *Sale and distribution of printed matter, 2.52(a)*
  - *Grazing, 2.60(b)*
  - *Residing on Federal Lands, 2.61(a)*
  - *Memorialization and Scattering Ashes, 2.62(b)*
  - *Boating, (3.3)*
  - *Commercial Operations, (5.3)*
  - *Commercial Filming, (5.5)*
  - *Construction of Facilities, (5.7)*
  - *Mining operations, (9.9(a)) an approved Plan of Operations (in lieu of permit)*
  - *Cabins on Federal Lands-*
    - General use and occupancy, 13.17(e)(1-2)*
    - Commercial fishing, 13.17(e)(3)*
    - Subsistence, 13.17(e)(4)*
    - For taking of fish and wildlife-temporary, 13.17(e)(7)*
    - Cabins otherwise authorized by law, 13.17(e)(8)*
- *Abandoned Property, 13.22*
- *Backcountry Camping, 13.18(a)*
- *Using Aircraft for Subsistence, 13.45(a), 13.73(a)(2)*
- *Cutting live standing timber greater than 3 inches in diameter for subsistence uses, (13.49)*

**Title 43 CFR PART 36**

- *Access to Inholdings, 43 CFR 36.10(b)*
- *Helicopter Landings, 43 CFR, 36.11(f)(4)*
- *Off-road vehicle (ORV) Use, 43 CFR 36.11(g)(2)*

**Recommendation:**

This list should be compared to the Service's 1994 template to determine if any activities are inappropriately listed as requiring a permit. We note the following examples.

Delete “*Possess Weapon, 2.4(d).*” It is incorrect and misleading to indicate firearm possession requires a permit. The regulation Section 2.4(a)(1) clearly indicates the permit requirement is superseded by the 36 CFR Part 13 Alaska regulations. Section 13.19(a) “applies to all park areas in Alaska except . . . former . . . Katmai National Monument.” Section 13.19(b) states “Firearms may be carried within park areas in accordance with applicable Federal and State laws, except where such carrying is prohibited or otherwise restricted pursuant to 13.30.” No such regulations have been enacted. On page 3, the compendium correctly notes that Section 2.4(a)(2)(ii) and 2.4(a)(3) provide for possession of inaccessible or inoperable weapons in vehicles, vessels, and lodging (without a permit); this applies to the original Katmai monument. Thus, the public does not need a permit to carry loaded or accessible weapons anywhere in the parks, except that the weapons must be inaccessible or inoperable while within the original Katmai monument. This latter provision should be clarified under Section 2.4(a).

Delete “*Air Delivery, 2.17(a)(3)*” and “*Boating, (3.3).*” Permits should not be required for these activities. Access methods by aircraft and boats are addressed by the Alaska regulations. Congress directed that permits be avoided as much as possible. Most “*Air Delivery*” is probably already under permit through existing commercial operator permits and reporting requirements.

**Compendium (page 2):**

**TITLE 36 CODE OF FEDERAL REGULATIONS  
PART 2. RESOURCE PROTECTION, PUBLIC USE AND RECREATION**

**2.1(a)(4) Designated Areas for Collection of Dead Wood**

*Dead and down wood may be collected for use as fuel for campfires within the Katmai National Park. (Superseded by 13.20(a)(4) in the ANILCA additions.)*

*This requirement is intended to protect limited slow growing vegetation and preserve standing deadwood habitat from over harvest for firewood. Applies to the pre-ANILCA areas of Katmai National Park.*

**Recommendation:**

The national regulation Section 2.1(a)(4) prohibits the collection of firewood unless an area is designated for such by the superintendent. This is superseded by the Alaska-specific regulation 13.20(b)(4), which allows collection of dead or downed wood in all Alaska parks except the pre-ANILCA portions (e.g., “old” Katmai). If the intent of the compendium is to designate the pre-ANILCA portion of Katmai as being open to collection of dead or down wood for fuel, we suggest this intent be more clearly presented.

**Compendium (page 3):****2.1(a)(5) Entering On or into Cultural Resource Sites**

*There are no areas in the Parks designated for this activity.*

**2.1(b) Designated Trails**

*There are no designated trails at this time.*

**Recommendation:**

All park areas in Alaska are open to the public until closed or restricted through appropriate rulemaking. We therefore recommend deleting these two provisions from the compendium since they simply reiterate national rulemaking which is superseded by Alaska regulations in 36 CFR Part 13 and 43 CFR Part 36. Any designated cultural resource sites that the park wishes to close to public entry should undergo the appropriate closure process reflected in the park-specific regulations in 36 CFR Part 13 Subpart C.

Similarly, there is no need to address “Designated Trails.” This is consistent with the Service's 1994 template which notes that Section 2.1(b) -Designated Trails is “not applicable.” The template also notes there are no designations under this section, ostensibly because closures in Alaska park areas require appropriate rulemaking.

**Compendium (page 3):****2.1(c)(1-3) Harvesting Resources for Personal Use or Consumption**

*The following may be gathered by hand for personal use or consumption:*

- *Unoccupied seashells*
- *All edible berries and fruits*
- *Edible mushrooms*

*(Superseded by 13.20(b)(1) and 13.49 for ANILCA additions)*

**Recommendation:**

While we understand this is a “designation” opening an area to the above harvests, we suggest an explanation that the Superintendent is authorizing these activities in the pre-ANILCA Katmai park area, consistent with the rest of the unit under the Alaska regulations.

**Compendium (page 3):****2.2(d) Transporting Lawfully Taken Wildlife through Katmai National Park**

*Wildlife legally taken outside the park may be transported through the park provided the transporter obtains permission from the superintendent verbally or in writing prior to entering the park and provides the following information:*

- *Hunting location*
- *Names and addresses of hunters*
- *Means of access (aircraft/vessel descriptions and registration numbers)*
- *Species hunted and taken*
- *Approximate dates of transport*
- *Agreement to show or locate kill location on map if contacted*
- *Map clearly showing park boundaries*

*This requirement is intended to allow transport of legally taken game across park lands. It is understood that there are limited locations that can only be accessed by crossing park lands to reach lands outside the park to hunt.*

### **Recommendation:**

We request this section be simplified and made less burdensome. The intent of the 1994 template provision was to ease impacts on legal hunting activities in those few locations where public access to legal hunting areas is limited and necessitates crossing parklands. We encourage reevaluation in light of Section 1.5(c) requiring “a written determination justifying the action . . . and an explanation of why less restrictive measures will not suffice . . . .”

Specifically, the conditions should be more flexible to accommodate changes in weather, changes in hunting partners, or inability to make contact with the Superintendent. For example, the 1994 template requires “prior notification to park superintendent verbally or in writing” of “where” and “how” a hunter will access to hunt “what” species, which could be accomplished via a single letter, phone message, fax, e-mail message. In contrast, the April 2001 Compendium requires “the transporter obtains permission” for all hunters before hunting and a required report after hunting. This will often entail multiple long distance calls since the superintendent and staff are not always readily accessible. What consideration is given to hunting parties that leave home to hunt over the weekend or when the superintendent is otherwise unavailable?

Regarding the reporting requirement, if the park desires public use data, why aren't state annual reports adequate? Big game hunters are already required by the state to report where, how long, how accessed, and what animals are harvested. We also suggest clarification that the term “transporter” refers to the hunter(s) moving his harvest, not a commercial transporter.

We also urge deletion of the required “permission.” Prior “notification” is less burdensome and is consistent with the 1994 template. Receiving permission implies that it can be denied, which is the same as requiring a permit. Hunters legally hunting outside the park, but crossing the park, should not be required to acquire a defacto park permit in addition to the state's license, tags, and harvest tickets. A hunter legally hunting outside the park should also not be required to list (and get permission for) every species he might possibly hunt. A person may only be intending to hunt moose but have the opportunity to take a fox under the legal system—is he then in violation of his NPS “permit”? What criteria would be used to deny permission to a legal hunt? We believe enforcement to prevent illegal harvest along the routes of travel within the park would protect park resources more effectively than this unwieldy paperwork requirement.

In conclusion, we recommend appropriate designation of known important access routes across parklands, and requiring simple advance notification for use of other crossings only when not already designated. The Superintendent could include the designation(s) in the compendium and provide notice through a sort of “general” permission, and reminding others using undesignated routes to provide notification.

### **Compendium (page 3):**

#### ***2.2(e) Wildlife Viewing with Artificial Light***

*Wildlife viewing with artificial light is prohibited in all areas of the Parks.*

**Recommendation:** None at this time.

**Compendium (page 3):**

**2.3(d)(2) Waters Open to Bait Fishing in Fresh Water**

*There are no areas in the Parks designated for this activity. State Law applies.*

**2.3(d)(8) Fishing from Public Boat Docks**

*There are no areas in the Parks designated for this activity.*

**Recommendation:**

We request both be clarified as “superceded by Section 13.21(b)--State Law applies.” Section 2.3(d)(2) is also superceded by 13.66(b)(1), as noted in the 1994 Katmai compendium. ANILCA Sections 1313 and 1314 reaffirm state management of fishing under applicable state and federal law. The 1994 template included “All waters open to bait fishing,” which is consistent with state fishing regulations. If these two items are addressed in the Compendium, then both should be consistent—state law applies. Under Section 2.3(d)(8), the Service may only close fishing from Service-owned facilities; other facilities which provide access to public waters are regulated by the owner/manager and likely allow fishing consistent with state law. This distinction should be clarified.

We also request a new section under Section 2.3(a). Under the Alaska-specific regulation at Section 13.21(b), “fishing is permitted in all park areas in accordance with applicable State and Federal law . . . to the extent they are not inconsistent with Section 2.3 of this chapter.” Alaska’s fishing regulations allow some net fisheries in fresh waters, closely regulated for subsistence, commercial, personal use, and recreation. While Section 2.4 of the national regulations defers the use of nets in Alaska to the Part 13 regulations, the Part 13 regulations on fishing defer to state law if consistent with Section 2.3, which prohibits use of nets “except in designated areas.” Thus, we request the Superintendent add Section 2.3(a) to the compendium and designate Alaska parks as “State law applies.” Without this designation, many people legally fishing under state regulations could inadvertently be in violation of the net prohibition and subsequently be deprived from participating in traditional fisheries under state management. The requested change is consistent with the Service’s intent cited in the preamble to the 1983 regulations to defer to state fisheries management with regard to use of nets for fishing:

**In general, the rules found in 36 CFR Part 13 apply to Alaska park areas and supersede the general regulations found in 36 CFR Parts 1-6 in those specific instances where the provisions of the general regulations are in conflict.** For example, Alaskan park areas have specific regulatory provisions concerning snowmobiles, motorboats, aircraft, weapons, traps and **nets**, hunting, trapping, off-road vehicles, nonmotorized surface transportation (including dogsleds), unattended or abandoned property, camping, picnicking, permits, access, and cabins.” (emphasis added)

**Compendium (page 4):**

**2.4 (a)(2)(i) Carrying of Weapons, Traps, or Nets**

*This section does not authorize any areas for possessing a weapon, trap, or net.  
(Superseded by 13.19(b) in the ANILCA additions.)*

*(Note: See 2.4(a)(2)(ii) and 2.4(a)(3), which authorizes possession of inaccessible or inoperable weapons in vehicles, vessels, and lodging.)*

*The intent of this requirement is to provide maximum wildlife protection by not allowing the carrying of weapons or traps within the park unless the weapon is broken down and made inaccessible during transport.*

**Recommendation:**

To eliminate potential confusion, we recommend deleting the lead reference to the superceded national regulation and citing the applicable Alaska regulations in 36 CFR Section 13.19, as noted. Except for the pre-ANILCA portion of Katmai, carrying firearms is regulated by the Alaska provisions and any restrictions must follow the 36 CFR Section 13.30 procedures. Additionally, clarify that weapons may be in possession, per Section 2.4(a), in the pre-ANILCA portion of Katmai if unloaded or inaccessible.

We recommend deletion of the confusing supporting language since it describes a more burdensome requirement that weapons be “broken down and made inaccessible,” when the regulation more accurately requires it be “inaccessible or inoperable.” The term “broken down” is undefined; and it is unnecessary to require the weapon to be both inoperable and inaccessible.

**Compendium (page 4):**

**2.4 (a)(2)(ii) Carrying Weapons for Target Practice**

*There are no areas in the Parks designated for this activity.*

**Recommendation:**

How can one tell whether the firearm is going to be used for “sighting-in” as part of routine and safe hunting practice after transport and prior to hunting, thus legal under 36 CFR Section 13.19 and Section 2.4(a) versus “target practice”? It would be clearer to state there are no areas designated for target practice rather than implying that the carrying itself is illegal if the intent is to use for target practice.

**Compendium (page 4):**

**2.10 (a) Camping**

*(Superseded by 13.18(a))*

**Recommendation:**

We recommend clarification, consistent with the 1994 template, “all areas open for camping” unless restricted or closed under the 36 CFR Section 13.30 closure procedures.

**Compendium (page 4):**

**2.10 (d) Food Storage**

*All food, food containers, garbage, and harvested fish must be secured within a building, designated food cache, a bear resistant section of a vehicle, vessel or aircraft, or a bear resistant food container. Any fish caught and kept within the Brooks Camp Developed Area must be immediately stored within a designated facility.*

*A bear resistant section or container is securable and constructed of material capable of withstanding a minimum of 200-ft/lbs of energy. Some examples include: PVC plastic backpacker canisters, steel drums with locking rings, modified military ammo cans, and metal raft dry boxes. Ice chest, coolers, tents, and plastic packing boxes ARE NOT approved Bear Resistant Food Containers.*

*Designated fish storage facilities within the Brooks Camp Development Area are the Fish Freezing Building for the public, and employee residences.*

*The intent of these requirements is to prevent bears and other wildlife from learning to associate humans, human developments, or camp sites as potential sources of food, thus protecting wildlife and park visitors alike. There is a lack of suitable vegetation throughout most of the park[s] for hanging items out of the reach of wildlife, therefore this means of food storage is prohibited.*

### **Recommendation:**

We request reinstatement of the 1997 Compendium provision that allowed storage “suspended at least 10 feet above the ground and 4 feet horizontally from a post, tree trunk, or other object, or other facility designated by the Superintendent.” There are forested areas where such means of food storage are reasonable, feasible and traditionally used by residents, particularly in Katmai preserve. This less restrictive modification would be consistent with Section 1.5(c).

### **Compendium (page 4):**

#### **2.11 Picnicking**

*(Superseded by 13.18(b))*

### **Recommendation:**

We suggest adding a clarifier consistent with the 1994 template: “All areas of the park[s] are open for picnicking.”

### **Compendium (page 4):**

#### **2.13(a)(1) Fires**

*Within a 5 mile radius of the Brooks River and within the Lake Camp Developed Area (see Appendix Maps), fires are permitted only in pre-established designated fire rings or grills. Campfires are permitted at all other locations. Fires may not be left unattended and must be completely extinguished upon termination of use.*

*The intent of this requirement is to allow for fires in the backcountry while ensuring that resource impacts are minimized. It is recommended in backcountry areas to reuse visible fire rings. When fires are extinguished, cooled remnants should be scattered.*

### **Recommendation:**

We recommend changing the word “permitted” to “allowed” or “authorized” consistent with the 1994 template to clarify that campfires do not require a permit. We also request deleting the italicized recommendation that cooled ashes be scattered. Scattering ashes in some habitat is less desirable than leaving them within a campfire ring.

**Compendium (page 5):**

**2.14 (a)(2) Sanitation and Refuse - Government Receptacles**

*Dumping of household, commercial, or industrial refuse brought into the park is prohibited.*

*This requirement is intended to ensure the refuse handled by the park is generated by activities occurring within the park.*

**Recommendation:** None at this time.

**Compendium (page 5):**

**2.14 (a)(5) Sanitation - Bathing and Washing**

*Within the Brooks Camp Developed Area (Appendix A), the water spigot located adjacent to the food cache is the only outdoor location approved for washing of cooking utensils. Showers may be obtained from the Concessioner at Brooks Lodge.*

**Recommendation:**

To be consistent with public notice requirements of Sections 1.5 and 1.7, a map showing the location of these washing and bathing facilities should be attached and be readily available to the public.

**Compendium (page 5):**

**2.14 (a)(7) Sanitation - Disposal of Fish Remains**

*There are no areas in the Parks designated for this activity.*

**Recommendation:**

This entry incorrectly implies that fish waste cannot be disposed of throughout the parks. In fact, the cited regulation prohibits “disposing of fish remains on land, or in waters within 200 feet of boat docks or designated swimming beaches, docks or within developed areas, except otherwise designated.” Inclusion of this level of detail is important to clarify that there are indeed areas within park boundaries where fish waste may be disposed, such as in most waterbodies.

**Compendium (page 5):**

**2.14 (a)(8) Sanitation - Human Waste in Developed Areas**

*Use of existing fixtures and facilities at Brooks Camp, Brooks Lake and Lake Camp is required.*

**Recommendation:** None at this time.

**Compendium (page 5):**

**2.14 (a)(9) Sanitation - Human Waste in Non-Developed Areas**

*Within 1/4 mile of marine shoreline, human body waste will be deposited in salt water or the intertidal zone. In all other areas holes dug at least 6 inches deep and 100 feet from any surface freshwater source will be used. Toilet paper must be removed as trash.*

*This requirement is intended to ensure that proper disposal of human waste occurs in the backcountry to protect water quality and visitor health and safety.*

**2.14 (b) Sanitation - Disposal, Carrying Out of Human Waste**

*There are no current requirements to pack out human waste.*

**Recommendation:**

Revise. State law [18AAC72.020(b)] requires a minimum separation of 100 feet “between the mean annual high water level of a lake, river, stream, spring, or slough, or the mean higher high water level of coastal waters” and the burial of human waste. Requiring disposal of human waste on state tidelands or in marine waters is in violation of state law and does not “protect water quality and visitor health and safety.” We request deletion of the requirement to remove toilet paper; it is more effective to bury with human waste, as provided in state law, than to dispose in public receptacles.

**Compendium (page 5):**

**2.15 (a)(1), (a)(3), (a)(5), (b), (e) Pets**

*Pets on a leash, crated, or otherwise under direct physical restraint and control, **and** attended at all times are permitted in all areas outside the Brooks Camp Developed Area. Employees’ pets are managed under the Park Housing Plan.*

*This restriction limits the free-range of pets within the park to protect wildlife and park visitors from harassment.*

**Recommendation:** None at this time.

**Compendium (page 5):**

**2.16 (a-c) Horses and Pack Animals**

*(Superseded by 43 CFR 36.11(e).)*

**Recommendation:**

We appreciate the correction of errors appearing in previous compendia. It would be helpful to general readers if the very short regulation on these provisions in Alaska park units at 43 CFR 36.11(e) were quoted or summarized.

**Compendium (page 5-6):**

**2.17 (a) Aircraft Operation**

*(Superseded by 43 CFR 36.11(f).)*

**2.17 (c)(1) Removal of Downed Aircraft**

*(Superseded by 43 CFR 36.11(f)(3)(ii).)*

**2.18 (c) Snowmobiles**

*(Superseded by 43 CFR 36.11(c).)*

**Recommendation:** None at this time.

**Compendium (page 6):**

**2.19 (a) Winter Activities**

*All areas open to winter use.*

**Recommendation:**

We appreciate this entry consistent with the 1994 template. We request notation that restrictions will be implemented through applicable provisions in 36 CFR Section 13.30 and 43 CFR Part 36.

**Compendium (page 6):**

**2.20 Roller Skating and Skateboards**

*There are no areas in the Parks designated for this activity.*

**Recommendation:** None at this time.

**Compendium (page 6):**

**2.21 Smoking**

*All public buildings, including public use cabins are closed to smoking. Smoking is also prohibited within 100 feet of park fuel storage facilities.*

*These restrictions are intended to protect public safety from secondhand smoke and meet federal and state smoking restrictions.*

**Recommendation:**

The supplemental paragraph should explain if this only applies to federal facilities on federal public lands, or if it include all facilities used by the public within park boundaries, e.g. guiding or lodging facilities?

**Compendium (page 6):**

**2.22 Abandoned Property**

*(Superseded by 13.22)*

**Recommendation:**

See comments addressing Section 13.22.

**Compendium (page 6):**

**2.23 Designated Recreation Fee use Area**

*The Brooks Camp Developed Area is the only designated recreational fee area within the parks. As a condition of use, ALL persons arriving at Brooks Camp must receive an approved Bear Orientation from the National Park Service or other authorized persons.*

*By requiring **all** visitors to check in at the Brooks Camp Visitor Center, the visitor will be ensured of getting a proper orientation to correct behavior around bears. Guides who have been accepted into the Brooks River Guide Program may provide this orientation to their clients without going to the Visitor Center. This is intended to increase visitor safety and resource protection.*

*[emphasis added]*

**Recommendation:**

Section 203 of ANILCA states: “no fees shall be charged for entrance or admission to any unit of the National Park System located in Alaska.” Congress authorized an experimental fee use area at Brooks, although it was intended for the use of park facilities, not as an entrance fee. We understand that state officials (e.g., fish and wildlife management biologists) and persons accompanied by some fish guides (not using the park facilities) are not required to view the bear video every time they enter the Brooks Camp area. Are the latter exempt from the fee as well? If so, this should be addressed. If there are no exemptions for the fee by those passing through to fish or conduct official work, then the charge appears to be an entrance fee.

Neither the compendium provision nor the supporting paragraph address the requirement of a fee, such as how paid, where, boundaries of the applicable area, etc. One of the conditions of use of the area is addressed but its relationship to a fee is not apparent. Fulfillment of the requirement in Section 1.5(c) to establish minimum restrictions that suffice is also not apparent.

**Compendium (page 6):****2.35 (3)(i) Alcoholic Beverages - Areas Closed to Consumption**

*No restrictions in effect.*

**2.38(b) Explosives/Fireworks**

*There are no areas in the Parks designated for this activity. Fireworks are prohibited.*

**Recommendation:** None at this time.

**Compendium (page 7):****2.51(e) Public Assemblies/Meetings - Designated Areas**

*Areas of the park open to public assemblies with a permit from the superintendent are designated on the attached Appendix D Map.*

*The permit requirement is intended to ensure assemblies can occur, but with minimal impact on park visitors and activities.*

**2.52(e) Sale and Distribution of Printed Matter- Designated Areas**

*Areas of the park open to distribution of printed matter with a permit from the superintendent are designated on the attached Appendix D Map.*

*The permit requirement allows sale or distribution of printed matter with minimal impact on park visitors and activities.*

**Recommendation:**

To be consistent with public notice requirements of Sections 1.5 and 1.7, a map showing the location of these designated areas should be attached and be readily available to the public.

**Compendium (page 7):****2.60(a)(3) Grazing**

*There are no areas in the Parks designated for agricultural grazing of livestock.*

**Recommendation:**

Although we are not concerned about a lack of “agricultural” grazing designations, we note that the 1994 template recognized that legitimate use of pack animals would necessitate some grazing. To address this, we request the following addition of the 1994 language:

- Grazing of pack or saddle animals by private parties, not to exceed 14 days, is authorized without a permit.
- Grazing in support of commercial operations [e.g. visitor services] is only allowed under permit from the Superintendent.

**Compendium (page 7):****2.62 Memorialization-Scattering ashes**

*All areas of the park are open to scattering of ashes upon receipt of a permit from the superintendent.*

**Recommendation:**

We question the need for this permit and recommend adoption of the approach in the 1994 template: “All areas of the park[s] are open to scattering of ashes without a permit.” Under Section 2.62(b), scattering of ashes from cremation may be allowed without a permit “in areas designated by the Superintendent.” Given the parks' size, remoteness, and lack of access except via airplane and motorboat, we see insufficient justification to require a permit from those few who choose to spread ashes. At some time in the future, if necessitated by population growth or visitor conflicts in high use areas, then a required permit might be appropriate for specified parts of the parks with considerations to minimize stipulations consistent with Section 1.5(c).

If a permit is required, the criteria for issuance or denial should be provided.

**Compendium (pages 7-8):****PART 3. BOATING AND WATER USE ACTIVITIES****3.3 Permits**

*(Superseded by 43 CFR 36.11(d) and (e).)*

**3.6 (i) Boating, Prohibited Operations - Designated Launching Areas**

*All areas of the park are open to launching of boats.*

**3.6 (j) Operating a Vessel not Directly Accessible by Road**

*(Superseded by 43 CFR 36.11(d))*

**3.6 (l) Operating a Vessel in Excess of Designated Size**

*No size restrictions are in effect.*

**3.20 (a) Water Skiing - Designated Waters**

*All park waters are open to water skiing.*

**3.21 (a)(1) Swimming and Bathing - Areas Designated as Closed**

*All park areas are open to swimming and bathing.*

**3.23(a) SCUBA and Snorkeling**

*There are no restrictions on these activities.*

**PART 4. VEHICLES AND TRAFFIC SAFETY**

**4.10 Areas Designated for Off-Road Use**

*(Superseded by 43 CFR 36.11.)*

**4.11(a) Load Weight and Size Limits**

*No additional restrictions*

**4.21 Speed limits-designation of a speed limit**

*Vehicle use is restricted to the south side of Brooks River. Speed limits on the road between the lower platform and Brooks Lake (Brooks Lake road) is 15 mph. The Valley of Ten Thousand Smokes road is designated is 25mph. Limited administrative use of small utility vehicles is permitted within the Brooks Camp area.*

*The reduced speed limit around Brooks Camp is for public safety. Pedestrians, bicyclists and wildlife often use the roadway and visibility is limited due to road design and vegetation.*

**4.30(a) Bicycles - Closed Areas**

*(Superseded by 43 CFR 36.11(e).)*

**4.30(d)(1) Wilderness Closed to Bicycle Use**

*(Superseded by 43 CFR 36.11.)*

**4.31 Hitchhiking - Designated Areas**

*There are no restrictions*

**Recommendation for a new section:**

We request the following addition for Section 5.7 based on the 1994 template:

**5.7 Construction of buildings or other facilities**

Maintenance of landing strips involving nonmotorized hand tools is not considered construction and no permit is required.

**Compendium (page 8):**

**PART 13. ALASKA REGULATIONS**

**SUBPART A – PUBLIC USE AND RECREATION**

**13.17(d)(8)(ii) & (iv) Removal of Cabins**

*No conditions established. (May require access permit).*

**13.17(4)(i) Subsistence Cabins**

*No designations. All subsistence use of existing cabins, shelters, or temporary facilities requires a permit from the superintendent.*

**Recommendation:**

We request two changes to Section 13.17(4)(i).

1. Change the title to “Use of cabins for subsistence purposes.” Some cabins may be used for more than just subsistence; e.g., trapping is not categorized as subsistence or recreational. This would clarify the apparent intent to require a permit of all users who may use a cabin on

federal lands for subsistence purposes, rather than designating a building as a subsistence cabin.

2. The cited regulation states: “the Superintendent may designate existing cabins or other structures that may be shared by local rural residents for authorized subsistence uses without a permit.” If a cabin were routinely used for subsistence purposes during particular times of year or for specific purposes, it would be less burdensome for the Superintendent and the subsistence users to list and designate such cabins in the compendium.

**Compendium (page 9):**

**13.17(e)(4)(vi) Construction of Temporary Structures for Subsistence**

- Superintendent must be notified in writing or verbally with the following information:
- Location
- Structure description
- Access method
- Type of subsistence use
- Individuals involved
- Dates of construction, use, and removal

**Recommendations:**

To be consistent with the Alaska regulation, revise the reference to read:

**13.17 Cabins and other structures**

(e)(4) Use of cabins for subsistence purposes.

(vi) Temporary Facilities.

We request the compendium’s reporting requirements be revised, consistent with the directives in Section 13.17:

A temporary facility or structure directly and necessarily related to the taking of subsistence resources may be constructed and used by a qualified subsistence user without a permit so long as such use is for less than thirty days and the site is returned to a natural condition. The Superintendent may establish conditions and standards governing the use or construction of these temporary structures and facilities which shall be published annually in accordance with §1.7 of this chapter. [emphasis added]

While the compendium does not expressly require a permit, failure to provide the required information from every user is a restriction on subsistence users that closely parallels a permit. Could permission for subsistence use be denied? If so, based on what criteria? What would be the consequences of failing to provide notification? In many cases, just the presence of a subsistence reporting requirement may have a chilling effect on rural residents.

The regulation authorizes the Superintendent to establish “conditions and standards governing the use or construction” of temporary facilities. Most of the information which the compendium requires from subsistence users is unrelated to “use or construction” of the facilities. Collecting the name of a responsible party if there are documented problems of subsistence users failing to remove temporary facilities may be reasonable; but we do not see a compelling need to require personal information and use activities for all individuals using the site.

We interpret the Alaska regulation allowing the superintendent to set conditions such as group size, structure size, or regulating the type of building materials—only if necessary. Under the terms of Section 1.5(c), we question whether the compendium has evaluated less restrictive measures. Also, if “conditions and standards governing the use or construction” are adopted, then the posting and notice requirements of Section 1.7 must be met to be enforceable.

To avoid triggering these issues, we urge replacing the notification requirement with the 1994 language: “No conditions or standards established at present.”

**Compendium (page 9):**

**13.17(e)(6) Designated Cabins or Other Structures for General Public Use**

*Fure’s Cabin at the northeast corner of the “Bay of Islands” in the north arm of Naknek Lake is designated as a public use cabin. The following conditions apply:*

- *Use of the cabin site for specific administrative uses shall have priority over all unreserved public use when deemed necessary by the park superintendent.*
- *All use will be conducted for recreational activity only by reservation through the King Salmon office.*
- *No commercial overnight use is permitted at the cabin.*
- *Reservations shall be made on a first-come first-served basis beginning no earlier than January 1 of each calendar year of the intended use.*
- *Use will be limited to groups no larger than six and the names of all group members shall be provided at the time a reservation is requested.*
- *Overnight stays are limited to no more than four consecutive nights and no more than seven nights a year.*
- *Use of the adjacent historic tower is not permitted.*
- *The use of a tent within the cleared area around the cabin is prohibited.*
- *Alterations to the structure, marring the surface of the wood logs, framing or other components of the cabin and surrounding structures is prohibited.*

*This requirement allows for equitable public use of the Fure’s Cabin.*

**Recommendation:**

Subparagraph (5) addresses cabins for general public use, not (6). For consistency with the Alaska regulations, this should read:

**13.17 Cabins and other structures**

(e)**(5)** General public use cabins.

The text of the regulation gives the superintendent authority to designate a cabin as a public use cabin and such cabins “are intended for short term recreational use and occupancy only.” The superintendent “may establish conditions and develop an allocation system in order to manage the use of designated public use cabins.” The cabins shall be signed and the location made available on a map.

We are unaware of concerns at this time with the above conditions for use of Fure’s Cabin. However, we are aware of other cabins in the parks and request they be addressed based on language in the 1994 template: “No [additional] formal designations, however, all federal cabins not otherwise under permit, are open for short term public use (approx. 14 days).”

**Compendium (pages 9-10):****13.18(a) Camping**

*All camping regulations are in accordance with 36 CFR 13.30(d)2.*

**Brooks Camp Campground**

- *Camping in the Brooks Camp Campground is limited to 7 nights during the month of July.*
- *Groups are limited to no more than 6 persons per site.*
- *Camping is prohibited in the Brooks Camp Campground from September 18<sup>th</sup> –May 15<sup>th</sup>.*
- *Camping is prohibited within 5 miles of Brooks Camp Developed Area.*

*These restrictions are provided to ensure that a greater number of visitors have access to the Brooks Camp area during the peak visitation season and to minimize crowding thus protecting the visitor experience and the natural resources. Public notice of this restriction will be provided by the posting of signs at Brooks Camp.*

**Backcountry Camping**

*Camping in one location is permitted up to 7 consecutive nights at which time the camp must be moved at least one mile.*

*For the purpose of this section, camping is defined as any planned overnight stay in the backcountry areas of the above listed parks, excluding stays at the Brooks Campground or Commercial Lodges.*

*This limitation is to prevent long term occupancy of campsites other groups may wish to use, minimize campsite deterioration and disruption of wildlife use patterns.*

**Backcountry Permit Required**

*A backcountry permit is required for all camping within Katmai National Park and Preserve, Aniakchak National Monument and Preserve, and the Alagnak Wild River, except for the Brooks Camp Campground.*

*For the purpose of this section, camping is defined as any planned overnight stay in the backcountry areas of the above listed parks, excluding stays at the Brooks Campground or Commercial Lodges.*

*This requirement is to ensure park visitors are provided direct exposure to park safety and educational materials as well as backcountry regulations. Additionally, the permit will facilitate the gathering of public use data to assist in the development of a backcountry management plan to further the protection of resources.*

**Recommendation:**

These camping limits are permanent restrictions that require fulfillment of the Section 13.30 closure procedures. They are not temporary restrictions authorized under Section 13.30(d) as cited above. In past discussions about this issue, the Service reached the same conclusion. According to the Chief of Enforcement (August 18, 1994):

The analysis charged KATM's [Katmai park/preserve compendium] apparent lack of compliance with the requirements of 13.30 requiring rule-making for permanent closure provisions. NPS will recommend that a special regulation be promulgated.

Section 13.18 clearly states (emphasis added):

(a) Camping. **Camping is permitted** in park areas **except where such use is prohibited or otherwise restricted by the Superintendent in accordance with the provisions of Section 13.30**, or as set forth for specific park areas in subpart C of this part.

Regarding the Brooks Camp closures: The Brooks campground camping closure from September 18-May 15 and the camping prohibition within 5 miles are permanent, albeit seasonal, and close a significant area. While we may not dispute the need for a permanent restriction that effects some additional restrictions on camping in Brooks Camp, the closures cannot be implemented as indicated in the compendium in accordance with the procedures for "temporary closures or restrictions" in 36 CFR 13.30(d)(2) and effective upon notice as prescribed in 36 CFR 13.30(f). The 5-mile closure is a permanent year-around closure and the seasonal closure is ongoing annually. Section 13.30(d)(3) states, "temporary closures or restrictions shall not extend for a period exceeding 12 months and may not be extended." Thus federal rulemaking procedures under Section 13.30(e) are applicable:

(e) Permanent closures or restrictions. Permanent closures or restrictions shall be published as rulemaking in the FEDERAL REGISTER with a minimum public comment period of 60 days and shall be accompanied by public hearings in the area affected and other locations as appropriate.

Under 13.30(f), all "emergency, temporary, and permanent closures or restrictions require publications and notice, with a map "convenient to the public" and/or posting of signs. The Service must go through permanent rulemaking to include the Brooks Camp area restrictions in Subpart C before they can be enforced, and if implemented for one season as temporary restrictions, a map must be available.

Regarding the 7-day camping limit: Section 13.18(a) states that "camping is permitted"—any restriction or prohibition requires federal rulemaking under Section 13.30. We consider camping time limits to be restrictions. According to both Sections 1.5(f) and 13.30(h), violating restrictions and public use limits is prohibited; thus must be addressed under Section 13.30 to be enforceable. We request that this portion of the compendium clarify the appropriate process to implement such restrictions where necessary. For now, the compendium may choose to address the 7-day "limit" as a voluntary measure. In some cases, education may assist in dispersing uses or reducing impacts.

Any future camping limit rulemaking proposals must consider the remoteness of the two parks and the broad range of activities year-round that involve camping. A parkwide 7-day limit will have considerable impact on Alaska residents who frequently camp for longer periods in remote locations to hunt and trap. If there are locations with seasonal situations where "long term occupancy" is causing "campsite deterioration and disruption of wildlife" or user conflicts, those sites should be identified, monitored, and evaluated for site-specific restrictions.

Regarding "required" backcountry permit: Last spring, when the State was provided the opportunity to review the April 2001 Compendium, we were also made aware of the new backcountry permit. At the time it was verbally characterized as a voluntary registration system, yet this compendium and all the written material we have seen for distribution to commercial guides and unguided overnight visitors refers to a "required permit." We strongly encourage clarifying that this is indeed a simple registration program system which would be less bureaucratic and equally effective. We are willing to work with park managers to design an appropriate outreach and information exchange program. In addition, a coordinated effort with the State and other entities could review existing databases and seek additional voluntary information where there are gaps.

To require a backcountry permit, as noted above for the 7-day limit, any restriction or prohibition requires compliance with federal rulemaking under Section 13.30. Also, there is no apparent criteria for denying a backcountry permit. If there is no reason to deny a backcountry permit, then a required permit is unnecessary and thus inconsistent with the "less restrictive measures" provision in Section 1.5(c). Finally, general violations of compendia restrictions are prohibited under Sections 1.5(f), further justifying the need to comply with closure procedures in Section 13.30.

We also note the Service has no permitting authority for backcountry camping in Alaska (and none are listed in the compendia). Section 13.31 addresses Alaska permits "required by any section of this part." Part 13 recognizes permits for helicopter landings, off-road vehicles, temporary access, and cabins, among other uses, but not camping. Therefore Section 13.31 is not applicable.

**Compendium (page 10):**

**13.18(b) Picnicking**

*Picnicking is restricted at Brooks Camp to the Brooks Campground, the Visitor Center Food Cache, the Brooks Lake Shelter, and a site designated in the employee housing areas.*

*For the purpose of this regulation, picnicking is defined as preparing or consuming food or beverage. Water is not considered a beverage.*

*These restrictions are listed here for information. Regulations require notification of picnicking limitations by posting of appropriate signs. The posting of signs at Brooks Camp will provide public notice of this restriction.*

**13.20(d) Collection of Natural Features**

*There are no additional restrictions.  
Applies to ANILCA Additions*

**13.21(c) Taking Of Fish and Wildlife**

*No added restrictions in effect.*

**Recommendation:** None at this time.

**Compendium (page 10):****13.22(c) Unattended or Abandoned Property****Brooks Camp**

*No personal property of any kind may be left unattended for any length of time in the Brooks Camp Developed Area except for: the lodge porch, the campground, or in the Caches at the Visitor Center.*

**Rest of Park**

*Personal property may not be stored or left unattended for more than 24 hours without written permission from the superintendent.*

*This restriction is intended to limit abandonment of personal property in the park and impacts to resources and other park users. The Brooks Camp provision is intended to minimize bear-human confrontations that could result from bears investigating unattended property. Provisions may be granted for longer-term storage where warranted with permission of the superintendent. Public notice of this restriction will be provided by the posting of signs at Brooks Camp and other locations.*

**Recommendation:**

We oppose application of this restriction to the entire park unit(s). The ANILCA regulations acknowledged congressional recognition that Alaskans frequently stored gear used for fishing, hunting, trapping on a seasonal basis. For example, commercial fishermen frequently store crab pots on shore when using their vessels for other fisheries. The cost and time of a run between the Katmai coast and Kodiak, Homer, Seward or other bases preclude their ability to constantly move gear around. Similarly, trappers may store winter supplies ahead of season or between seasons. Thus the Service adopted a regulation in Section 13.22(b) that allows persons to store vehicles and personal property for up to 12 months. The discretion under the regulations to the Superintendent in (c) was to protect the park—not to circumvent the permissiveness of the Alaska regulations by applying the national standard of 24 hours. This national standard is simply not appropriate in these large, remote parks. We request consideration to designate only specific areas and times where the storage may be of concern for public safety and resources, such as the Brooks Camp area.

**Compendium (pages 11-12):****13.30 Temporary Closures and Restrictions.**

*No added restrictions in effect.*

**SUBPART B – SUBSISTENCE****13.46 Use of Transportation for Subsistence.**

*No added restrictions in effect.*

**13.49(a)(2) Subsistence Timber Harvest (house logs & firewood) Less than 3" in Diameter**

*Cutting of live timber is not authorized within areas designated as Park. Verbal or written permission from the superintendent is required to cut live timber less than 3" in diameter in the Preserve, except as necessary to clear designated vehicle routes and airstrips.*

**43 CFR, PART 36 TRANSPORTATION AND UTILITY SYSTEMS (DOI Access Regulations)**

**36.11(c) Restrictions on Snowmachines, Prohibited Areas**

*No additional restrictions in effect.*

**36.11(d) Use of Motorboats**

*No restrictions in effect*

**36.11(e) Use of Non-motorized Surface Transportation**

*No restrictions in effect*

**36.11(f)(1) Restrictions on Landing Aircraft**

*No restrictions in effect.*

**36.11(f)(3)(ii) Salvaging and Removing Downed Aircraft**

*All downed aircraft shall be reported to National Park Service within 24 hours and removed from the Parks within 30 days. A permit is required from the superintendent before downed aircraft may be salvaged and removed from the park; violation of the terms and conditions of the permit is prohibited.*

*This requirement allows the superintendent to establish terms and conditions for salvage operations as necessary to protect resources, provide for public safety, and minimize impacts on visitors.*

**36.11(f)(4) Designated Helicopter Landing Areas**

*No areas of the park are designated for helicopter landings.*

*Helicopter landing may be authorized by NPS for emergency and other exceptional purposes but is generally precluded by this regulation on lands managed by the Dept. of Interior in Alaska.*

**36.11(g)(1) Use of Off-Road Vehicles (ORV) on Designated Routes (Recreational Use)**

*There are no areas in the Parks designated for this activity.*

**Recommendation:**

We continue to object to the failure of the Service to recognize and designate traditional trails used by ATVs for subsistence and other activities in the parks. We continue to believe this is a closure without studying the pre-ANILCA traditional access methods and activities.

**Compendium (page 12):**

**LIST OF ATTACHMENTS (MAPS)**

*Appendix A, Brooks Camp Developed Area  
Appendix B, Brooks Bear Viewing Area Map  
Appendix C, Lake Camp Developed Area  
Appendix D, First Amendment Sites*

**Recommendation:**

Maps not attached, per earlier comments.