

# STATE OF ALASKA

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May 8, 2002

Gary Candelaria  
Superintendent  
Wrangell-St. Elias National Park and Preserve  
P.O. Box 439  
Copper Center, Alaska 99573

Dear Mr. Candelaria:

The State of Alaska has reviewed the March 28, 2002, draft of the 2002 Wrangell-St. Elias park unit compendium. This letter represents the consolidated views of the state's resource agencies. We appreciated the opportunity to discuss Wrangell-St. Elias compendium issues with your staff at the February work session, just as we welcome this follow up review prior to the 2002 summer season. This dialogue is allowing National Park Service managers, regional office staff, and state agency representatives to discuss park management concerns, resource-related public use activities and impacts, public use data needs, and a range of options including use of non-federal management tools.

The State's long standing involvement with compendia stems from our interest in insuring a common understanding of the distinctions between public use restrictions that can be implemented by a superintendent's discretionary authority (compendia) and those that require rulemaking under the Alaska National Interest Lands Conservation Act (ANILCA). In addition, Service actions can affect resources and uses managed by the state, such as public activities involving fish, wildlife, and their habitat and uses, and management of state owned water ways.

The 2002 Wrangell-St. Elias compendium is relatively consistent with the Service's 1994 compendium template. With a few notable exceptions, it appears to be within the superintendent's discretionary authority under 36 CFR Parts 1.5-1.7 as modified by ANILCA. Most of the provisions we are concerned about can be addressed without formal rulemaking as prescribed in 36 CFR Part 13 and/or 43 CFR Part 36. In the few remaining cases, we urge the Service to work with the state in pursuit of regulations to legally invoke the proposed restrictions on public activities.

Our comments are organized chronologically according to the draft compendium and address the following recommendations:

- 1) Modify methodology for defining and/or the authority for the Kennicott camping closure
- 2) Delete the prior notification requirement for transporting lawfully taken wildlife
- 3) Add a reference at 2.3(a) to note applicable state law
- 4) Modify 2.3(d) to note applicable state law
- 5) Clarify that 2.1(a)(5) does not apply to the McCarthy Road camping closure
- 6) Delete use of temporary closure procedures for annual McCarthy Road camping closure and exhaust alternative measures prior to consideration of permanent rulemaking
- 7) Provide an exception clause with prior approval for longer term cache storage
- 8) Attach or incorporate subsistence green wood harvest policy to the compendium
- 9) Attach or incorporate the definition of the Malaspina Forelands to the compendium after cooperative evaluation with the state

General recommendations: Complete or expand 1.5 compliance to document justification for the action, document why less restrictive measures will not suffice, and provide appropriate public notice.

Each of these issues is discussed more fully below.

### **1) Proposed Compendium restrictions under 2.1(a)(5) [quoted]:**

2.1(a)(5) Designated areas and conditions for walking, climbing on archeological cultural resource sites  
 The designations and conditions described below are designed to protect sensitive cultural and archeological sites and to protect the public from hazards in those sites. The Park Service proposes to continue to permit access to the Kennecott Historic Site with many of the same conditions that existed when the area was private property. The National Park Service does not intend the following compendium conditions to regulate the actions of people on private property in the National Historic Site.

- 1) Entry is prohibited into buildings that are barricaded or signed as closed. Do not pass beyond barricades, climb through windows or remove boards to enter closed buildings.

*This closure protects both the historic structures and contents from vandalism and the public from the safety hazards found in these unstable buildings.*

- 2) Mine tunnels and other openings within the Kennecott Historic Site are closed to entry.

The abandoned mines contain hazards that could result in serious injury or death. They have decayed support timbers, unsafe ladders, rotten structures, unstable explosives, deep pools of water, cave-ins, rock fall from unstable ceilings and walls, deadly gas, lack of oxygen, concealed or thinly covered vertical shafts in tunnel floors.

- 3) Camping is not permitted in or on any of the historic structures in the Kennecott National Historic Site. Camping is not permitted in the mill site. The mill site is the collection of buildings clustered around the mill on both sides of National Creek.

*Part of the attraction of the Kennecott Mill Town is the historic scene presented by the mill buildings. Camping is prohibited to preserve the historic scene and to lower the temptation to use the buildings for shelter. Camping is permitted in areas outside of the Mill Site and north of Jumbo Creek.*

- 4) Fires are not permitted inside of any building or within 300 feet of any of the historic buildings or structures in the Kennecott National Historic Site.

*The historic buildings and structures are made of wood. There is no way to extinguish a structural fire.*

### **Recommendations:**

The camping restriction in subpart “3)” needs to be further revised by providing a clear, very specific definition of “the mill site.” The state submitted comments (April 21, 1999, and July 10,

2000) related to the proposal to close camping on the grounds around the buildings. We appreciate the concerns the Service has with possible vandalism, fire, and public safety that could result from people camping near the buildings and on the relics in the immediate vicinity. Establishing the “site” to include the area in proximity to the historic buildings may provide discretionary authority to the superintendent under the national regulations to restrict public activities on archeological and historical cultural resource sites. However, the site needs to be narrowly defined and depicted on a map so as not to circumvent ANILCA’s protection of public activities as could result if unnecessarily large surrounding areas are designated.

The Service’s regulations that implement ANILCA in 36 CFR 13.18(a) state: “camping is permitted in park areas except where such use is prohibited or otherwise restricted by the superintendent in accordance with the provisions of sec. 13.30 . . . .” Therefore, the Service is required to follow the closure procedures provided in 36 CFR 13.30(e) and (f). These closure procedures include publication in the Federal Register, a minimum public comment period of 60 days, public hearings in the affected area and other locations as appropriate, and notice in a newspaper or on posted signs, or both. While 36 CFR 2.1(a)(5) may be interpreted to provide legal authority to close the historic structures and related physical relics, this authority does not extend to closing a broadly-defined area of the mill town to camping. We also believe it is inappropriate to use this authority “to preserve the historic scene.” In our view, using 2.1(a)(5) to go beyond the direct protection of physical structures and artifacts is inconsistent with ANILCA and 36 CFR 13.30.

In previous discussions with the Service in 1999 and 2000, we encouraged pursuit of the proposed camping closure through appropriate rulemaking. While the regulatory process may be lengthy, we believe such a minor rule would be adopted without difficulty with the support of the state and the local community after clearly delineating a mutually agreeable area. We believe this approach would better serve the interests of the park.

Minor editorial: It appears the paragraph under the restriction contained in subpart “2)” above is intended to fulfill 36 CFR Part 1.5(a) requirement that restrictions be “based upon a determination that such action is necessary . . . .” If so, it should be in italics.

2) **Proposed Compendium restrictions under 2.2(d) [quoted]:**

2.2(d) Established conditions and procedures for transporting lawfully taken wildlife through the park area.

Procedures and Conditions in effect:

Requires prior notification to park superintendent verbally or in writing providing the following information:

- Where the hunting will take place.
- Names and addresses of hunters
- Means of access (aircraft "N" number, ATV's description)
- Species hunted
- Approximate-dates of transport
- Agreement to show or locate kill location on map if contacted.
- Map clearly showing park boundaries

**Recommendations:**

We request that this proposed restriction be deleted and replaced with the following language: “There is no notification or reporting requirement for transporting legally taken wildlife through the park unit.”

Deleting this requirement would be consistent with the Final 2002 Katmai compendium. On page 16 of our December 6, 2001, comments on the draft Katmai compendium, the state questioned the need for this provision in the draft Katmai compendium, noting the provision was burdensome to both hunters and park staff, limited the flexibility of hunters to legally hunt under state permit, and amounted to a defacto park permit. After evaluating our comments, the Katmai superintendent and park staff reassessed this issue and determined that transport of legally taken wildlife was not a significant issue and the provision was dropped from the 2002 compendium.

In addition, the scope of this provision ("park area") is unclear. Does it apply to the entire park and preserve unit or only the pure park? Application of such a "prior notification" requirement in the Wrangell-St. Elias unit would be particularly burdensome. The entire unit is open to hunting under state law and regulations with some differences in eligibility under federal law, particularly for the "pure" park. Land status is complicated with different hunting and access rules applicable to private, state, and federal lands. Application of this rule would also be complicated by public use of federal and state trails, easements, and rights-of-way. It would not apply to use of state lands and waterways that are used for access throughout the unit; and access related to inholdings and communities would not be addressed yet would occur simultaneous to hunters access. Does the restriction apply to subsistence hunters hunting under the 36 CFR Subparts B and C eligibility restrictions for hunting within the "pure" park?

We are unaware of any enforcement problems that would necessitate such expansive, additional record keeping. We are reviewing some concerns park staff have raised regarding a Board of Game regulation involving bear hunts along the road system and possible solutions under the Board's jurisdiction, as we agreed to do at the February 27 meeting. However, those staff concerns would not be resolved by addition of this requirement.

No "determination" accompanies this provision as required by 36 CFR 1.5-1.7 to document the purpose and explain how this is the least restrictive approach.

### **3) Recommendation to add 2.3(a) to proposed Compendium:**

We request "2.3(a)" be listed with the provision "State law applies." Without this designation, people legally fishing under the State's regulations could inadvertently be in violation of federal restrictions contained in §2.4 of the national regulations and subsequently be deprived from participating in traditional fisheries under state management. (This designation should be made for all parks in Alaska.) The requested change is consistent with the Service's intent, cited in the preamble of the 1983 regulations for Alaska park units, to defer to state fisheries management.

### **4) Proposed Compendium liberalizations/restrictions under 2.3(d) [quoted]:**

- 2.3(d)(2) Designated waters open to bait in fresh water  
All waters open to bait fishing.
- 2.3(d)(8) Designated areas open for fishing from bridges, etc.  
Not applicable.

### **Recommendation:**

We request both of these simply state either "State law applies" or "All areas are designated as open to fishing in accordance with State law and 50 CFR part 100 where applicable to subsistence fishing."

**5) Proposed Compendium liberalizations/restrictions under 2.10(a) [quoted]:**

2.10 (a) Camping - designated sites, areas, conditions and permits

See section 2.1 (a) (5) for conditions specific to the end of the McCarthy Road and Kennecott

**Recommendation:**

Section 2.1(a)(5) only references the conditions for camping at Kennecott. McCarthy Road restrictions are at §13.18(a).

**6) Proposed Compendium restrictions under 3.18(a) [quoted]:**

13.18(a) Restricted areas for camping:

The campground associated with the spur road on the north side of the McCarthy Road at mile 59 is closed from 10pm to 6am to camping, between the dates of April 15 and October 15 2002. This temporary closure will be lifted on. October 15 2002

*The closure is necessitated because of the danger presented to the camping public by human habituated bears. The campground is located in a bear corridor and adjacent to a large soap berry patch. Bear research has confirmed that bear encounters are unavoidable and that the bears tend to be accustomed to humans and to associate humans' with food. The risk to campers from both black and brown bears is unacceptably high.. Private fee campgrounds are available in the immediate area.*

**Recommendations:**

The Alaska-specific park regulation 36 CFR 13.18(a) invokes the provisions of §13.30, which grants authority to “close an area or restrict an activity on an emergency, temporary, or permanent basis.” The end-of-the-road camping closure is an ongoing seasonal closure, thus not an emergency, so it must be implemented under the terms of “temporary” or “permanent.”

Temporary closures affecting camping must meet the requirements of §13.30(d):

(2) other temporary closures shall be effective upon notice as prescribed in §13.30(f); (3) temporary closures or restrictions shall not extend for a period exceeding 12 months and may not be extended.

Permanent closures affecting camping must meet the requirements of §13.30(e):

(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.

The Service proposes to repeat a seasonal closure (April 15 – October 15) this year and annually in the future until such time as the current problems of bear movements and associations of people with food/trash are no longer a problem. As you know, resolution of the problem could entail (1) substantial improvements at the campground, such as electric fencing and bear proof containers, and (2) enforcement of existing state and federal regulations such as litter control and implementation of compendium authority requiring restrictive food storage (2.10(d)). We recognize the Service does not have funds for such improvements or adequate enforcement

personnel and has not applied other options for control of bear/human conflicts at the campground.

During our February 27 discussion with Wrangell-St. Elias staff, two concerns were raised regarding this camping closure which remain unresolved:

- We do not agree with the Service interpretation that seasonal closures repeated annually are temporary rather than permanent. Annually reinstating nearly identical restrictions during the period of public (and bear) use through a compendium circumvents the Service's regulations that require permanent rulemaking. If the rule is likely to be replicated, then both the compendia authority in 36 CFR 1.5-1.7 and the Alaska process for closure as permanent rulemaking must be followed. We urge the Service to reconsider its interpretation and abandon using the "temporary" compendia process to implement seasonal restrictions which are capable of repetition yet evading the public review required for "permanent" rules.
- While we recognize the Service has evaluated other options and discussed the situation with other stakeholders, it remains unclear if the Service has fully considered less restrictive measures that would suffice to protect both bears and the public, particularly since a written determination to that effect is not included in the compendium as required in 36 CFR 1.5(c). Additional coordination with local private campground owners, the state, and other organizations might assist in further reducing the scope of the problem and should be cooperatively pursued at the earliest opportunity.

We are sympathetic to the fact that there is public use of an area through which bears travel with some frequency and have become habituated to food acquired from people. We are concerned, however, about setting precedent for more widespread camping closures without rigorous attention to less restrictive alternatives. We urge a careful evaluation of interim measures to allow continued use of this site while considering long term measures. We also understand that the Service may consider rulemaking after this season to permanently close this campground. While we appreciate the Service's interest in taking this issue out of the compendium, we urge the Service to exhaust (and document) other options to reduce bear/human encounters prior to such action.

#### 7) **Proposed Compendium restrictions under 3.22(c) [quoted]:**

13.22(c) All caches must be labeled with the name of the owner, home address, telephone number, date that the cache was established, and if the cache contains fuel the type of fuel must be noted.

Unlabeled caches will be impounded.

**Caches left for more than 4 months will be considered abandoned and may be removed by park rangers.**

**All caches must be stored in such a manner that wildlife is unable to access the cache contents.**

**Fuel caches will be limited to one location, and to no more than 30 gallons may be registered to a single cache owner.**

**Fuel caches will be stored at least 100 feet from any water source, on a tarp or other impervious material. Under no circumstances will fuel caches be stored on a gravel bar or near a flood plain.**

**Violation of these conditions may result in a citation or forfeiture of the impounded property or both.**

Unlabeled and undated caches are an indication that the owner has no intention of returning or retrieving the property. Experience indicates that caches older than 4 months are usually abandoned. Unlabeled fuel is of questionable use since fuel deteriorates with age. Fuel caches require special handling because fuel spills contaminate ground and are widely dispersed by water. Unstable stream banks and sudden changes in water levels make streamside caches unsuitable.

**Recommendations:**

This is a significant improvement for dealing with the issue of caches and abandonment, and we are going to urge other park units to adopt similar stipulations as appropriate for their units.

We suggest you consider including language such as: “Exceptions. Under unique or special circumstances, or under terms of a permit, caches may be granted up to 12 months on a case-by-case basis. Requests for exceptions should be made to the Superintendent and confirmation of the extended period should be received in writing.” This leaves room to handle unusual weather, illness, or other circumstances under the discretion of the Superintendent.

**8) Proposed Compendium restrictions under 13.49(a) [quoted]:**

**Subpart B - Subsistence**

13.49(a)(1) may permit cutting in accordance with specifications of permit for subsistence timber harvest (house logs & firewood)

See policy statement on subsistence green wood harvest.

**Recommendation:**

The “policy statement on subsistence green wood harvest” is not attached. While it may be the Service’s intent to attach it to the final (which we recommend), we would appreciate an opportunity to review it in association with our review of the draft compendium, particularly if it clarifies terms of permit acquisition and associated public use.

**9) Proposed Compendium restrictions under 13.73(a)(2) [quoted]:**

**Subpart C - Special Regulations, Specific Park Areas**

13.73(a)(2) Aircraft access for residents of Yakutat to Malaspina Forelands

See policy statement on definition of Malaspina Forelands.

**Recommendations:**

The “policy statement on definition of Malaspina Forelands” is also not attached. We understand this to be a map. A map must be included with the compendium as required under 36 CFR 1.5-1.7. We would appreciate the opportunity to review it as part of our review of the draft compendium since it affects both aircraft access and traditional fish and wildlife related activities. Also, we have unsuccessfully requested in past years the opportunity to review the map defining the aircraft use areas for residents of Yakutat. Given the long history of use,

predating ANILCA, in this area and the state's management of related fish and wildlife uses, we believe this map should be cooperatively reviewed in light of historic data.

### **General Recommendations**

A superintendent's authority to issue a compendium to restrict public uses is described in 36 CFR 1.5. Section 1.5(a) requires such restrictions in part to be "based upon a determination that such action is necessary." 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.*

We recommend that each restriction in the compendium include some summary of the written determination. This will help the public understand the reasons for each restriction. We further request copies of all written determinations that have been made for this proposed compendium once it is completed. In the future, receiving the determinations along with the draft compendium would help us understand the impetus for the restrictions and could better enable constructive suggestions regarding less restrictive measures.

According to §1.5(e) and §1.7, public notice will be provided on compendium restrictions and conditions. We urge that the compendium be made available, not only locally, but also on the Service's Wrangell-St. Elias unit web site so that visitors can also be aware of the provisions prior to their visit. All public notices and publications should also include any maps.

Thank you again for the opportunity to discuss the proposed compendium and to comment on the revised draft. We welcome these additional process steps as a means to improve coordination with the State and to improve management of the park unit for local residents and the visiting public.

Sincerely,

/ss/

Sally Gibert  
State CSU Coordinator

cc: Rob Arnberger, Regional Director, National Park Service  
Frank Rue, Commissioner, Alaska Department of Fish and Game  
Pat Pourchot, Commissioner, Alaska Department of Natural Resources  
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