

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

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March 20, 2008

U.S. Forest Service  
Attn: Carolyn Holbrook  
Recreation and Heritage Resources Staff (2720)  
1400 Independence Ave., SW  
Stop 1125  
Washington, DC 20250-1125  
Transmit via e-mail to <http://www.regulation.gov>

Dear Ms. Holbrook:

The Alaska Department of Fish and Game (Department) reviewed the Forest Service's (Service) "Proposed Directives for Forest Service Outfitting and Guiding Special Use Permits & Insurance Requirements for Forest Service Special Use Permits" (proposed regulations) and provides the following comments.

#### GENERAL COMMENTS

The Alaska National Interest Lands Conservation Act (ANILCA) Section 102 defines lands within the National Wilderness Preservation System (Wilderness) in Alaska as conservation system units (CSU). In Section 1307(b), the Service shall give preference in selecting persons to provide any type of visitor service, except sport fishing and hunting guiding, on CSUs. In addition, ANILCA allows for uses within Wilderness in Alaska not necessarily allowed outside of Alaska. The proposed regulations do not adequately address these differences in management of commercial services under ANILCA provisions.

The proposed regulations imply the Service can limit guiding and outfitting based on resource conservation and allocation concerns. While the Service has the authority to limit use based on land management concerns, the proposed regulations should clearly specify that using limits to address fish and wildlife resource conservation and allocation concerns rests with the State fish and wildlife agencies. We request the Service confer with the States when issuing or limiting permits involving fish and wildlife.

As further illustrated below, the Department also finds the proposed regulations overly complex and burdensome, failing to provide a clear intent of the proposed revisions.

## SPECIFIC COMMENTS

### **Page 2; Section 3; The following statement does not apply to Wilderness in Alaska:**

- 3. Do not authorize any development, improvements, installations, or caches in wilderness areas, except as necessary to meet minimum requirements for administration of the area for the purposes of the Wilderness Act (16 USC 1133c).*

This statement does not take into account sections of ANILCA which permit uses within Wilderness not permitted elsewhere in the system. We request the Service acknowledge statutory provisions in ANILCA when promulgating Wilderness-related regulations in Alaska. We also request that the proposed regulations reference the Alaska Supplement to Minimum Required Decisions Guide in order to provide additional direction and insight regarding management of Wilderness in Alaska. The Alaska Supplement may be found on the interagency website at [www.wilderness.net](http://www.wilderness.net).

### **Page 6; Section 1:**

- 1. Conduct a needs assessment to determine the public or agency need for authorized outfitting and guiding activities.*

If an individual was engaged in providing any type of visitor service on a CSU in Alaska, the individual may continue providing that service, along with similar services, as long as that service began on or before January 1, 1979 (ANILCA Section 1307(a)). In this situation, the Service should not require a needs assessment.

### **Page 7; Section 3:**

- 3. Determine the allocation of use between outfitted and guided and non-outfitted and guided visitors. Further determine the allocation of outfitting and guiding use between priority and temporary use.*

ANILCA Title VIII provides the opportunity for a consumptive, subsistence use priority over other consumptive uses “when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population” (see ANILCA Section 802(2)). We request the regulations recognize this priority.

ANILCA also limits the federal agencies’ ability to restrict access and non-outfitted/guided use on CSUs. Specific provisions protect general public access and use and prescribe procedures for limiting such use. We request this Section specify that exceptions to the Service’s authority apply in Alaska CSUs, including Wilderness.

### **Page 9; Issuance of New Outfitting and Guiding Permits. Page 15; Issuance of Temporary Use Permits. Page 16; Issuance of Priority Use Permits:**

When issuing permits on CSUs in Alaska, ANILCA Section 1307(b) requires that when “selecting persons to provide any type of visitor service..., except sport fishing and hunting

guiding” preference shall be given to Native corporations and local residents. We request the Service adequately acknowledge Section 1307 throughout these regulations.

**Page 14; Section c:**

*c. When on a particular day a holder lacks sufficient equipment or guides to accommodate the holder’s customers, allow the holder, without prior written approval from the authorized officer, to contract for additional equipment or guides from another holder.*

Although this regulation would allow the permit holder to better satisfy clientele, the Service does not acknowledge the effects of increasing operational size without prior authorization. The increase in equipment or guides could significantly impact the pressure placed on a given area – pressure that could be detrimental to the resource. For example, this could allow hunting guides to increase staff and operations without Service oversight, which could detrimentally concentrate hunters. We prefer any increase in operations require the approval of authorized officers.

**Page 15; Section 6. Page 18; Section 7:**

*6. Do not approve requests to transfer all or part of the authorized use to others. If a holder is unable or unwilling to provide the services authorized by the permit, revoke the permit or reduce the allocation of use.*

*7(a). A priority use permit is a privilege acquired by demonstrated acceptable performance and is not transferable, either upon the sale of the business entity or the sale of a controlling interest in the business entity;*

We concur with the Service that permits should not be transferable. These permits represent the allocation of public resources, which resources cannot be sold or otherwise transferred from one private entity to another. We request the Service reinforce this language; clearly denying the ability for any non-Service entity to, in any way, transfer a permit.

**Page 18; Section 6:**

*6. When a priority use permit for activities other than sport hunting and fishing in a Conservation System Unit in Alaska expires, the permit shall not be reissued if there is a need to limit use and there is competitive interest by preferred operators in providing visitor services (16 U.S.C. 3197; 36 CFR 251.124(b)).*

It does not follow that a permit shall not be reissued if there is a need to limit use and a competitive interest by preferred operators. The need to limit use should be the deciding factor in whether or not to issue a permit. However, when such use no longer needs to be limited, Section 1307 of ANILCA applies. We request the Service rephrase this section to better reflect the application of Section 1307 in Alaska.

**Page 19; Section 1:**

*1. When issuing a priority use permit, allocate use in accordance with the applicable land management plan, the applicable project implementation decision, or other appropriate analysis.*

ANILCA Title VIII provides the opportunity for a consumptive, subsistence use priority over other consumptive uses “when it is necessary to restrict taking in order to assure the continued viability of a fish or wildlife population or the continuation of subsistence uses of such population” (see ANILCA Section 802(2)). We request the Service recognize this priority.

**Page 21; 41.53n Administration of Outfitting and Guiding Permits:**

*2. The authorized officer may revoke or suspend a temporary or priority use permit:*  
*a. For noncompliance with federal, state, or local laws and regulations;*  
*e. At the discretion of the authorized officer, for specific and compelling reasons in the public interest (36 CFR 251.60(a)(2)(i)).*

*5. Monitor outfitting and guiding operations by conducting inspections (FSM 2716.5).*

The Department concurs with the Service that, under qualifying circumstances, both temporary and priority use permits might need to be revoked or suspended. However, we are concerned with the open-ended discretion placed on the Service in this instance. The Service does not address a timeline or process for monitoring permit holders in these proposed regulations. When and how would monitoring inspections take place? The Department requests the Service to clarify this concern. In addition, we request the Service to cooperate and coordinate with the States before determining, if necessary, the need to adjust the number of permit holders as necessary to protect local fish and wildlife populations.

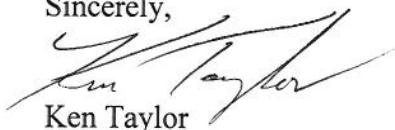
**Page 22; Section 4:**

*4. The authorized officer may impose an immediate suspension of all or part of a permit when deemed necessary to protect public health or safety or the environment in accordance with 36 CFR 251.60(f).*

We request clarification of the term ‘environment.’ The Department requests that fish and wildlife be specifically noted as an integral part of the ‘environment.’ However, we also request that when suspension of permits for this reason be considered, the States be consulted and their management authorities for fish and wildlife be respected.

If you have any questions, please call Andrew T. Levi at 907-267-2242.

Sincerely,



Ken Taylor  
Deputy Commissioner