

STATE OF ALASKA

SEAN PARNELL, Governor

ANILCA IMPLEMENTATION PROGRAM Office of Project Management and Permitting

550 W. 7TH AVENUE, SUITE 1430
ANCHORAGE, ALASKA 99501
PH: (907) 269-7477 / FAX: (907) 334-2509
sally.gibert@alaska.gov

February 16, 2010

Sue Masica
Regional Director
National Park Service
240 West 5th Avenue
Anchorage, AK 99501

Dear Ms. Masica:

The State of Alaska reviewed the draft 2010 Superintendent's Proposed Compendiums for all park units in Alaska, as posted on the National Park Service web site. This letter represents the consolidated views of the State's resource agencies.

We appreciate the Service's commitment to annual public review of park compendiums and the opportunities for dialogue throughout the year as issues develop. While this year we raise significant concerns regarding certain Compendium proposals and processes, we remain committed to continued cooperation and communication, and hope to work with the Service to identify possible solutions.

Temporary vs. Permanent Restrictions

To better understand certain comments, we need to clarify our views regarding the relationship between temporary and permanent closure regulations under 36 CFR Part 13. First, we recognize that we have a fundamental disagreement with the Service over what constitutes a "temporary" regulation. 36 CFR 13.50(d)(3) states a temporary closure or restriction "*shall not extend for a period exceeding 12 months and may not be extended.*" We recognize the Service asserts that a reoccurring, annual restriction of less than 12 months does not run counter to the above definition of temporary. The State disagrees with this interpretation. In our view, any reoccurring seasonal restriction must be implemented through permanent rulemaking under 36 CFR 13.50(e). However, we appreciate the Service's general commitment to eventually move longstanding reoccurring seasonal restrictions to permanent rulemaking.

Second, at times seasonal or reoccurring year-around restrictions may be warranted – even if it would be premature to immediately propose them through rulemaking. In recent years, several examples of this type of temporary or interim restriction have been included in various compendiums. These include the camping closure at Hallo Bay (Katmai), and camping closure at the end of the McCarthy Road (Wrangell- St. Elias). In these and a few other situations, the State concurred with the need to take an immediate action to reduce impacts, even though neither the Service nor the State was certain that the specific short-term response (i.e. compendium entry) was necessarily the right tool for long-term

management. In some cases, additional field observation, stakeholder involvement, or new information would be needed to determine the best solution to put into a permanent regulation.

We recognize the closure procedures in 36 CFR 13.50 do not provide for multi-year interim rules; and even if the Service actively pursues a permanent regulation, the process can easily take 2-3 years. As a result of this discrepancy, we can generally support reoccurring “temporary” compendium restrictions under the following conditions; 1) when an immediate need is mutually-identified, 2) resources are at immediate risk, 3) the specific solution may not be sufficiently fine-tuned or well enough understood, and 4) the Service is actively working with the State and other stakeholders to find an acceptable permanent solution that will be proposed through permanent rulemaking. We have also learned, along with the Service, that moving too hastily to permanent rulemaking can lead to unintended consequences that may take years and additional rulemaking to fix. However, the State will not support reoccurring temporary rules if resources are not at immediate risk and if the Service intends from the beginning for the proposed restriction to be permanent.

Gates of the Arctic and Denali National Park and Preserves

13.40(c) Temporary closures or restrictions to the taking of fish and wildlife: We strongly object to the proposed discretionary closure and restriction to the taking of fish and wildlife at 13.40(e) for Denali National Park and Preserve and 13.40(e) for Gates of the Arctic National Park and Preserve. These two Compendiums propose the following restrictions from October 15 through April 30:

- (1) artificial light may not be used to take a black bear at a den site except to retrieve a dead bear or dispatch a wounded bear as authorized by state law; and
- (2) a person may not take a cub bear or a female bear accompanied by a cub bear at a den site.

We request the Service refrain from considering adoption of these proposed closures and restrictions until after the Alaska Board of Game (state Board) makes a decision in regard to Proposal Number 5 at the Interior Region state Board meeting to be held in Fairbanks, February 27 – March 6, 2010. If unsatisfied with state Board actions, the Service should discuss specific park management concerns with ADF&G at that time.

According to Service justification for these proposals in its Determination of Need, (Determination), denning was discussed at the 2008 Southeast Region state Board meeting but the Service did not “*recognize that [Service] lands were affected and consequently did not comment.*” This oversight does not justify this unnecessary infringement on state sovereignty. Taking black bears in dens is not currently prohibited under state regulations and has not been prohibited in the past. It is a customary and traditional subsistence use that is conducted in a very localized and limited fashion. Anticipated levels of additional black bear harvest are low, and there is no identified conservation issue. During deliberations on November 10, 2009 the state Board specifically noted this is not a predator control activity. Service lands were not identified by proponents of the proposal or by Alaska Department of Game (ADF&G) staff as potential harvest locations within the game management units considered. Therefore, additional harvest on Service lands is not likely to occur, and, if harvest does occur, it would be a negligible increase.

Congress, in Titles I and II of the ANILCA, identified the purposes for national park lands in Alaska, including subsistence uses. Additional direction is found in ANILCA Section 1313, which states

“...that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve...” The Service must balance competing purposes and values when managing park units, including the continuation of subsistence uses. Activities that may cause limited conservation impacts can be allowed to provide for customary and traditional subsistence uses in Alaska parks and preserves (see page 7). For example, the Service supported authorizing the use of fyke nets within the exterior boundary of Lake Clark National Park and Preserve, despite identifiable conservation issues. Like other subsistence uses, use of fyke nets are not based on Western “fair chase” philosophies; rather they are based on customary and traditional methods of obtaining wild foods efficiently.

ARTIFICIAL LIGHT

The Service’s national regulations at 36 CFR 2.2(e) state “[t]he Superintendent may designate all or portions of a park area as closed to the viewing of wildlife with an artificial light. Use of an artificial light for purposes of viewing wildlife in closed areas is prohibited.” This provision is commonly utilized outside of Alaska to help address poaching concerns. There are currently no Service lands in Alaska closed under this regulation. The state Board has authority at AS 16.05.255 to establish “...the means and methods employed in the pursuit, capture, taking, and transport of game” Under state regulations, there is a general prohibition on taking game with the aid of artificial light except for certain exceptions.¹ In this instance, the state Board authorized an additional exception to the general prohibition to address legitimate issues and concerns. This limited exception allows for harvesters to identify bears in the den – providing the opportunity to avoid harvesting sows and sows with cubs, if desired. The use of artificial light also allows for clean and accurate shot placement, so a hunter can harvest an animal efficiently and insure high quality meat for human consumption.

DENNING

Taking black bears at den sites is not currently prohibited under state regulations and has not been prohibited in the past. The opportunity to take black bears in dens during the winter months has generally existed throughout the state.

The Service Determination references the state Board’s Bear Conservation and Management Policy (Policy) dated May 14, 2006. The Policy is a statement of the state Board’s general intentions at the time it was adopted; however, the state Board can deviate from these intentions when justifiable. Nowhere does the Policy suggest that the state Board may not continue to recognize and permit customary and traditional uses of Alaska’s bears. To the contrary, it states the state Board’s policies in generalities, implicitly recognizing that exceptions will sometimes be permitted. When the regulations at issue were adopted, the state Board was presented with overwhelming evidence and testimony that an exception authorizing the documented subsistence means and methods of bear harvest at den sites was a justifiable deviation from the general intent to “protect” cubs, and sows with cubs, from harvest. The Board provided numerous justifications on the record explaining the customary and traditional nature of this activity and acted in accordance with other general intentions found in the Policy, including:

¹ 5 AAC 92.080 (7) – taking game is prohibited “with the aid of a[n] artificial light... except that... artificial light may be used; for the purposes of taking furbearers under a trapping license during an open season November 1 – March 31 in Units 7 and 9 – 26; by a tracking dog handler with one leashed dog to aid in tracking and dispatching a wounded big game animal; to aid in tracking, recovering, and dispatching a wounded game animal without the use of a motorized vehicle; by a resident hunter taking black bear under customary and traditional use activities at a den site from October 5 through April 30 in Unit 19(A), that portion of the Kuskokwim River drainage within Unit 19(D) upstream from the Selatna River drainage and the Black River drainage, and in Units 21(B), 21(C), 21(D), 24, and 25(D).

Manage bear populations to allow a wide range of human uses, while providing for long-term bear population sustainability.

Harvests will not be allowed to threaten the long-term population survival of bears.

The Department will continue to accommodate subsistence needs and will consider the impacts on subsistence activities.

The Service misinterprets the intent of the Board by truncating the second of the following sentences from the Policy. “*For both species, sows accompanied by cubs, and the cubs, are protected, but cubs are defined as bears in their first year of life for black bears and for the first two years of life for brown/grizzly bears. The Department will continue to maintain these strategies and regulations for most of the state, unless it is necessary to consider methods to increase bear harvests as part of a bear predator control program.*” (Emphasis added) The phrase “*for most of the state,*” is the state Board’s recognition that there might be exceptions to this general “*protection*” other than predator control type activities. This exception is not unique, as there are exceptions to otherwise prohibited hunting methods throughout the state. For example, taking big game “*...with the use of a firearm other than a shotgun, muzzleloader, or rifle or pistol using a center-firing cartridge...*” is prohibited “*...except that in Units 23 and 26, swimming caribou may be taken with a firearm using rim fire cartridges.*”²

At its 2008 Southeast Region meeting, the state Board clarified it was recognizing denning, including the take of cubs and sows with cubs, as a customary and traditional practice, i.e., an opportunity for a subsistence use and not implementing predator control type activities, as follows:

Just because predator control is going on out there doesn’t mean [denning] isn’t practiced, that the native people who live out there practiced this for thousands of years. And feel like wherever we can we ought to recognize those practices...

There are customary and traditional practices of denning bears in the area historically. And again it’s an opportunity for local people to take meat and to practice these customary and traditional methods.

Would allow a long standing pattern of subsistence use to continue....

Require salvage of meat as it’s a subsistence activity, a customary and traditional activity.

...this is an attempt to move towards this goal of recognizing some of the customary and traditional practices that go on out in the Bush. A way people get food.

One of things I want to make very clear, at least as I see it in my mind, this is in no way part of any predator management program this isn’t linked to one of them or one of the tools we are going to use. Again it’s an opportunity for local residents to practice their customary and traditional heritage.

² 5 AAC 92.085. Unlawful methods of taking big game; exceptions.

In stating this authorization is predator control, the Service misinterprets the intent of the state regulation. This state regulation³ is not intended to manipulate natural wildlife populations for human consumption and is not part of predator control in one of the State's six intensive management programs. Rather the State is recognizing a long standing subsistence use where bears are harvested, as needed, to provide food in late winter. Denning is not likely to be conducted by non-local residents as it is time consuming and requires "marking" a den in the late fall and early winter. In addition, this is a ritualistic practice of great significance to several Native Alaskan peoples, particularly those of Athabaskan descent.

STATE OF ALASKA AUTHORITIES

In Alaska, the state Board is responsible for the conservation and development of the state's wildlife resources. Codified at AS 16.05.255, the state Board's authorities include establishing open and closed seasons and areas for the taking of game; establishing means and methods employed in pursuit, capture, taking, and transport of game, including regulations that are consistent with resource conservation and development goals; and regulating sport hunting and subsistence hunting as needed for the conservation, development, and utilization of game. When reviewing proposals, the state Board is not limited by the specific language or confines of the actual proposals that have been submitted by the public or ADF&G staff.

ADF&G is responsible for the sustainability of fish and wildlife in the State of Alaska, regardless of land ownership, and is the primary management authority for fish and wildlife, which includes determining healthy populations and allocating fish and wildlife – including for subsistence purposes – unless specifically preempted by federal law. The Mission of ADF&G is to "*administer the state program for the conservation and development of the state's... game... animals.*" ADF&G manages fish and wildlife in accordance with recognized scientific principles, which assure the health, continued viability, and conservation of fish and wildlife populations. Throughout the legislative history of ANILCA, Congress recognized the State of Alaska as a world-respected fish and wildlife management agency. ADF&G's management program is extensive, with staff experienced in evaluating the health and sustainable harvests of fish and wildlife populations.

The state Board has determined, through a positive finding, that taking black bears, including cubs and sows with cubs, at den sites is a "customary and traditional" practice.⁴ As defined at AS 16.05.940 (7), "*'customary and traditional' means the noncommercial, long-term, and consistent taking of, use of, and reliance upon fish or game in a specific area and the use patterns of that fish or game that have been*

³ 5 AAC 92.260 – *A person may not take a cub bear or a female bear accompanied by a cub bear, except that a black bear cub or a female black bear accompanied by a cub bear may be taken by a resident hunter from October 15 through April 30 under customary and traditional use activities at a den site in Unit 19(A), that portion of the Kuskokwim River drainage within Unit 19(D) upstream from the Selatna River drainage and the Black River drainage, and in Units 21(B), 21(C), 21(D), 24, and 25(D)*

⁴ Excerpts from the Customary and Traditional Use Worksheet (Simon, 2008) utilized by the state Board to make this determination include:

"Taking black bears from their dens, or 'denning,' is still commonly practiced today (Andersen et al. 1998:25; Andersen et al. 2001:5; Case and Halpin 1990:21, 88; Nelson 1973:155-166, 118). Known 'denning' sites are checked for signs of occupancy in the late fall and early winter.

From time to time, one may discover a den occupied by a sow bear and one or two yearling cubs. These cubs are often two-thirds the size of a full adult. It is the obligation of the hunter to take all occupants of a den. If the bears did not wish to be taken they would not have revealed themselves, and to not take them would be an act of disrespect. (Nelson et al. 1982:47)"

established over a reasonable period of time taking into consideration the availability of the fish or game.” By statute, the Alaska Legislature has defined all customary and traditional activities as subsistence uses. (See § 16.05.940 (33) where “*subsistence uses*” means the noncommercial, customary and traditional uses of wild, renewable resources by a resident....)

When establishing new areas and adding to existing areas in Title II, ANILCA refers to parks and preserves. For example, Section 201(4)(a) states “*Gates of the Arctic National Park, containing approximately seven million fifty-two thousand acres of public lands, Gates of the Arctic National Preserve, containing....*” Significantly, when establishing the purposes of the conservation system units in Section 201, Congress states “...[t]he **park and preserve** shall be managed for the following purposes ,among others...” clearly including both units. (Emphasis added) However, in Section 201 subsistence uses are only mentioned for park units – “...*subsistence uses... shall be permitted in the **park**, where such uses are traditional, in accordance with provisions of Title VIII.*” (Emphasis added) This statement does not appear in Section 201(2), Bering Land Bridge National Preserve; Section 201(8), Noatak National Preserve; or Section 201(10), Yukon-Charley Rivers National Preserve.

The authorization for subsistence use in national preserves is in Sections 203 and 1313, not in Section 201. Section 203 states “[s]ubsistence uses by local residents shall be allowed...” and Section 1313 states “...*the taking of fish and wildlife for sport and subsistence purposes, and trapping shall be allowed in a national preserves under applicable State and Federal law and regulation.*” Nowhere in these sections does Congress refer to subsistence uses “*in accordance with the provisions of title VIII.*” Congress specifies “*subsistence... shall be allowed*” – including subsistence provided by the State of Alaska.

In Section 801(4) of ANILCA, Congress states its desire to “...*protect[s] and provide[s] the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents...*” but does not preclude other Alaskan residents from the opportunity to participate in subsistence uses provided by the State of Alaska on national preserves unless, per Section 804, 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.*”

Additional guidance from the November 14, 1979, House of Representatives Report of the Committee on Energy and Natural Resources states “[t]he *consumptive use of wildlife resources for subsistence, recreational, and other purposes is a recognized and permitted use of such resources within National Park Preserves*” and that “*a preserve be managed as a national park except that all forms of hunting be permitted to continue.*”

SERVICE MANAGEMENT POLICIES

Service Management Policies of 2006 state that determining whether an impact qualifies as “*impairment*” or an “*unacceptable impact*” is “*the professional judgment of the responsible [Service] manager.*” Section 1.4.7.1 continues by addressing unacceptable impacts. It states that “[v]irtually every form of human activity that takes place within a park has some degree of effect on park resources or values, **but that does not mean the impact is unacceptable or that a particular use must be disallowed.**” (Emphasis added) The policy lists five criteria the responsible Service manager must take into account when determining whether an impact is “*unacceptable.*” These include:

- [A] be inconsistent with a park’s purposes or values, or
- [B] impede the attainment of a park’s desired future conditions for natural and cultural resources as identified through the park’s planning process, or
- [C] create an unsafe or unhealthful environment for visitors or employees, or
- [D] diminish opportunities for current or future generations to enjoy, learn about, or be inspired by park resources or values, or
- [E] unreasonably interfere with
 - [a] park programs or activities, or
 - [b] an appropriate use, or
 - [c] the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park.
 - [d] [Service] concessioner or contractor operations or services.

It is unclear why this state regulation is incompatible with Preserve goals, objectives, or management plans or why impacts resulting from this state regulation constitute an unacceptable impact to park resources or values, as discussed below:

- A. Section 101(c) of ANILCA provides the general purposes of ANILCA: *“It is further the intent and purpose of this Act... to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.”* As quoted above, in establishing and expanding the park units, Section 203 states *“... hunting shall be permitted in areas designated as national preserves....”* and Section 1313 states *“...the taking of fish and wildlife for sport and subsistence purposes, and trapping shall be allowed in a national preserve....”* The applicable state regulation is not inconsistent as it provides the opportunity for Alaskan residents to participate in subsistence uses.

Section 1.4.6 of the Service Management Policies states park resources and values include *“the park’s... wildlife, and the processes and conditions that sustain them, including... the ecological, biological, and physical processes that created the park and continue to act upon it....”* It also directs *“appropriate opportunities to experience enjoyment of the above resources, to the extent that can be done without impairing them....”* Since there are no identified conservation issues, the state regulation does not impair wildlife or the processes that sustain them and does not have the potential to significantly impact the natural integrity of these black bear populations or the potential to create pressures on the natural abundance, behavior, distribution, and ecological integrity of black bear populations. State Board deliberations on November 10, 2008, confirm this for the larger game management areas that include those small affected portions of Denali National Preserve and Gates of the Arctic National Preserve, respectively:

In 19(D) east the current population estimate is somewhere between 1750 and 2650 and the current harvest where we do have a sealing program is five or six bears taken annually where as the allowable harvest could be as high as 175 – 265 bears per year in this area. ...[T]his is a very lightly hunted population and there is in no way connection with any sort of conservation concern in... 19(D) east....

ADF&G has no black bear conservation concerns in relation to this activity. Black bears are abundant, we estimate there are somewhere between 2000 and 4000 black bears in

these units and they are lightly harvested. Estimates are 50 – 180 annually are being taken currently. We don't expect that adoption of this amended proposal will result in a significant increase in harvest. It's a localized practice done by relatively few people and focused on traditional hunting areas.

It's a localized practice there is no doubt about that. The other thing is that I think the harvest is going to be extremely low. I think you can probably count the harvest from each one of these areas probably on one hand....

The above-mentioned harvest methods include all types of harvest, not solely the taking denning bears. Though not expected, if hunting pressure were to increase, the state Board has the ability to modify seasons, limits, and methods and means and ADF&G has authority to protect wildlife populations through emergency order authorities, such as closing seasons or reducing bag limits. Furthermore, The State of Alaska has the authority to take enforcement actions against any resident engaged in an activity not in compliance with the customary and traditional methods of take described in Special Publication Number BOG 2008-07,⁵ as it would constitute an illegal take of black bear cubs, or sows with cubs. Customary and traditional activities by definition are “noncommercial.” Since this state regulation authorizes only resident hunters, any non-resident engaged in this activity would face enforcement actions as well.

Additionally, this state regulation is unlikely to negatively impact other park resources or values such as the area's scenery, water and air resources, or native plants and animals.

- B. This state regulation does not present a conservation issue; therefore, it does not impede the attainment of Service desired future conditions in regard to natural or cultural resources.
- C. This state authorized activity would take place off the road system and would not affect the vast majority of park visitors or employees. It very likely will only affect those local area residents participating in a customary and traditional activity.
- D. This state authorized activity does not present a conservation issue; therefore, it does not diminish opportunities for current or future generations to enjoy park resources or values.
- E. This state authorized activity does not unreasonably interfere with any of the programs or activities listed under E above.

PROCESS

Section 1314 of ANILCA states “*nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands except as may be provided in title VIII of this Act....*” Under the MMOU with ADF&G, the Service agrees that unless the Service finds “*...State regulations to be incompatible with documented Park or Preserve goals, objectives or management plans,*” the taking of wildlife by hunting is authorized in accordance with state law.

⁵ Simon, J. J. 2008. Customary and traditional use worksheet, black bears, Game Management units 12, 19, 20, 21, and 24 (Interior Alaska). Alaska Department of Fish and Game Division of Subsistence Special Publication No. BOG 2008-07, Fairbanks.

If an unacceptable impact did exist or a determination of incompatibility is made, pursuant to Section 1313 of ANILCA, the Secretary:

*...may designate zones [within National Preserves] where and periods when no hunting... may be permitted for reasons of public safety, administration, floral and faunal protection, or public use and enjoyment. Except in emergencies, any regulations prescribing such **restrictions relating to hunting... shall be put into effect only after consultation with the appropriate State agency having responsibility over hunting... activities.** (Emphasis added)*

In the MMOU, the Service agrees “*to **utilize the State’s regulatory process to the maximum extent allowed by Federal law in... proposing changes in existing State regulations** governing or affecting the taking of fish and wildlife on Service lands in Alaska” and “to **recognize ADF&G as the primary agency responsible for policy development and management direction relating to subsistence uses of fish and wildlife resources on State and Service lands....**” (Emphasis added) In the spirit of cooperation and mutual respect, we request the Service continue to recognize and adhere to this long standing agreement and fully exhaust the state Board process.*

COMPENDIA APPLICATION

While not a year-around restriction, this proposed discretionary closure and restriction to the taking of fish and wildlife is not “*temporary*” as defined by ANILCA. 36 CFR 13.50(d)(3) states a temporary closure or restriction “*shall not extend for a period exceeding 12 months and may not be extended.*” Additional guidance found in the preamble to 36 CFR Part 13, published in the Federal Register June 17, 1981, states “[t]his rulemaking establishes time limits for emergency closures (30 days) and temporary closures (12 months) which cannot be extended.” Without state Board action, the Service does not intend to lift this proposed restriction after the 2010 season; therefore, this proposed closure would be permanent, not temporary.

If the Service exhausts the state Board process and, after consultation with ADF&G, determines a permanent closure is necessary, the appropriate process pursuant to 36 CFR 13.50 for permanent closures is formal rulemaking. “*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.***” (Emphasis added)

Addressing this issue through a formal rulemaking process is also consistent with national compendia guidance. Though superseded by 36 CFR Part 13 in this instance, national regulations at 36 CFR 1.5 outline the process by which a Superintendent may limit or liberalize public uses on Service lands. Any action taken under the authority of 36 CFR 1.5(a) is limited by 36 CFR 1.5(b), which states “[e]xcept in emergency situations, a **closure, designation, use or activity restriction or condition, or the termination or relaxation of such, which is... of a highly controversial nature, shall be published as rulemaking in the FEDERAL REGISTER.**” (Emphasis added)

We assert that any attempt to supersede state fish and wildlife regulations constitutes “*highly controversial*” and should not be addressed through compendia but rather a formal rulemaking process – only after fully exhausting the state Board process. This is in line with the commitment of the Service as

outlined by Alaska Regional Director Robert Arnberger in a Memorandum dated October 31, 2002, that the Service “...is committed to using formal rulemaking when legally required.”

We recognize the Service is responsible for the management of Service lands in Alaska and the conservation of resources on these lands under applicable federal law and regulation. ADF&G remains committed to the MMOU and continued communication and cooperation. We urge Service leadership consult with ADF&G to discuss possible solutions that would avoid a formal regulatory process.

Glacier Bay National Park and Preserve

13.1116, Camping Permit Requirements in Glacier Bay National Park: The current permit system requires all campers to participate in an orientation. From the discussion it appears there may be some public resistance to an orientation requirement for the first visit each calendar year. We appreciate the overall intent of the orientation is to ensure visitor safety and protect park resources; however, to reduce potential inconvenience to some visitors, we recommend considering whether education methods that would not require on-site orientation, such as DVD mailings or web video postings, could be offered as an alternative. We also recommend building in an allowance for the Superintendent to make exceptions, where appropriate.

Katmai National Park and Preserve

3.8(b)(3), Operating a vessel in excess of flat wake speed in designated areas: This proposed compendium change redefines “vessel” to include float planes while operating on water. Service regulations at 36 CFR §1.4(a) currently define “vessel” as follows:

*Vessel means every type or description of craft, **other than a seaplane on the water**, used or capable of being used as a means of transportation on water, including a buoyant device permitting or capable of free flotation. (Emphasis added)*

We question whether it is appropriate or legally defensible to amend a regulatory definition through the compendium process. In addition, float planes are not as maneuverable as vessels and adherence to no-wake zones could create safety issues for float plane operators and their passengers, vessels, and bystanders. The Federal Aviation Administration (FAA) Flight Information Supplement for Alaska already includes advisory conditions for the Brooks Camp area. If considered insufficient, we recommend the Service either consult with the FAA on possible additions or changes to the existing conditions or pursue a formal regulatory change to address floatplanes, as was done for Glacier Bay at 36 CFR 13.1102.

13.204, Traditional redfish fishery: Conditions established by the Superintendent. We offer the following technical clarifications for your consideration:

Seasons and methods for the take of red fish (spawned-out sockeye salmon that have no significant commercial value) ~~by other than hook and line~~ under this regulation will be set by the Alaska Department of Fish and Game as posted in the ~~2009-2010~~ annual Subsistence and Personal Use Statewide Fishing Regulations booklet.

Not all who qualify for and obtain a subsistence fishing permit, issued by the Alaska Department of Fish and Game ~~in King Salmon~~, are allowed to take red fish under this

section within Katmai National Park. Persons must meet the federal regulatory definition of local residents who are descendants of Katmai residents who lived in the Naknek Lake and river drainage.

We also request the Service provide an updated list of the persons meeting the federal regulatory definition annually to avoid any possible confusion.

13.1206, Wildlife distance conditions: We support the proposed wildlife viewing protocol at Geographic Harbor to allow wildlife viewing within 50 yards of a bear. We appreciate the opportunity to visit the site this past summer.

13.1228, Brooks Camp Developed Area (BCDA): designated facilities and conditions for food storage: As written, “*all fish caught and retained... must be immediately placed in a plastic bag... and carried to the Fish Freezing building....*,” the proposed modification seems to shift the focus away from storage. Without reading the regulation, it may not be clear that storage at designated facilities is also required, especially given the following statement: “[f]ood storage (**non-fish**) facilities are provided at....” For clarity, we recommend removing “(*non-fish*)” from the last sentence.

Lake Clark National Park and Preserve

1.5, Closures and public use limits, (a)(1) Visiting hours, public use limits, closures: We tentatively support this proposed closure at the meadow north of the slough in Chinitna Bay. Generally, when a restriction to public access based on wildlife concerns is proposed, Alaska Department of Fish and Game (ADF&G) staff request an opportunity to conduct a site visit; however, to date that has not been possible. A site visit is tentatively scheduled for this spring and it is our understanding that if this visit raises any issues or concerns, the Service will consider those at that time. We appreciate the close communication between Service and ADF&G staff on this issue.

Wrangell-St. Elias National Park and Preserve

13.25(a), Temporary closures and restrictions to camping: We appreciate the efforts to work with stakeholders to identify concerns and possible solutions, as well as the intention to obtain feedback following the 2010 season, rather than waiting until the frontcountry planning process is complete, which could be years away.

While limits may achieve the desired outcome, we request less restrictive measures be considered first. Restrictions and closures should only serve as a last resort. For example, more enforcement of existing regulations and park rules regarding food storage and waste disposal should be exhausted before imposing use limits on the public. Voluntary registration is another alternative, which could be used as a means to gather information about groups. This information could be made available to the public to assist those that want to avoid times when other large groups will be in the area. We also recommend including an option for the Superintendent to make exceptions to the group size limit. Experienced larger groups can have far less impact than smaller groups unversed in outdoor etiquette and unfamiliar with the area.

We also question whether the dates chosen for the proposed camping restrictions are longer than necessary. It appears the reason for the seasonal restriction is limited camping opportunities. Since the

high season occurs from approximately mid-June through Labor Day weekend, the same results could be achieved by narrowing the dates.

The half-mile camping buffer may also be overly restrictive and burdensome for the public as it would likely require extensive scouting for a party to determine if they are in compliance, especially those who are unfamiliar with the more popular campsites and surrounding terrain. Further, specifying a half-mile seems somewhat arbitrary and may be difficult to enforce. The buffer may be more effective as a camping guideline than an enforceable restriction. We suggest rewording the requirement as follows: “*camping within sight and sound of another group is discouraged.*”

In the second bullet, the term “*associated*” needs clarification. Also, how would this buffer apply to another “unassociated” group?

Lastly, these limits were identified as “*interim measures.*” If the Service ultimately determines limits are necessary, as noted previously, procedures for permanent closures are identified at 36 CFR 13.50 and require a formal rulemaking process, including a 60-day public commenting period and public hearings. While we generally support the intent to test the effectiveness of certain types of proposed limits, we caution against retaining them in the Compendium for an extended period as previously noted in our introductory comments.

Other General Comments

Firearms

While we understand the Service cannot take action on a law that is not yet in effect, we request existing compendium entries that address firearm use be revised to take into account the enactment of Section 512 of the *Credit Card Accountability Responsibility and Disclosure Act of 2009*, effective February 22, 2010. The new federal law allows individuals who can legally possess firearms under applicable federal and Alaska state law, to also legally possess firearms in National Parks and National Wildlife Refuges. It appears appropriate information has been included on most, if not all, park websites; however, it appears there are Compendium entries for the Glacier Bay, Denali, and Katmai National Park & Preserves that need to be updated to reflect the new federal law.

Although outside the Compendium process, we also request the Service consider whether 36 CFR §13.30 needs to also be modified to reflect the new federal law.

Thank you for this opportunity to comment. Please contact me at (907) 269-7477 if you have any questions.

Sincerely,



Sally Gibert
State ANILCA Program Coordinator